

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

*Public Governance, Performance and Accountability
(Charging for Regulatory Activities) Order 2017*

Charging for regulatory activities government policy order

Subsection 22(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides that the Finance Minister may make an order that specifies a policy of the Australian Government that is to apply in relation to one or more corporate Commonwealth entities (CCE).

The *Public Governance, Performance and Accountability (Charging for Regulatory Activities) Order 2017* (the Order) supports the implementation of the Australian Government Charging Framework (the Framework). The Order specifies the Australian Government policy relating to charging for regulatory activities that is to apply to certain CCEs. It contains provisions that relate to how regulatory charging activities are to be undertaken by a CCE. The Order does not govern or restrict resource and commercial activities undertaken by a CCE.

Details of the Framework are available on the Department of Finance's (Finance) website at www.finance.gov.au. The Order is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). However, subsection 22(4) of the PGPA Act provides that the Order is not subject to disallowance. Therefore, a statement of compatibility with human rights is not required (subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*).

Consultation

In accordance with section 17 of the Legislation Act, Finance consulted stakeholders from across the Commonwealth in the development of the Order. The whole-of-government Charging Working Group, chaired by Finance, oversaw the development process of the Order.

Consistent with subsection 22(2) of the PGPA Act, prior to issuing a government policy order, the Finance Minister must be satisfied that the minister responsible for the policy has consulted the affected entities on the application of the policy. A consultation process occurred with selected CCEs in December 2016 - May 2017.

The Order only applies to selected CCEs in the general government sector and does not adversely affect the private sector. The Office of Best Practice Regulation advised (reference number 17871) that only a short form Regulatory Impact Statement (RIS) was required to implement the Framework. The short form RIS stated that 'There are no regulatory impacts or compliance costs to businesses or individuals from the implementation of Framework'. Issuing the Order is part of the broader implementation of the Framework.

Details of the Public Governance, Performance and Accountability (Charging for Regulatory Activities) Order 2017

Section 1—Name

This section provides that the title of the legislative instrument is the *Public Governance, Performance and Accountability (Charging for Regulatory Activities) Order 2017* (the Order).

Section 2—Commencement

This section provides for the commencement of the Order. The Order commences on the later of 1 July 2017 or the day after the legislative instrument is registered on the Federal Register of Legislation.

Section 3—Authority

This section states that the Order is made under subsection 22(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Section 4—Application

This section specifies that the Order only applies to those corporate Commonwealth entities (CCE) that undertake regulatory charging activities. Schedule 1 lists the CCEs that are subject to the Order.

Section 5—Simplified outline of this instrument

This section provides a simplified outline, which details the effect of the Order as a whole. The intention of the Order is to apply the key requirements of the Australian Government Charging Framework (the Framework) to CCEs that undertake regulatory charging activities.

Section 6—Definitions

This section defines certain terms that are used in the Order.

Section 7—Approved regulatory charging activity requirements

This section details those requirements that a CCE must undertake in respect to charging for regulatory activities. These requirements are the same as those that apply to non-corporate Commonwealth entities, including that there are no financial or other thresholds for application of these requirements. An approved regulatory activity is an activity that has:

- policy approval from the Australian Government for the CCE to conduct and charge for a regulatory activity (this includes authority for partial cost recovery e.g. 80 per cent of the total costs of the activity); and
- a statutory basis to allow the CCE to charge for the regulatory activity.

For each approved regulatory charging activity a CCE must:

- ensure that expenses and revenue for the activity align over a reasonable period of time (usually over the business cycle of the activity, rather than on a year-by-year basis). When the policy approval includes authority for partial cost recovery, expenses and revenue must align to the percentage or portion of the costs that will be recovered, as agreed by the Australian Government;
- have up-to-date, published information about the activity, in the form of a Cost Recovery Implementation Statement (CRIS); and
- measure, assess and document the performance of the activity, to ensure that the activity is efficient and is meeting the intended policy outcomes of the Government.

Further information on the application of regulatory charging is provided in the Framework, which can be viewed at www.finance.gov.au.

Section 8—Cost Recovery Implementation Statement

A CRIS must be prepared for each approved regulatory charging activity conducted by the CCE regardless of the value of the regulatory activity. The CRIS is a tool to document regulatory design and operation, as well as reporting financial and non-financial performance of an approved regulatory charging activity.

Paragraphs 8(1)(a) to (k) of the Order set out the details required within a CRIS. A CRIS template is available and can be accessed from the Department of Finance's website at www.finance.gov.au. The CRIS is an explanatory document that provides key information on how cost recovery is implemented for an approved regulatory charging activity. After charging commences, the CRIS also becomes a continuous disclosure tool. It is initially prepared after the Australian Government makes a decision to cost recover a regulatory activity and provides the basis for ongoing engagement with stakeholders on various aspects of the approved regulatory charging activity.

Paragraph 8(1)(k) refers to a portfolio charging review. All CCEs that undertake charging activities contribute to a scheduled portfolio charging review, which is coordinated by the Department of State.

Paragraphs 8(2)(a) detail the approval process for a CRIS. The CRIS must be certified by the accountable authority of the CCE prior to consideration by the responsible minister of the CCE.

Paragraph 8(2)(b) requires a CCE to publish the CRIS on its website prior to it commencing to charge for the approved regulatory charging activity.

Sub-section 8(3) refers to the charging risk rating of an approved regulatory charging activity. A charging risk assessment is required by the Budget Process Operational Rules when a new regulatory charging activity is being proposed or an existing regulatory charging activity is being amended.

The charging risk assessment results in a rating of either: high, medium or low risk. Where the charging risk rating is high, the Finance Minister's written agreement is also required for the CRIS, in addition to the requirements set out in subsection 8(2).

Schedule 1

Only those CCEs listed at Schedule 1 are required to comply with the Order. CCEs can be added from this list, depending on whether they undertake an approved regulatory charging activity. When CCEs no longer conduct regulatory activities, the Regulatory Charging GPO will no longer apply. Consistent with the requirements under subsection 22(2) of the PGPA Act, appropriate consultation with relevant CCEs will occur prior to the entity being added to Schedule 1 of this legislative instrument.