

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

Public Governance, Performance and Accountability Rule 2014

*Public Governance, Performance and Accountability Amendment
(2020 Measures No. 2) Rules 2020*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) set out a framework for regulating resource management by Commonwealth entities and companies. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Public Governance, Performance and Accountability Amendment (2020 Measures No. 2) Rules 2020* (the Amending Rule) amends the PGPA Rule to prescribe the reporting requirements for Commonwealth entities under the PGPA Act where a Commonwealth entity ceases to exist or where there is a transfer of functions.

Details of the Amending Rule are set out at [Attachment A](#). A statement of compatibility with human rights is at [Attachment B](#).

The Amending Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is a disallowable instrument.

Consultation

The Department of Finance worked with the Office of Parliamentary Counsel in developing the Amending Rule.

The Amending Rule was developed in consultation with the Australian National Audit Office and the Chief Financial Officers of portfolio departments.

Details of the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 2) Rules 2020*

Section 1—Name of rule

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 2) Rules 2020* (the Amending Rule).

Section 2—Commencement

This section provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

The entire instrument commences on the day after the Amending Rule is registered.

Section 3—Authority

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

Section 4—Schedules

This section provides that each legislative instrument that is specified in a Schedule to the Amending Rule is amended or repealed as set out, and that any item in a Schedule to this instrument operates or is applied as specified in the Schedule.

Schedule 1 – Reporting requirements when Commonwealth entities have ceased to exist or functions have been transferred

Public Governance, Performance and Accountability Rule 2014

Item 1 – Section 4

Item 1 is a technical amendment to define a key term ('reporting entity') used in the amendments to the PGPA Rule contained in section 17J at Item 2. This definition is not currently provided in the PGPA Rule or PGPA Act.

Item 2 – Division 4 of Part 2-3

Item 2 repeals and substitutes a new *Division 4 – Special reporting requirements when Commonwealth entity has ceased to exist or functions have been transferred*. Division 4 introduces four new subdivisions and several new sections. These are summarised below.

Section	Functions transferred	Additional criteria	Does old entity cease to exist?	Annual performance statements, annual financial statements and annual report are prepared by...
Reporting on non-transferred functions				
Subdivision A				

Section	Functions transferred	Additional criteria	Does old entity cease to exist?	Annual performance statements, annual financial statements and annual report are prepared by...
17B	No functions		Yes	Accountable authority of the nominated entity
17C	Some functions		Yes	Accountable authority of the nominated entity
17D	All functions		Yes	N/A – see Subdivision C
Subdivision B				
17F	Some functions	Not practicable for accountable authority of old entity to report	No	Accountable authority of the nominated entity
17G	All functions		No	N/A – see Subdivision C
Reporting on transferred functions				
Subdivision C				
17J	Some or all functions		Yes or No	Accountable authority of the reporting entity (i.e. the accountable authority of the nominated entity, otherwise the accountable authority of the new entity)
Minister may determine that, for reporting purposes, a transfer of functions has not occurred				
Subdivision D				
17K	Some or all		Yes or No	Accountable authority of the old entity

Sections 17A, 17E and 17H are excluded from the table above as they provide a guide to each Subdivision.

The purpose of Item 2 is to provide clarity on reporting arrangements for Commonwealth entities, particularly in the case of machinery of government changes.

Section 17A Guide to this Subdivision

Section 17A provides a guide to explain that the purpose of Subdivision A is to set out requirements relating to reporting that apply when a Commonwealth entity has ceased to exist, and that Subdivision A deals only with reporting in relation to the functions of the entity that have not been transferred to other Commonwealth entities.

This section also states that Subdivision A is made for the purposes of paragraph 102(1)(h) of the PGPA Act.

Section 17B Commonwealth entity has ceased to exist—none of its functions has been transferred

Subsection 17B(1) provides that if a Commonwealth entity (the *old entity*) has ceased to exist and none of its functions have been transferred to other Commonwealth entities, the Finance

Minister may, in writing, nominate the accountable authority of a Commonwealth entity (the *nominated entity*) to report for the old entity.

It is expected that the Finance Minister would ordinarily make a nomination under this subsection.

Subsection 17B(2) sets out the specific requirements for the preparation and submission by the accountable authority of the nominated entity of annual performance statements, annual financial statements and annual report for the old entity. These are set out in further detail below:

- Under paragraph 17B(2)(a), the accountable authority of the nominated entity must prepare the annual performance statements, annual financial statements and annual report for the old entity that the accountable authority of the old entity would have been required to prepare had the old entity not ceased to exist;
- Under paragraph 17B(2)(b), the accountable authority of the nominated entity must include a copy of the annual performance statements prepared under paragraph (a) in the annual report prepared under paragraph (a);
- Under paragraph 17B(2)(c), the accountable authority of the nominated entity must give the annual financial statements prepared under paragraph (a) to the Auditor-General as soon as practicable after they are prepared; and
- Under paragraph 17B(2)(d), the accountable authority of the nominated entity must give the annual report prepared under paragraph (a) to the nominated entity's responsible Minister, for presentation to the Parliament.

Section 17C Commonwealth entity has ceased to exist—some, but not all, of its functions have been transferred

Subsection 17C(1) provides that if a Commonwealth entity (the *old entity*) has ceased to exist and some, but not all, of its functions have been transferred to one or more other Commonwealth entities, the Finance Minister may, in writing, nominate an accountable authority of a Commonwealth entity (the *nominated entity*) to report for the old entity in relation to the function or functions (*non-transferred functions*) that have not been transferred.

It is expected that the Finance Minister would ordinarily make a nomination under this subsection.

The relevant reporting arrangements in relation to the transferred functions are addressed under section 17J.

Paragraph 17C(2)(a) provides that the accountable authority of the nominated entity must prepare annual performance statements for the old entity in accordance with subparagraphs (i) and (ii):

- Subparagraph (i) requires that, subject to subparagraph (ii), the statements must be the annual performance statements that the accountable authority (the *old accountable authority*) of the old entity would have been required to prepare had the old entity not ceased to exist.

- Subparagraph (ii) requires that the statements must only include information about the old entity's performance of the non-transferred functions. This is because, under section 17J, the entity or entities to which the relevant function or functions were transferred must report on the old entity's performance of the transferred function or functions.

Paragraph 17C(2)(b) provides that the accountable authority of the nominated entity must prepare the annual financial statements for the old entity that the old accountable authority would have been required to prepare had the old entity not ceased to exist, to the extent that the functions of the old entity have not been transferred to other Commonwealth entities.

Paragraph 17C(2)(c) provides that the accountable authority of the nominated entity must prepare an annual report for the old entity in accordance with subparagraphs (i) and (ii):

- Subparagraph (i) provides that, subject to subparagraph (ii), the report must be the annual report that the old accountable authority would have been required to prepare had the old entity not ceased to exist.
- Subparagraph (ii) requires that the report must only include information relating to the non-transferred functions. This is because, under section 17J, the entity to which the relevant function or functions were transferred must include the relevant information on the transferred function or functions in its annual report.

Paragraph 17C(2)(d) provides that the accountable authority of the nominated entity must include a copy of the annual performance statements prepared under paragraph (a) in the annual report prepared under paragraph (c).

Paragraph 17C(2)(e) provides that the accountable authority of the nominated entity must give the annual financial statements prepared under paragraph (b) to the Auditor-General as soon as practicable after they are prepared.

Paragraph 17C(2)(f) provides that the accountable authority of the nominated entity must give the annual report prepared under paragraph (c) to the nominated entity's responsible Minister, for presentation to the Parliament.

Section 17D Commonwealth entity has ceased to exist—all of its functions have been transferred

Section 17D provides that if a Commonwealth entity (the *old entity*) has ceased to exist and all of its functions have been transferred to one or more other Commonwealth entities, then annual performance statements, annual financial statements and an annual report must not be prepared for the old entity.

The Note clarifies that the information that would have been included in the annual performance statements, annual financial statements and annual report for the old entity must be included in the statements and reports for the Commonwealth entity or entities to which the functions have been transferred. The requirements for this are covered in Subdivision C.

Section 17E Guide to this Subdivision

Section 17E provides a guide to explain that the purpose of Subdivision B is to set out requirements relating to reporting that apply when some or all of the functions of a

Commonwealth entity (the *old entity*) have been transferred to one or more other Commonwealth entities, but the old entity has not ceased to exist.

Section 17E provides that Subdivision B deals only with reporting in relation to the functions of the entity that have not been transferred.

The guide also states that Subdivision B is made for paragraph 102(1)(h) of the PGPA Act.

Section 17F Commonwealth entity has not ceased to exist—some, but not all, of its functions have been transferred and it is not practicable for it to report

Subsection 17F(1) provides that if some, but not all, of the functions of a Commonwealth entity (the *old entity*) have been transferred to one or more other Commonwealth entities, and the old entity has not ceased to exist, and the Finance Minister is reasonably satisfied that it is not practicable for the accountable authority of the old entity to report in relation to the function or functions (the *non-transferred functions*) that have not been transferred, the Finance Minister may, in writing, nominate the accountable authority of a Commonwealth entity (the *nominated entity*) to report in relation to the non-transferred functions.

It may not be practicable for the accountable authority of the old entity to report where, for example, a decision has been taken to abolish the old entity but the legislation required to cease the entity has not yet been passed by the Parliament. In such a scenario, the old entity may not perform any substantial functions or have any resources available to it, and therefore it may be impractical for the old entity to report.

Subsection 17F(2) provides that, if the Finance Minister makes a nomination under subsection (1), the accountable authority (the *old accountable authority*) of the old entity must not prepare annual performance statements, annual financial statements and an annual report for the old entity.

Subsection 17F(3)(a) provides that the accountable authority of the nominated entity must prepare annual performance statements for the old entity in accordance with subparagraphs (i) and (ii):

- Subparagraph (i) requires that, subject to subparagraph (ii), the statements must be the annual performance statements that the accountable authority (the *old accountable authority*) of the old entity would have been required to prepare apart from subsection (2).
- Subparagraph (ii) requires that the statements must only include information about the old entity's performance of the non-transferred functions.

Paragraph 17F(3)(b) provides that the accountable authority of the nominated entity must prepare the annual financial statements for the old entity that the old accountable authority would have been required to prepare apart from subsection (2).

Paragraph 17F(3)(c) provides that the accountable authority of the nominated entity must prepare an annual report for the old entity in accordance with subparagraphs (i) and (ii):

- Subparagraph (i) provides that, subject to subparagraph (ii), the report must be the annual report that the old accountable authority would have been required to prepare apart from subsection (2).
- Subparagraph (ii) requires that the report must only include information relating to the non-transferred functions.

Section 17G Commonwealth entity has not ceased to exist—all of its functions have been transferred

Section 17G provides that if all the functions of a Commonwealth entity (the *old entity*) have been transferred to one or more other Commonwealth entities, and the old entity has not ceased to exist, then annual performance statements, annual financial statements and an annual report must not be prepared for the old entity.

The Note clarifies that the information that would have been included in the annual performance statements, annual financial statements and annual report for the old entity must be included in the statements and reports for the Commonwealth entity or entities to which the functions have been transferred. The requirements for this are covered in Subdivision C.

Section 17H Guide to this Subdivision

Section 17H provides a guide to explain that the purpose of Subdivision C is to set out requirements relating to reporting in relation to a function or functions that have been transferred from one Commonwealth entity (the *old entity*) to another.

The guide states that Subdivision C is made for the purposes of paragraph 101(1)(h) of the PGPA Act.

Section 17J Reporting in relation to transferred functions

Subsection 17J(1) provides that section 17J applies if a function or functions of a Commonwealth entity (the *old entity*) have been transferred to another Commonwealth entity (the *new entity*) (whether or not the old entity has ceased to exist).

Subsection 17J(2) defines ‘reporting entity’ as:

- the Commonwealth entity nominated under subsection (3); or
- if no Commonwealth entity is nominated under subsection (3)—the new entity.

Subsection 17J(3) provides that the Finance Minister may, in writing, nominate the accountable authority of a Commonwealth entity to report in relation to the transferred function(s).

A nomination under subsection 17J(3) may be made to an entity other than the entity to which the function was transferred. This subsection retains the Finance Minister’s power under the former section 17A(4) of the PGPA Rule to nominate another entity.

Annual performance statements

Subsection 17J(4) provides that, in relation to preparing annual performance statements, the information about the old entity’s performance of the transferred function or functions that would, apart from this Division, have been required to have been included in the annual performance statements for the old entity must instead be included in the annual performance statements for the reporting entity.

Annual financial statements

Under subsection 17J(5), if:

- the old entity has ceased to exist; or
- all of the functions of the old entity have been transferred to one or more other Commonwealth entities,

then, for the purposes of preparing the annual financial statements for the reporting entity, the old entity is taken to have been part of the reporting entity at all times during the relevant reporting period, to the extent that the functions of the old entity have been transferred to the new entity.

There may be situations where more than one new entity receives one or more functions transferred from the old entity. In this situation, subject to subsection 17J(2), each new entity would be the reporting entity in relation to the functions specifically transferred to it.

The Note clarifies that, if subsection (5) does not apply, the ordinary requirements in relation to the preparation of annual financial statements apply in relation to the annual financial statements for the old entity and the reporting entity, subject to Subdivision B.

Annual report

Subsection 17J(6) provides that, in relation to preparing the annual report, the information relating to the transferred function or functions that would, apart from this Division, have been required to have been included in the annual report for the old entity must instead be included in the annual report for the reporting entity.

Section 17K Determinations by Finance Minister

Subsection 17K(1) provides that section 17K applies if a function of a Commonwealth entity (the *old entity*) has been transferred to another Commonwealth entity (whether or not the old entity has ceased to exist).

Subsection 17K(2) provides that the Finance Minister may determine that, for the purposes of:

- the preparation, auditing and giving of financial statements and performance statements for Commonwealth entities for the reporting period in which the transfer occurred; and
- the preparation and giving of annual reports for Commonwealth entities for that reporting period,

the transfer is to be taken not to have occurred, and anything done by the new entity in the performance of the function during the reporting period is taken to have been done by the old entity.

An example of a situation in which the Finance Minister may make a determination under section 17K is when machinery of government changes occur within a few days of the end of a reporting period. While the machinery of government changes may involve the formal transfer of some or all functions to one or more other Commonwealth entities, in practice the old entity may have performed the transferred functions for almost the entire, or in some circumstances the entire, reporting period. This section would enable the Finance Minister to determine that the old entity must prepare the relevant reports and documents for the full reporting period, as this entity would be best placed to do this.

Subsection 17K(3) clarifies, without limiting the effect of a determination made under subsection (2), that a determination made under subsection (2) has effect for the purposes of Subdivisions A to C.

Item 3 – in the appropriate position in Chapter 5

Item 3 inserts a new Part 7 – *Amendments made by the Public Governance, Performance and Accountability Amendment (2020 Measures No. 2) Rules 2020*.

Section 37 provides that the amendments of Division 4 of Part 2-3 made by the Amending Rule apply in relation to any reporting period that begins on or after 1 July 2019.

Subsection 38(1) provides that a nomination made under subsection 17A(1) and in force immediately before the commencement of this section, has effect, from that commencement, as if it had been made under subsection 17B(1) or 17C(1) (whichever is most relevant), as amended by the Amending Rule.

Subsection 38(2) provides that a nomination made under subsection 17A(4) and in force immediately before the commencement of this section, has effect, from that commencement, as if it had been made under subsection 17J(3), as amended by the Amending Rule.

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 (2020 Measures No. 2) Rules 2020

The *Public Governance, Performance and Accountability Amendment (2020 Measures No. 2) Rules 2020* (Amending Rule) 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 Amending Rule is being made to amend the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). The PGPA Rule is to support the implementation of the PGPA Act.

The legislative instrument amends the PGPA Rule to prescribe the reporting requirements where a Commonwealth entity ceases to exist or where there is a transfer of functions.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Senator the Hon Mathias Cormann