



# **Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020**

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I, Mathias Cormann, Minister for Finance, make the following rules.

Dated 25 February 2020

Mathias Cormann  
Minister for Finance

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
	<b>Schedule 1—Amendments</b>	<b>2</b>
	<i>Public Governance, Performance and Accountability Rule 2014</i>	<i>2</i>



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## 1 Name

This instrument is the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	28 February 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Public Governance, Performance and Accountability Act 2013*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *Public Governance, Performance and Accountability Rule 2014*

#### 1 Section 4

Insert:

*books* includes:

- (a) a register; and
- (b) financial reports or financial records, however compiled, recorded or stored; and
- (c) a document.

#### 2 Subsection 12(1) (table item 3, column headed “Circumstances”)

Omit “any requirements relating to the granting of indemnities prescribed by rules made for the purposes of section 61 of the Act”, substitute “the requirements prescribed by section 22B relating to the granting of indemnities”.

#### 3 At the end of Part 2-2

Add:

### Division 3—Inspection of books of corporate Commonwealth entities

#### 16DA Inspection of books of corporate Commonwealth entities

##### **Guide to this section**

The purpose of this section is to authorise the inspection of the books of a corporate Commonwealth entity.

A person who is the accountable authority, or a member of the accountable authority, of the entity may, for the purposes of certain legal proceedings, inspect the entity’s books and take copies of them. This right continues for a period of 7 years beginning when the person ceases to be the accountable authority or a member of the accountable authority.

This section is made for paragraphs 102(1)(a), (b) and (d) of the Act.

- (1) A person who is the accountable authority, or a member of the accountable authority, of a corporate Commonwealth entity may, for the purposes of an eligible legal proceeding in relation to the person, inspect the books of the entity at all reasonable times.
- (2) A person who ceases to be the accountable authority, or a member of the accountable authority, of a corporate Commonwealth entity may, for the purposes of an eligible legal proceeding in relation to the person, inspect the books of the entity at all reasonable times during the period of 7 years beginning at that cessation.

- (3) However, a person's right under subsection (1) or (2) to inspect books is subject to any Commonwealth law that prohibits disclosure of particular information.
- (4) A person authorised to inspect books under this section may make copies of the books.
- (5) In this section:

***eligible legal proceeding***, in relation to a person, means a legal proceeding:

- (a) to which the person is a party; or
- (b) that the person proposes in good faith to bring; or
- (c) that the person reasonably believes will be brought against the person.

#### **4 Subsection 16E(2) (table items 3 to 6)**

Repeal the items, substitute:

3	Key activities	For the entire period covered by the plan, the key activities that the entity will undertake in order to achieve its purposes.
4	Operating context	For the entire period covered by the plan, the following: <ul style="list-style-type: none"> <li>(a) the environment in which the entity will operate;</li> <li>(b) the strategies and plans the entity will implement to have the capability it needs to undertake its key activities and achieve its purposes;</li> <li>(c) a summary of the risk oversight and management systems of the entity, and the key risks that the entity will manage and how those risks will be managed;</li> <li>(d) details of any organisation or body that will make a significant contribution towards achieving the entity's purposes through cooperation with the entity, including how that cooperation will help achieve those purposes;</li> <li>(e) how any subsidiary of the entity will contribute to achieving the entity's purposes.</li> </ul>
5	Performance	For each reporting period covered by the plan, details of how the entity's performance in achieving the entity's purposes will be measured and assessed through: <ul style="list-style-type: none"> <li>(a) specified performance measures for the entity that meet the requirements of section 16EA; and</li> <li>(b) specified targets for each of those performance measures for which it is reasonably practicable to set a target.</li> </ul>

#### **5 At the end of Division 1 of Part 2-3**

Add:

#### **16EA Performance measures for Commonwealth entities**

##### **Guide to this section**

The purpose of this section is to set out the requirements for the performance measures for a Commonwealth entity.

The performance measures must be included in the entity's corporate plan (see subsection 16E(2)) and are used to measure and assess the entity's performance in a reporting period (see subsection 16F(1)).

This section is made for subsection 35(2) of the Act.

The performance measures for an entity meet the requirements of this section if, in the context of the entity's purposes or key activities, they:

- (a) relate directly to one or more of those purposes or key activities; and
- (b) use sources of information and methodologies that are reliable and verifiable; and
- (c) provide an unbiased basis for the measurement and assessment of the entity's performance; and
- (d) where reasonably practicable, comprise a mix of qualitative and quantitative measures; and
- (e) include measures of the entity's outputs, efficiency and effectiveness if those things are appropriate measures of the entity's performance; and
- (f) provide a basis for an assessment of the entity's performance over time.

## 6 Subsection 17(4)

Repeal the subsection, substitute:

- (4) If the entity is a non-corporate Commonwealth entity:
  - (a) all of the members of the audit committee must be persons who are not officials of the entity; and
  - (b) a majority of the members must be persons who are not officials of any Commonwealth entity.

(4AA) If the entity is a corporate Commonwealth entity, all of the members of the audit committee must be persons who are not employees of the entity.

## 7 Subsection 17(4A)

After "subsection (4)", insert "or (4AA)".

## 8 Subsection 17(5)

Omit "subsections (3) (4) and (4A)", substitute "subsections (3) to (4A)".

## 9 After subsection 17AG(2)

Insert:

*Audit committee*

- (2A) The annual report must include the following:
  - (a) a direct electronic address of the charter determining the functions of the audit committee for the entity;
  - (b) the name of each member of the audit committee during the period;
  - (c) the qualifications, knowledge, skills or experience of those members;
  - (d) information about each of those members' attendance at meetings of the audit committee during the period;
  - (e) the remuneration of each of those members.



**10 After paragraph 17BE(t)**

Insert:

- (taa) the following information about the audit committee for the entity:
- (i) a direct electronic address of the charter determining the functions of the audit committee;
  - (ii) the name of each member of the audit committee during the period;
  - (iii) the qualifications, knowledge, skills or experience of those members;
  - (iv) information about each of those members' attendance at meetings of the audit committee during the period;
  - (v) the remuneration of each of those members;

**11 After Division 4 of Part 2-4**

Insert:

**Division 4A—Indemnities and exemptions by corporate Commonwealth entities**

**22B Indemnities and exemptions by corporate Commonwealth entities****Guide to this section**

The purpose of this section is to prescribe requirements relating to the granting of indemnities and exemptions by corporate Commonwealth entities.

It provides that in certain circumstances corporate Commonwealth entities are not allowed to give indemnities.

It also provides that corporate Commonwealth entities are not allowed to grant exemptions to persons for liabilities incurred as officials of the entity.

This section is made for section 61 and paragraphs 102(1)(a), (b) and (d) of the Act.

*When indemnity for liability (other than for legal costs) not allowed*

- (1) A corporate Commonwealth entity, or a subsidiary of a corporate Commonwealth entity, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an official of the entity:
- (a) a liability to pay a pecuniary penalty for the contravention of a law of the Commonwealth, a State or a Territory;
  - (b) a liability to pay a pecuniary penalty for an offence against a law of the Commonwealth, a State or a Territory;
  - (c) a liability arising out of conduct that was not in good faith and is owed to someone other than:
    - (i) the entity; or
    - (ii) a subsidiary of the entity;
  - (d) a liability to the entity or a subsidiary of the entity.

This subsection does not apply to a liability for legal costs.

*When indemnity for legal costs not allowed*

- (2) A corporate Commonwealth entity, or a subsidiary of a corporate Commonwealth entity, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an official of the entity if the costs are incurred:
  - (a) in defending or resisting proceedings in which an outcome is that the person is found to have a liability for which they could not be indemnified under subsection (1); or
  - (b) in defending or resisting criminal proceedings in which an outcome is that the person is found guilty.
- (3) For the purposes of subsection (2), an outcome of proceedings includes the outcome of any appeal in relation to the proceedings.

*Exemptions not allowed*

- (4) A corporate Commonwealth entity, or a subsidiary of a corporate Commonwealth entity, must not exempt a person (whether directly or through an interposed entity) from a liability to the entity incurred as an official of the entity.

## 12 Section 27A

Repeal the section, substitute:

### 27A Corporate plan for Commonwealth companies

**Guide to this section**

The purpose of this section is to prescribe requirements for corporate plans for Commonwealth companies.

It provides that most of the requirements in section 16E relating to corporate plans for Commonwealth entities also apply to corporate plans for Commonwealth companies.

It also provides that the corporate plan for a Commonwealth company must include certain matters relating to the company's performance.

This section is made for section 95 of the Act.

- (1) Section 16E (other than item 5 of the table in subsection 16E(2)) applies to a Commonwealth company in the same way as it applies to a Commonwealth entity.
- (2) For the purposes of subsection (1), a reference in section 16E to the accountable authority of the entity is taken to be a reference to the directors of the company.
- (3) The corporate plan for a Commonwealth company must include, for each reporting period covered by the plan, a summary of the following:
  - (a) how the company will achieve its purposes;

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- (b) how the company's performance in achieving the company's purposes will be measured and assessed, including any performance measures and any targets that will be used in the measurement and assessment.

### **13 After paragraph 28E(a)**

Insert:

- (aa) the results of a measurement and assessment of the company's performance during the period, including the results of a measurement and assessment of the company's performance against any performance measures and any targets included in the company's corporate plan for the period;

### **14 After paragraph 28E(oa)**

Insert:

- (ob) the following information about the audit committee for the company:
- (i) a direct electronic address of the charter determining the functions of the audit committee;
  - (ii) the name of each member of the audit committee during the period;
  - (iii) the qualifications, knowledge, skills or experience of those members;
  - (iv) information about each of those members' attendance at meetings of the audit committee during the period;
  - (v) the remuneration of each of those members;

### **15 In the appropriate position in Chapter 5**

Insert:

## **Part 6—Amendments made by the Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020**

### **36 Application of amendments made by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020***

- (1) Subsection 16DA(2), as added by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020*, applies in relation to a person who ceases to be the accountable authority, or a member of the accountable authority, of a corporate Commonwealth entity on or after the commencement of that instrument.
- (2) The amendments of section 16E and the insertion of section 16EA made by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020* apply in relation to a corporate plan that is prepared under paragraph 35(1)(a) of the Act for a reporting period that begins on or after 1 July 2020.
- (3) The amendments of section 17 made by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020* apply in relation to an audit committee for a Commonwealth entity on and after 1 July 2021.

- (4) The amendments of sections 17AG, 17BE and 28E and Schedules 2, 2A and 2B (other than the amendments of section 28E and Schedule 2B mentioned in subsection (7)) made by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020* apply in relation to an annual report for a reporting period that begins on or after 1 July 2019.
- (5) Section 22B, as inserted by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020*, applies in relation to a liability incurred on or after the commencement of that instrument.
- (6) The repeal and substitution of section 27A and the amendments of section 16E made by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020* apply in relation to a corporate plan for a Commonwealth company for a reporting period that begins on or after 1 July 2020.
- (7) The insertion of paragraph 28E(aa) and the corresponding amendment of Schedule 2B made by the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 1) Rules 2020* apply in relation to an annual report for a Commonwealth company for a reporting period that begins on or after 1 July 2020.

**16 Schedule 2 (after table item dealing with PGPA Rule Reference 17AG(2)(d) – (e))**

Insert:

<i>Audit Committee</i>			
17AG(2A)(a)		A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory
17AG(2A)(b)		The name of each member of the entity's audit committee.	Mandatory
17AG(2A)(c)		The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory
17AG(2A)(d)		Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory
17AG(2A)(e)		The remuneration of each member of the entity's audit committee.	Mandatory

**17 Schedule 2A (after table item dealing with PGPA Rule Reference 17BE(t))**

Insert:

17BE(taa)	The following information about the audit committee for the entity: (a) a direct electronic address of the charter determining the functions of the audit committee;	Mandatory
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- (b) the name of each member of the audit committee;
- (c) the qualifications, knowledge, skills or experience of each member of the audit committee;
- (d) information about each member's attendance at meetings of the audit committee;
- (e) the remuneration of each member of the audit committee

### **18 Schedule 2B (after table item dealing with PGPA Rule Reference 28E(a))**

Insert:

28E(aa)	The results of a measurement and assessment of the company's performance during the reporting period, including the results of a measurement and assessment of the company's performance against any performance measures and any targets included in the company's corporate plan for the reporting period	Mandatory
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### **19 Schedule 2B (after table item dealing with PGPA Rule Reference 28E(oa))**

Insert:

28E(ob)	The following information about the audit committee for the company: <ul style="list-style-type: none"> <li>(a) a direct electronic address of the charter determining the functions of the audit committee;</li> <li>(b) the name of each member of the audit committee;</li> <li>(c) the qualifications, knowledge, skills or experience of each member of the audit committee;</li> <li>(d) information about each member's attendance at meetings of the audit committee;</li> <li>(e) the remuneration of each member of the audit committee</li> </ul>	Mandatory
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