# EXPLANATORY STATEMENT

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

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability Amendment (Non-corporate Commonwealth Entity Annual Reporting) 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 (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016* (Annual Reporting Rule) is being made to amend the rule made under the PGPA Act. The rule instrument is the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

The Annual Reporting Rule contains provisions that provide minimum requirements for the preparation of annual reports by non-corporate Commonwealth entities under the PGPA Act. Details of the Annual Reporting Rule are set out at Attachment A. A statement of compatibility with human rights is at Attachment B.

The Annual Reporting Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Consultation**

The Department of Finance (Finance) has worked with the Office of Parliamentary Counsel in developing the Annual Reporting Rule.

Finance consulted stakeholders from non-corporate Commonwealth entities in relation to the annual report requirements which will apply to any reporting period beginning on or after 1 July 2015. A public consultation paper, requesting comments on the proposed approach for annual report requirements for 2015-16, was also released.

An exposure draft of the Non-corporate Annual Reporting Rule was posted on the Finance website.

Finance consulted with the Joint Committee of Public Accounts and Audit (JCPAA) throughout the development of the Annual Reporting Rule. The JCPAA is required to approve the annual report requirements prescribed by the Annual Reporting Rule for non-corporate Commonwealth entities under subsection 46(4) of the PGPA Act. The Annual Reporting Rule was approved by the JCPAA on 3 May 2016.

**Attachment A**

**Details of the *Public Governance, Performance and Accountability Amendment (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016***

**Section 1—Name of instrument**

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability Amendment (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016.*

**Section 2—Commencement**

This section provides that the instrument commences 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 PGPA Act.

**Section 4—Schedules**

This section ensures that if anything in a Schedule of the instrument makes an amendment to another instrument, then those amendments will apply after commencement of this instrument.

**Schedule 1—Amendments**

Public Governance, Performance and Accountability Rule 2014

**Item 1 - Section 4**

Item 1 inserts a definition of *‘enterprise agreement’, ‘individual flexibility arrangement’, ‘non‑ongoing APS employee’* and *‘ongoing APS employee’* in section 4 of the PGPA Rule.

**Item 2 - Section 16F**

Item 2 omits the existing reference in the guide to the section that explains that a non-corporate Commonwealth entity’s corporate plan, for a reporting period, sets out how the entity’s performance will be measured and assessed in achieving the entity’s purposes. This has then been replaced with an expanded explanation that incorporates the entity’s corporate plan as well as “any Portfolio Budget Statement, Portfolio Additional Estimates Statement and other portfolio estimates statement relevant to the reporting period”.

**Item 3 - Subsection 16F(1)**

As per Item 2 above, Item 3 inserts a reference to Portfolio Budget Statement, Portfolio Additional Estimates Statement and other portfolio estimates statement. This provides that the method of measuring and assessing the non-corporate Commonwealth entity’s performance in the reporting period must be in accordance with the method set out in the corporate plan for the entity for that reporting period as well as any Portfolio Budget Statement, Portfolio Additional Estimates Statement and other portfolio estimates statement relevant to the entity for the period that the annual performance statement relates.

**Item 4 - After Division 3 of Part 2-3**

Item 4 inserts and creates a new division “Division 3A—Annual report for Commonwealth entities“ and “Subdivision A—Annual report for non-corporate Commonwealth entities” to reflect the amendments to the PGPA Rule and ensure the PGPA Rule sequencing aligns with the PGPA Act.

**Section 17AA Guide to this Subdivision**

Section 17AA provides a guide to explain that the purpose of subdivision A is to prescribe the annual reporting requirements for non-corporate Commonwealth entities and that subdivision A is made for subsection 46(3) of the PGPA Act.

**Section 17AB Parliamentary standards of presentation**

The annual reports for non-corporate Commonwealth entities are tabled in Parliament. As such, section 17AB requires that the report must comply with guidelines for presenting documents to the Parliament (for example, presentation and printing standards).

**Section 17AC Plain English and clear design**

Subsection 17AC(1) requires that non-corporate Commonwealth entities must be conscious of the interests of the Parliament and other persons interested in the annual report when preparing the annual report.

Subsection 17AC(2) states that the information included in the annual report must also be relevant, reliable, concise, understandable and balanced. Where practicable, this should be achieved by:

* using clear design (for example, through headings and adequate spacing);
* defining acronyms and technical terms (for example, in a glossary);
* using tables, graphs, diagrams and charts; and
* including any additional matters as appropriate.

**Section 17AD Specific requirements for annual reports**

Section 17AD provides the mandatory content requirements for non-corporate Commonwealth entities annual reports.

There are eight mandatory content requirements detailed in subsection 17AD(a) through to subsection 17AD(h), which are:

1. a review by the accountable authority of the entity;
2. an overview of the entity;
3. a report on the performance of the entity, including the annual performance statement for the entity (as required by Section 39(1)(b) of the PGPA Act) and a report on financial performance of the entity;
4. information on management and accountability of the entity;
5. the annual Financial statements for the entity (as required by Section 43(4) of the PGPA Act);
6. other mandatory information;
7. a letter of transmittal; and
8. aids to access.

The eight mandatory requirements are set to ensure that essential information is included in a non-corporate Commonwealth entity’s annual report. The inclusion of these requirements ensures consistency of content. Annual reports are required to include information on each of these items. An accountable authority of a non-corporate Commonwealth entity may produce additional information in the entity’s annual report, provided these specific mandatory requirements are met.

**Section 17AE Overview of the entity**

Section 17AE establishes a range of mandatory elements that must be included by an accountable authority when dressing the mandatory content requirements as specified by subsection 17AD (b) overview of the entity.

Paragraph 17AE(1)(a) requires that the Overview of the entity must include a description of the entity including:

* The role and function of the entity;
* An outline of the organisational structure of the entity;
* The outcome and program structure of the entity as laid out in the relevant Portfolio Budget Statements; and
* The purpose(s) of the entity as laid out in the entity’s corporate plan prepared for subsection 35(1)(b) of the PGPA Act.

Paragraph 17AE(1)(b) establishes an additional requirement, specifically for non-corporate Commonwealth entities that are Departments of State, to provide an overview of the structure of the portfolio that the Department oversees.

Subsection 17AE(2) establishes a requirement for the annual report of a non-corporate Commonwealth entity to detail and explain any variations between the entity’s program and outcome structure published in the annual report, as required by subsection 17AE(1)(a)(iii), and the outcome and program structure of the entity published in the relevant Portfolio Budget Statements for the reporting period.

**17AF Report on financial performance**

Section 17AF establishes a range of mandatory elements that must be included by an accountable authority when addressing the mandatory content requirements as specified by paragraph 17AD(c)(ii) financial performance.

Subsection 17AF(1) requires the annual report to include information on the financial performance of the entity in the reporting period for which the annual report is prepared, this information must include:

* a discussion on the financial performance of the entity in the reporting period for which the annual report is prepared; and
* a table detailing the entity’s total resources received and payment made in the reporting period for which the annual report is prepared.

Subparagraph 17AF(2) requires the annual report to include information on any significant changes in financial results experienced by the entity in the reporting period in comparison to the previous reporting period for which the annual report is prepared. This information must include details of any operating loss incurred by the entity for the reporting period (including the cause and the entity’s actions in response), and details of any matter that can reasonably be anticipated to significantly affect the entity’s future operation or financial results.

 **Section 17AG Information on management and accountability**

Section 17AG establishes a range of mandatory elements that must be included by an accountable authority when addressing the mandatory content requirements as specified by subsection 17AD(d) information on management and accountability of the entity for the period.

*Corporate governance*

Subsection 17AG(2) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the corporate governance of the entity.

Paragraph 17AG(2)(a) requires the annual report to contain information on the entity’s compliance with section 10 of the PGPA Rule; which addresses the entity’s prevention, detection and the dealing with fraud.

Paragraph 17AG(2)(b) requires the annual report to contain a statement by the accountable authority of the non-corporate Commonwealth entity certifying that:

1. The entity has prepared fraud risk assessments and fraud control plans;
2. The entity has appropriate mechanisms for prevention, detection, investigation, recording and reporting fraud that meets the specific needs of the entity; and
3. They have taken all reasonable measures to appropriately address fraud relating to the entity.

Paragraph 17AG(2)(c) requires the annual report to contain a statement detailing the structures and processes that the entity has in place to implement the principles and objectives of corporate governance during the reporting period.

Paragraph 17AG(2)(d) requires the annual report to contain a statement that details any instance of significant non-compliance with the PGPA Act or the rule by the entity that occurred during the reporting period.

Paragraph 17AG(2)(e) requires the annual report to contain information detailing the entity’s response to remediate any instance of significant non-compliance with the PGPA Act or the PGPA Rule, as identified through the entity’s response to paragraph 17AG(2)(d).

*External scrutiny*

Subsection 17AG(3) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the most significant developments during the period in external scrutiny of the entity, and the entity’s response to that scrutiny.

Paragraph 17AG(3)(a) requires the annual report to contain information that details of any judicial decision or decision of an administrative tribunal that has had a significant effect on the operations of the entity during the reporting period.

Paragraph 17AG(3)(b) and (c) require the annual report to contain particulars of any reports given by the Auditor-General (other than those that deal with the annual financial statements of the entity), the Parliament, the Commonwealth Ombudsman, the Australian information commissioner or capability review on the entity during the reporting period.

*Management of Human resources*

Subsection 17AG(4) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the management of human resources.

Paragraph 17AG(4)(a) requires the annual report to contain an assessment on how effective the entity has been in utilising (managing and developing) its staff to achieve its intended objectives during the reporting period.

Paragraph 17AG(4)(b) requires the annual report to contain statistical information on the number of ongoing and non-ongoing employees, as defined by the section 4 of the PGPA Rule. This statistical information must provide information on the number of ongoing and non-ongoing employees that the entity had at the end of the reporting period:

* at each APS classification level;
* that are full time employees;
* that are part time employees;
* by gender;
* by location; and
* that identify as indigenous.

Paragraph 17AG(4)(c) requires the annual report to provide information on any employment arrangement in place within the entity, be it an enterprise agreement, individual flexibility agreement, common law contract, Australian workplace agreement, section 24(1) determination under the *Public Service Act 1999,* or any other arrangement. This information must include:

* the number of SES and non-SES employees under each arrangement;
* the salary ranges available for APS employees, by APS classification level, for each arrangement; and
* a description of the range of any non-salary benefits provided by the entity to its employees.

Paragraph 17AG(4)(d) requires the annual report to provide information on any performance based payments made to employees during the reporting period. This information must include:

* the number of employees at each APS classification level that received a payment;
* the aggregate amount paid by the entity at each APS classification level;
* the average amount paid to employees at each APS classification level; and
* the aggregate amount of all performance payments paid by the entity.

*Asset Management*

Subsection 17AG(5) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the asset management of the entity. This information should be provided in the annual report where managing assets is a significant part of the activities of the entity during the period.

*Purchasing*

Subsection 17AG(6) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the procurement practices of the entity. This information must include an assessment of the entity’s performance against the mandatory requirements of the ‘Commonwealth Procurement Rules’.

*Consultants*

Subsection 17AG(7) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the entities use of consultants during the reporting period.

Paragraph 17AG(7)(a) requires the annual report to include a statement summarising the entity’s use of consultants during the reporting period; this summary must include:

* The number of new contracts engaging consultants entered into by the entity during the reporting period;
* The total actual expenditure on new contracts entered into by the entity during the reporting period;
* The total number of ongoing contracts entered into by the entity during a previous reporting period; and
* The total expenditure on ongoing contracts entered into by the entity during a previous reporting period.

Paragraph 17AG(7)(b) requires the annual report to include a specific statement, consistent for all entities, detailing the total number of new consultancy contracts entered into in the reporting period, the total actual expenditure on those consultancy contracts, the total number of ongoing consultancy contracts that were ongoing during the reporting period and the total actual expenditure on those consultancy contracts during the period.

Paragraph 17AG(7)(c) requires the annual report to include a summary of the entity’s policies and procedures for selecting and engaging consultants. Additionally, the annual report must also provide details of the entity’s primary justifications for engaging consultants during the reporting period.

Paragraph 17AG(7)(d) requires the annual report to include a statement indicating that the consultancy and contractual information provided in the annual report is done so on an ‘actual’ expenditure basis. The statement must also include directions to [www.tenders.gov.au](http://www.tenders.gov.au) where information on the ‘value’ of contract is published.

*Australian National Audit Office*

Subsection 17AG(8) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the occurrence of Australian National Audit Office access clauses in contracts entered into by the entity. This information must include details of any contract entered into by the entity of a value of $100,000 or more, that does not provide the Auditor\_General access to the contractor’s premises; including:

* the name of the contractor;
* the purpose and value of the contract; and
* the rationale for why the access clauses were not included.

*Exempt Contracts*

Subsection 17AG(9) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on contracts or standing offers, entered into by the entity, that the accountable authority has excluded from publication on [www.tenders.gov.au](http://www.tenders.gov.au) because it would disclose sensitive information, as defined by the *Freedom of Information Act 1982.* This information, to the extent that doing so does not disclose exempt information, must include:

* A statement that the contract (or standing offer) has been exempt from publication on [www.tenders.gov.au](http://www.tenders.gov.au); and
* The value of the exempt contact or standing offer.

*Procurement initiatives to support small business*

Subsection 17AG(10) establishes a requirement for the annual report of a non-corporate Commonwealth entity to include information on the entity’s participation in procurement initiatives to support small business. The information must include:

* a statement that the entity “supports small business participation in the Commonwealth Government procurement market”;
* a statement that “small and medium enterprises and small enterprise participation statistics are available on the Department of Finance’s website”;
* an outline of the ways procurement practices of the entity supports small and medium enterprises; and
* a statement, from relevant entities, that recognises the importance of ensuring that small businesses are paid on time and that results of the survey of Australian Government payments to small business are available on the Treasury’s website.

**17AH Other mandatory information**

Section 17AH establishes a range of mandatory elements that must be included by an accountable authority when addressing the mandatory content requirements as specified by subsection 17AD(f) other mandatory information.

Paragraph 17AH(1)(a) requires the annual report to include information on advertising campaigns that the entity conducted during the reporting period for which the annual report is being prepared. This information must include either:

* a statement that “during the reporting period the entity conducted advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at the entity’s website and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website”; or
* If the entity did not conduct any advertising campaigns during the reporting period, then a statement to that effect.

Paragraph 17AH(1)(b) requires the annual report to include a statement where information on grants awarded by the entity during the period can be located on the entity’s website.

Paragraph 17AH(1)(c) requires the annual report to include an outline of the mechanisms of the entity for reporting on disability, including a reference to the website where information in relation to those mechanisms can be found.

Paragraph 17AH(1)(d) requires the annual report to include a statement where information on the entity’s information publication scheme under Part II of the *Freedom of Information Act 1982* can be located on a website.

Paragraph 17AH(1)(e) provides for the annual report to include information that corrects any other information published in an annual report, produced by an entity in a proceeding reporting period, that is now proven to be incorrect to a material extent.

Subsection 17AH(2) allows for the annual report of a non-corporate Commonwealth entity to include any information, as required by other legislation, to be included in the annual report as an appendix to the report as necessary.

**17AI Letter of transmittal**

Section 17AI establishes a range of mandatory elements that must be included by an accountable authority when addressing the mandatory content requirements as specified by subsection 17AD(g) letter of transmittal.

Section 17AI establishes a requirement for the annual report of a non-corporate Commonwealth entity to include a copy of letter (the letter of transmittal) from the accountable authority to the relevant Minister. The letter must:

* be signed by the accountable authority;
* state that the annual report has been prepared for section 46 of the PGPA Act;
* include any relevant detail of enabling or other legislation that affects the preparation of the entity’s annual report; and
* be dated on the day that the accountable authority approved the final text of the annual report.

**17AJ Aids to access**

Section 17AJ establishes a range of mandatory elements that must be included by an accountable authority when addressing the mandatory content requirements as specified by subsection 17AD(h) aids to access.

Section 17AJ establishes a requirement for the annual report of a non-corporate Commonwealth entity to include:

* a table of contents;
* an index of the contents (ordered alphabetically);
* a glossary of acronyms and abbreviations;
* a list of mandatory annual reporting requirements (which identifies where in the annual report the mandatory requirements are addressed in the report) detail of which can be located in schedule 2 of the PGPA Rule;
* contact details of a relevant officer to which queries relating to the annual report can be referred;
* the entity’s website address; and
* details of where the annual report is published on the entity’s website.

**Item 5 - Subsection 17A(3)**

Item 5 omits the existing reference in the PGPA Rule that requires the Finance Minister nominate, in the event of a transfer of function between entities, an accountable authority to undertake the relevant reporting requirements for that function as required by the PGPA Act and PGPA Rule. Item 5 then substitutes with an expanded explanation that mandates that the entity receiving the function being transferred will take responsibility for the relevant reporting requirements for that function as required by the PGPA Act and PGPA Rule.

**Item 6 - At the end of section 17A**

Item 6 adds an allowance for the Finance Minister to nominate a Commonwealth entity to undertake the relevant reporting requirements for a transferred function as required by the PGPA Act and PGPA Rule. This nomination may be made to entities other than those who have received the transferred functions as referred to in 17A(3) of the PGPA Rule.

**Item 7 - After Chapter 4**

Item 7 inserts and creates a new Chapter “Chapter 5—Transitional and application provisions “ and “Part 1—Amendments made by the *Public Governance, Performance and Accountability Amendment (Non‑corporate Commonwealth Entity Annual Reporting) Rule 2016*” to reflect the amendments to the PGPA Rule, ensure the PGPA Rule sequencing aligns with the PGPA Act and address the transitional arrangements required for the implementation of the amendments to the PGPA rule.

Section 31 determines that the amendment made to the PGPA Rule made by the Public Governance, Performance and Accountability Amendment (Non‑corporate Commonwealth Entity Annual Reporting) Rule 2016 apply for to all reporting periods beginning from 1 July 2015.

**Item 8 - At the end of the rule**

Item 8 inserts new schedule “Schedule 2—List of requirements” that provides a guide and table containing all of the mandatory elements that non-corporate Commonwealth entities must address in an annual report. This table must be included in the annual report to address the mandatory content requirement as specified by subsection 17AJ(d) of the PGPA Rule.

Section 1 provides a guide to explain that the purpose of Schedule 2—List of requirements is to prescribe that the list of requirements must be included in non-corporate Commonwealth entity’s annual report for the reporting period and that Schedule 2 is made for subsection 46(3) of the PGPA Act.

**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 Amendment (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016***

The *Public Governance, Performance and Accountability Amendment (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016* 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 Amendment (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016* is being made to amend the rule instrument made under the PGPA Act, the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). The PGPA Rule is to support the implementation of the PGPA Act.

The *Public Governance, Performance and Accountability Amendment (Non-corporate Commonwealth Entity Annual Reporting) Rule 2016* contains provisions that provide minimum requirements for the preparation of annual reports by non-corporate Commonwealth entities under the PGPA Act.

**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**