

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Relevant Company) Amendment (2017 Measures No. 3) Rules 2017

Section 85 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides the Finance Minister with the authority to form, or participate in forming a relevant company on behalf of the Commonwealth. A relevant company is a company of a kind prescribed by a rule made under the PGPA Act and whose objects or proposed activities are of a kind prescribed by the rule. 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 (Relevant Company) Amendment (2017 Measures No. 3) Rules 2017* (the rule) would provide the legislative authority for the Commonwealth to form, or participate in forming, a relevant company whose objects or proposed activities are to assist with the performance of the functions, or exercise the powers of an intelligence or security agency or listed law enforcement agency (LLEA).

The rule will assist intelligence or security agencies or LLEAs to form companies to carry out designated activities identified in section 105D of the PGPA Act. Determinations made by the Finance Minister and the responsible Minister under section 105D of the PGPA Act also assist with the functions of intelligence or security agencies or LLEAs. To facilitate the formation of a relevant company, a determination will be made by the Finance Minister under section 105D(3) of the PGPA Act to modify section 85(1) of the Act to provide for the accountable authority of an intelligence or security agency or LLEA, or a person authorised, on behalf of the Commonwealth, for the purpose of a designated activity to:

- form or participate in forming a relevant company; or
- acquire shares (either by purchase or subscription) in a relevant company, or become a member of a company, in circumstances, but for subsection 89(5) that would result in the relevant company becoming a Commonwealth company.

The determinations will also modify the definition of ‘Commonwealth company’ to include a foreign company as well as a company incorporated under the *Corporations Act 2001*.

Details of the rule are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

The rule will commence on the day after registration on the Federal Register of Legislation.

Consultation

The Australian Secret Intelligence Service, Australian Secret Intelligence Organisation, the Australian Signals Directorate, Australian Federal Police and the Australian Criminal Intelligence Commission have been consulted in the making of this rule.

Details of the *Public Governance, Performance and Accountability (Relevant Company) Amendment (2017 Measures No. 3) Rules 2017*

Section 1 – Name

This section provides that the title of the rule is the *Public Governance, Performance and Accountability (Relevant Company) Amendment (2017 Measures No. 3) Rules 2017*.

Section 2 – Commencement

This section provides that each provision of the rule 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 rule will commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument specified in the Schedule is amended as set out in the applicable items of the Schedule.

Schedule 1 – Amendments

This section provides that a company is a relevant company if it is of a kind mentioned in column 2 of the table and its proposed activities are of a kind mentioned in column 3 for the corresponding item.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The *Public Governance, Performance and Accountability (Relevant Company) Amendment (2017 Measures No. 3) Rules 2017* 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) establishes 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 (Relevant Company) Amendment (2017 Measures No. 3) Rules 2017* would establish a rule under section 85 of the PGPA Act. The rule would provide the Commonwealth with the legislative authority to form, or participate in forming, relevant companies mentioned in section 5 of the rule.

Human rights implications

The rule does not impinge on any applicable rights or freedoms.

Conclusion

The rule is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**