

## EXPLANATORY STATEMENT

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

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

*Public Governance, Performance and Accountability Legislation Amendment (Enactment of the Public Governance and Resources Legislation Amendment Act (No. 1) 2015) Rule 2015*

Item 6 of Schedule 14 of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (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.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Public Governance, Performance and Accountability Legislation Amendment (Enactment of the Public Governance and Resources Legislation Amendment Act (No.1) 2015) Rule 2015* (Amendment Rule) would repeal sections of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule) relating to the matters detailed below.

Sections of the CTP Rule to be repealed relate to:

- 7AA – repayments by the Commonwealth;
- 7BB – the Clean Energy Regulator;
- 7BC – the Murray Darling Basin Authority;
- 7BD – the Climate Change Authority;
- 9 – disclosure of interests for members of the Reserve Bank Board and the Payments System Board; and
- Schedule 1 – modifications of the *Climate Change Authority Act 2011*.

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*.

The Amendment Rule commences the day after the instrument is registered on the Federal Register of Legislative Instruments and Schedule 1 to the rule commences on the day after registration or the commencement of the *Public Governance and Resources Legislation Amendment Act (No. 1) 2015* (PGRLA Act).

**Consultation**

The Amendment Rule was developed following consultation with affected entities and portfolio departments including the Department of the Environment, the Treasury and the Reserve Bank of Australia as part of developing the PGRLA Bill and advice was provided by the Australian Government Solicitor. The Amendment Rule was drafted by the Office of Parliamentary Counsel

**Details of the *Public Governance, Performance and Accountability Legislation Amendment (Enactment of the Public Governance and Resources Legislation Amendment Act (No. 1) 2015) Rule 2015***

**Section 1—Name of rule**

This section provides that the title of the rule is the *Public Governance, Performance and Accountability Legislation Amendment (Enactment of the Public Governance and Resources Legislation Amendment Act (No. 1) 2015) Rule 2015* (Amendment Rule).

**Section 2—Commencement**

This section provides that sections 1 to 4 of the rule commence the day after the instrument is registered on the Federal Register of Legislative Instruments. Schedule 1 to the Amendment Rule commences on the day after registration on the Federal Register of Commonwealth Instruments or the commencement of the *Public Governance and Resources Legislation Amendment Act (No. 1) 2015* (PGRLA Act).

**Section 3—Authority**

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

**Section 4—Schedules**

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

**Schedule 1—Amendments**

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

**Item 1—Sections 7AA, 7BB, 7BC, 7BD and 9**

This section repeals sections 7AA, 7BB, 7BC, 7BD and 9 of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (CTP Rule).

**Section 7AA—Repayments by the Commonwealth**

Section 7AA provides that section 77 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) can be used to support repayments regardless of when the payments to be refunded were received. The effect of this provision is that the Commonwealth may rely on either section 28 of the *Financial Management and Accountability Act 1997* or section 77 of the PGPA Act to make a repayment relating to an amount received by the Commonwealth before 1 July 2014.

Amendments to the CTP Act made by the PGRLA Act repeal the provision which saved section 28 of the *Financial Management and Accountability Act 1997*, accordingly, it is no

longer required in the CTP Rule.

### **Section 7BB—The Clean Energy Regulator**

Section 7BB has the effect of treating the Clean Energy Regulator as a non-corporate Commonwealth entity for the purposes of the finance law (within the meaning of the PGPA Act). This provision applied in the first reporting period for the Clean Energy Regulator that commences on or after 1 July 2014.

This provision has been given permanent effect by amendments to the *Clean Energy Regulator Act 2011* made by the PGRLA Act. Accordingly, it is no longer required in the CTP Rule.

### **Section 7BC—The Murray-Darling Basin Authority**

Section 7BC has the effect of prescribing the Chief Executive of the Murray-Darling Basin Authority is the accountable authority of the Murray-Darling Basin Authority. This provision applied in the first reporting period for the Murray-Darling Basin Authority that commences on or after 1 July 2014.

This provision has been given permanent effect by amendments made to the *Water Act 2007* made by the PGRLA Act. Accordingly, it is no longer required in the CTP Rule.

### **Section 7BD—The Climate Change Authority**

Section 7BD has the effect of treating the *Climate Change Authority Act 2011* as being modified as provided in Schedule 1 to the CTP Rule. This provision applied in the first reporting period for the Climate Change Authority that commences on or after 1 July 2014.

This provision has been given permanent effect by amendments made to the *Climate Change Authority Act 2011* made by the PGRLA Act. Accordingly, it is no longer required in the CTP Rule.

### **Section 9—Disclosure of interests for members of the Reserve Bank Board in relation to certain matters**

This section amended the *Reserve Bank Act 1959* to continue disclosure of interest arrangements for members of the Reserve Bank Board and the Payments System Board which were in place prior to the introduction of the PGPA Act. These requirements allow members of the Reserve Bank Board who have disclosed to the Treasurer a material personal interest, to be present and vote in relation to matters dealing with monetary policy decisions and financial system stability.

This provision has been given permanent effect by amendments made to the *Reserve Bank Act 1959* by the PGRLA Act. Accordingly, it is no longer required in the CTP Rule.

### **Item 2—Schedule 1**

This section repeals Schedule 1 of the CTP Rule 2014, which provides the detail of modifications to the *Climate Change Authority Act 2011* provided for by section 7BD of the CTP Rule.

These modifications included treating the Climate Change Authority as a non-corporate Commonwealth entity for the purposes of the finance law (within the meaning of the PGPA Act). The modifications also listed the following for the purposes of the finance law:

- the CEO is the accountable authority of the Climate Change Authority;
- the officials;
- the purposes of the Climate Change Authority;
- disclosure of interest requirements; and
- requirements for preparing the corporate plan of the Climate Change Authority.

This provision applied in the first reporting period for the Climate Change Authority that commences on or after 1 July 2014.

This provision has been given permanent effect by amendments to the *Climate Change Authority Act 2011* made by the PGRLA Act. Accordingly, it is no longer required in the CTP Rule.

## **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 (Enactment of the Public Governance and Resources Legislation Amendment Act (No. 1) 2015) Rule 2015***

The *Public Governance, Performance and Accountability Legislation Amendment (Enactment of the Public Governance and Resources Legislation Amendment Act (No. 1) 2015) Rule 2015* (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) consolidated 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.

Item 6 of Schedule 14 of the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (CTP Act) provides that the Finance Minister, by legislative instrument, make rules prescribing matters required or permitted by this 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 being made to support the commencement of the *Public Governance and Resources Legislation Amendment Act (No. 1) 2015*. It repeals the following sections of the CTP Rule:

- Section 7AA – repayments by the Commonwealth: this provision supports repayments by the Commonwealth through section 77 of the *Public Governance, Performance and Accountability Act 2013* regardless of when the amount was received by the Commonwealth;
- Section 7BB – the Clean Energy Regulator: has the effect of treating the Clean Energy Regulator as a non-corporate Commonwealth entity;
- Section 7BC – the Murray-Darling Basin Authority: has the effect of prescribing the Chief Executive of the Murray-Darling Basin Authority as the accountable authority;
- Section 7BD – the Climate Change Authority: has the effect of treating the *Climate Change Authority Act 2011* as being modified, as a consequence of the introduction of the PGPA Act, as provided in Schedule 1 to the CTP Rule;
- Section 9 – Disclosure of interests for members of the Reserve Bank Board (RBB) and the Payments System Board (PSB): has the effect of continuing disclosure of interests for RBB and PSB members in place prior to the introduction of the PGPA Act; and

- Schedule 1 – Modifications of the Climate Change Authority Act 2011: has the effect of treating the Climate Change Authority as a non-corporate Commonwealth entity listed the following for the purposes of the finance law:
  - the CEO is the accountable authority of the Climate Change Authority;
  - the officials;
  - the purposes of the Climate Change Authority;
  - disclosure of interest requirements; and
  - requirements for preparing the corporate plan of the Climate Change Authority

These provisions have been given permanent effect through the *Public Governance and Resources Legislation Amendment Act (No. 1) 2015*.

**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**