

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance and the Public Service

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability (Relevant Company) Rule 2016

*Public Governance, Performance and Accountability (Relevant Company) Amendment
(2018 Measures No. 1) Rules 2018*

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. Section 85 also authorises the Finance Minister, on behalf of the Commonwealth, to acquire shares in or become a member of a relevant company, in circumstances that would result in the relevant company becoming a Commonwealth company. A relevant company is a company of a kind prescribed, including its objects or proposed activities, by a 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. Relevant companies are prescribed in the *Public Governance, Performance and Accountability (Relevant Company) Rule 2016* (the Relevant Company Rule).

The *Public Governance, Performance and Accountability (Relevant Company) Amendment (2018 Measures No. 1) Rules 2018* (the Amendment Rules) amend the Relevant Company Rule. This amendment provides the legislative authority for the Finance Minister, on behalf of the Commonwealth, to acquire shares in a relevant company that is limited by shares whose objects or proposed activities are to develop and maintain sovereign ship design and construction capabilities and to undertake shipbuilding projects and related activities.

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

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

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

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Defence.

Details of the *Public Governance, Performance and Accountability (Relevant Company) Amendment (2018 Measures No. 1) Rules 2018*

Section 1 – Name

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability (Relevant Company) Amendment (2018 Measures No. 1) Rules 2018* (the Amendment Rules).

Section 2 – Commencement

This section provides that the Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that the *Public Governance, Performance and Accountability (Relevant Company) Rule 2016* is amended as set out in the Schedule to the Amendment Rules.

Schedule 1 – Amendments

Public Governance, Performance and Accountability (Relevant Company) Rule 2016

Item 1 – Section 5 (at the end of the table)

This item amends the table of relevant companies in section 5 of the *Public Governance, Performance and Accountability (Relevant Company) Rule 2016* by adding a company that is limited by shares whose objects or proposed activities are to develop and maintain sovereign ship design and construction capabilities and to undertake shipbuilding projects and related activities.

This item provides the Finance Minister, on behalf of the Commonwealth, with authority under paragraph 85(1)(b) of the PGPA Act to acquire shares in a relevant company in circumstances that would result in the relevant company becoming a Commonwealth company. The Commonwealth's involvement in the kind of company prescribed by the Amendment Rules would facilitate the development and sustainment of Australia's naval shipbuilding capability.

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 (2018 Measures No. 1) Rules 2018* (the Amendment Rules) are 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 Amendment Rules amend the *Public Governance, Performance and Accountability (Relevant Company) Rule 2016* to provide the Finance Minister, on behalf of the Commonwealth, with the legislative authority to acquire shares in a relevant company of the kind described below in circumstances that would result in the relevant company becoming a Commonwealth company. The relevant company prescribed by the Amendment Rules is of the kind:

- that is limited by shares; and
- with the objects or proposed activities to develop and maintain sovereign ship design and construction capabilities and to undertake shipbuilding projects and related activities.

Human rights implications

The Amendment Rules do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Rules are compatible with human rights as they do not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance and the Public Service**