

## EXPLANATORY STATEMENT

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

#### *Public Governance, Performance and Accountability Act 2013*

#### *Public Governance, Performance and Accountability Amendment (CSC) Rule 2016*

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 Amendment (CSC) Rule 2016* (Amendment Rule) is being made to amend the rule instrument made under the PGPA Act, the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

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.

ComSuper merged with Commonwealth Superannuation Corporation (CSC) on 1 July 2015. ComSuper was a non-corporate Commonwealth entity (NCE) for the purposes of the PGPA Act. ComSuper's main function was to provide administrative services to CSC in relation to the superannuation schemes administered by CSC. CSC is the trustee of the Australian Government's main civilian and military superannuation schemes. CSC is a corporate Commonwealth entity (CCE) for the purposes of the PGPA Act.

The merger was implemented by the *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015* (GAGSSLA Act). At commencement of the merger, ComSuper was abolished. CSC is now responsible for providing administrative services in relation to the Australian Government's main civilian and military superannuation schemes.

Following the merger of ComSuper with CSC, the Amendment Rule is being made. The Amendment Rule makes CSC subject to certain arrangements that applied to ComSuper when it performed the administrative services function in relation to the superannuation schemes administered by CSC. The Amendment Rule will:

- provide that, in relation to amounts received by CSC on behalf of the Commonwealth and certain other amounts, CSC must comply with directions relating to bank accounts opened and maintained in Australia given by the Finance Minister in delegating his or her power in subsection 53(1) of the PGPA Act to NCEs. The amounts covered by the requirement include administration fees and amounts that CSC collects from agencies, on behalf of the Commonwealth, in line with government policy. In practice, this will mean that Commonwealth money and certain other money held in CSC bank accounts will continue to be consolidated at the end of each day and banking arrangements for this money will need to comply with the directions.

CSC will not be required to apply the directions in managing money that the organisation holds in its own right;

- provide that the function of providing administrative services in relation to the superannuation schemes administered by CSC, formerly performed by ComSuper, will continue to be subject to, and need to comply with, the *Commonwealth Procurement Rules – July 2014* (CPRs), now that this function is performed by CSC. The CPRs will not apply to CSC in respect of any of its other functions, such as fund management and investment management; and
- allow the Board of CSC, which is a CCE, or an official of CSC to be delegated and the Board of CSC to sub-delegate certain powers, functions or duties relating to recovery of debts owing to the Commonwealth under the PGPA Act and the PGPA Rule. This is necessary given CSC's function to provide administrative services in relation to the superannuation schemes administered by the organisation. The relevant powers, functions or duties were performed by ComSuper when it previously undertook this administrative services function. Debts owed to CSC in its own right are not affected by the Amendment Rule and will be managed in the same manner as has been CSC's practice to date.

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 with CSC. The Amendment Rule was drafted by the Office of Parliamentary Counsel.

**Details of the *Public Governance, Performance and Accountability Amendment (CSC) Rule 2016***

**Section 1—Name**

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability Amendment (CSC) Rule 2016* (Amendment Rule).

**Section 2—Commencement**

This section provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

The whole of the Amendment Rule will commence on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3—Authority**

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

**Section 4—Schedules**

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

**Schedule 1—Amendments**

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

**Banking in relation to Commonwealth and certain other money**

**Item 1 – Section 4**

This item inserts new definitions into section 4 of the PGPA Rule referring to “banking delegation direction”, “CSC” and “superannuation scheme administered by CSC”. While these terms are largely self-explanatory, the following defined terms are noted:

- **CSC** is short for Commonwealth Superannuation Corporation and is the body corporate that was formerly referred to as Australian Reward Investment Alliance. The body corporate is continued in existence by section 5 of the *Governance of Australian Government Superannuation Schemes Act 2011* (GAGSS Act).
- **superannuation scheme administered by CSC** is a list of the schemes that are administered by CSC and is a reference to any of the schemes listed.

## Item 2 – Division 2 of Part 2-4 (heading)

This item repeals and substitutes the current heading with “Division 2 – Banking” and inserts new Subdivision A – Banking by corporate Commonwealth entities and new Subdivision B – Banking or dealing with relevant money received by officials.

Subdivision A comprises new section 18A, which will provide that CSC must comply with all banking delegation directions in relation to certain amounts, identified in section 18A.

These amounts are:

- amounts received by CSC for the purposes of making payments mentioned in section 29A of the GAGSS Act (which deals with making payments on behalf of the Commonwealth). In practice, these are largely amounts drawn by CSC from Commonwealth appropriations to pay superannuation benefit payments under superannuation Acts administered by the organisation;
- amounts received by CSC under section 29B of the GAGSS Act (which deals with receiving payments or other amounts on behalf of the Commonwealth). In practice, these amounts include administration fees and amounts that CSC collects from agencies, on behalf of the Commonwealth, in line with government policy. The amounts collected form part of the Consolidated Revenue Fund;
- any other amounts received by CSC (whether for the purpose of making payments or for any other purpose) on behalf of the Commonwealth for the purpose of performing CSC’s function under paragraph 8(1)(c) of the GAGSS Act. The inclusion of this category of amounts recognises that CSC may handle Commonwealth money in doing things incidental to, or conducive to, the performance of CSC’s other legislated functions;
- amounts received by CSC that are referable or equivalent to amounts credited to the Services for Other Entities and Trust Moneys – ComSuper Special Account (the SOETM – ComSuper Special Account) established by the *Financial Management and Accountability (Establishment of Special Account for ComSuper) Determination 2011/06*. The amounts credited to the SOETM – ComSuper Special Account are held on trust or otherwise for the benefit of persons other than the Commonwealth. The requirement for CSC to apply the banking delegation directions in relation to these amounts continues arrangements that applied under the former ComSuper.

Note 1 at the end of subsection 18A(1) informs the reader that the *Financial Management and Accountability (Establishment of Special Account for ComSuper) Determination 2011/06* is continued in force and modified by item 36 of Schedule 2 to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (PGPA (C&T) Act) and item 8 of Schedule 2 to the *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015* (GAGSSLA Act). Under item 36 of Schedule 2 to the PGPA (C&T) Act, the SOETM - ComSuper Special Account is taken to have been made under subsection 78(1) of the PGPA Act. Under item 8 of Schedule 2 to the GAGSSLA Act, references to ComSuper in the instrument establishing the SOETM - ComSuper Special Account have effect from commencement of the ComSuper-CSC merger as if they were references to CSC.

Note 2 assists the reader by indicating that other provisions relating to CSC are contained in section 28A.

A **banking delegation direction** is defined in new subsection 18A(2) as being a direction, in force at the time that the section commences, that is given in a delegation of the Finance Minister's power under subsection 53(1) of the PGPA Act and that relates to bank accounts opened and maintained in Australia.

New Subdivision B consists of existing sections 19 to 21 of the PGPA Rule which relate to banking or dealing with relevant money received by officials.

## **28A Modifications of the Act and instruments for CSC**

### **Item 3 – Before section 29**

This item inserts a new section 28A “Modifications of the Act and instruments for CSC” in the PGPA Rule, with the purpose of modifying the operation of the PGPA Act and the *Commonwealth Procurement Rules – July 2014* (CPRs) for CSC. New section 28A is made for section 104 of the PGPA Act, which permits rules to be made to modify the application, with respect to CSC, of the PGPA Act, the PGPA rules or an instrument made under section 105B or 105C of the PGPA Act.

#### **28A(1) *Delegation of powers, functions and duties in relation to recovery of debts***

Debts owing to the Commonwealth are generally recovered by non-corporate Commonwealth entities (NCEs), which are legally part of the Commonwealth. In doing so, NCEs are subject to arrangements for recovery of debts due to the Commonwealth that are set down in the PGPA Act and the PGPA Rule. Under this legislation, the arrangements do not apply to corporate Commonwealth entities (CCEs), such as CSC, as these entities do not usually recover debts on behalf of the Commonwealth.

The administration function that CSC assumed from ComSuper at commencement of the merger, involves CSC recovering debts owing to the Commonwealth (generally arising due to overpayments of superannuation benefits from Commonwealth appropriations). The GAGSSLA Act therefore inserted a new section 29C in the GAGSS Act that provides for rules made for the purposes of the PGPA Act in relation to recovery of debts owing to the Commonwealth to apply to CSC in the same way as those rules apply to a NCE.

The Amendment Rule addresses residual matters relating to the application of arrangements for recovery of debts due to the Commonwealth under the PGPA Act and PGPA Rule to CSC, so that CSC is able to more efficiently and effectively perform this part of its administrative services function.

Specifically, the Amendment Rule inserts new subsection 28A(1) into the PGPA Rule, which modifies the operation of subsection 107(1) and section 110 of the PGPA Act to enable the Finance Minister and the CSC Board, as the accountable authority of CSC, to delegate certain powers, functions and duties under the PGPA Act and PGPA Rule, concerning the recovery of debts due to the Commonwealth, as if CSC were a NCE. The powers, functions or duties that will be delegable to, and by the CSC Board, as a result of the modification are those under:

- paragraph 63(1)(b) of the PGPA Act, which enables the Finance Minister, on behalf of the Commonwealth, to authorise the modification of the terms and conditions on which an amount owing to the Commonwealth is to be paid to the Commonwealth. This is necessary as, while the legislation governing the superannuation schemes administered by CSC includes provisions enabling the organisation to recover debts due to the Commonwealth by instalments or to otherwise modify the terms and conditions on which such debts are to be paid to the Commonwealth, certain debts are not covered by these provisions; and
- section 11 of the PGPA Rules, which requires accountable authorities of NCEs to pursue recovery of debts due to the Commonwealth (unless certain requirements are met).

The note assists the reader by alerting them to the effect of subsections 107(1) and section 110 of the PGPA Act, and noting that paragraph 63(1)(b) and section 11 of the instrument deal with recovery of debts.

### ***28A(2) Limited application of Commonwealth Procurement Rules – July 2014 to CSC***

The Australian Government is a signatory to a number of international trade agreements. Under these agreements Australia has made commitments in relation to government procurement. Australia's obligations in relation to government procurement under these various trade agreements and their implementing legislation are partially reflected in CPRs issued under subsection 105B(1) of the PGPA Act.

ComSuper was subject to the government procurement obligations under relevant free trade agreements. For example, ComSuper was a listed 'procuring entity' under Annex 15-A of the Australia-United States Free Trade Agreement and the Australia-Chile Free Trade Agreement and, therefore, the government procurement obligations applied to its functions under these agreements. ComSuper met these obligations by applying the CPRs, which apply to all NCEs and CCEs prescribed under section 30 of the PGPA Rule.

As a result of the merger of the organisations on 1 July 2015, ComSuper was abolished and its function of providing administrative services in relation to the schemes administered by CSC transferred to CSC (which was not subject to the CPRs as it was not prescribed under section 30 of the PGPA Rule, which deals with procurement by CCEs).

Where a 'procuring entity' is merged or abolished or other machinery of government changes occur, the free trade agreement obligations attach to the function, not the entity. This means that the superannuation scheme administrative services function that transferred from ComSuper to CSC continues to be subject to the government procurement obligations under Australia's international trade agreements. These obligations apply to CSC's provision of administrative services for all of the civilian and military schemes under the organisation's management.

To support compliance with international free trade agreement obligations, new subsection 28A(2) of the PGPA Rule (inserted by the Amendment Rule) modifies the operation of the CPRs by applying them to CSC's function of providing administrative services relating to superannuation schemes administered by CSC. This is the function which CSC assumed from ComSuper. The CPRs do not apply to CSC in respect of any of its other functions.

**28A(3) Limited application of Commonwealth Procurement Rules – July 2014 to CSC**

Although CSC is a CCE, in order to comply with the Australian Government's international trade obligations, to the limited extent that the CPRs apply to CSC (that is, CSC's function of providing administrative services relating to superannuation schemes administered by CSC), they will apply, under new paragraph 28A(3)(c), as if CSC were a NCE. This means, for example, that CSC will apply the NCE reporting and procurement thresholds (to the extent the CPRs apply).

There are certain exceptions to CSC being treated as a NCE for the purposes of the limited application of the CPRs. They are:

- procurement-connected policies covered by rules 4.7 and 4.8 of the CPRs. Under new paragraph 28A(3)(a) CSC would be treated as a prescribed CCE in relation to these policies. As a result CSC will only be required to comply with rules 4.7 and 4.8 where a government policy order has been made under section 22 of the PGPA Act (which deals with the application of government policy to CCEs) that specifies that procurement-connected policies apply in relation to CSC; and
- coordinated procurements covered by rules 4.9 and 4.10 of the CPRs. Under new paragraph 28A(3)(b) CSC would be treated as a prescribed CCE in relation to coordinated procurements. As a result CSC will have the discretion to opt in to coordinated procurements (to the extent that the CPRs apply to CSC – that is, in relation to its superannuation scheme administrative services function).

## **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 (CSC) Rule 2016***

The *Public Governance, Performance and Accountability Amendment (CSC) Amendment Rule 2016* (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.

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- allow the Board of CSC, which is a CCE, or an official of CSC to be delegated and the Board of CSC to sub-delegate certain powers, functions or duties relating to recovery of debts owing to the Commonwealth under the PGPA Act and the PGPA Rule. This is necessary given CSC's function to provide administrative services in relation to the superannuation schemes administered by the organisation. The relevant powers, functions or duties were performed by ComSuper when it previously undertook this administrative services function. Debts owed to CSC in its own right are not affected by the Amendment Rule and will be managed in the same manner as has been CSC's practice to date.

### **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**