

## EXPLANATORY STATEMENT

### Issued by the Authority of the Minister for Finance

*Public Governance, Performance and Accountability Rule 2014*

*Public Governance, Performance and Accountability Amendment  
(Grant Rules for Corporate Commonwealth Entities) 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 (Grant Rules for Corporate Commonwealth Entities) Rules 2020* (the Amendment Rules) amends the PGPA Rule to implement Recommendation No. 4 of the 2019-20 Auditor-General Report No. 23: *Award of Funding under the Community Sport Infrastructure Program*. The Amendment Rules introduce the mandatory advising, decision-making and reporting requirements of the *Commonwealth Grant Rules and Guidelines*, to apply when a Minister is involved in the making of a corporate Commonwealth entity grant.

The Amendment Rules provide that the requirements apply to the accountable authorities of a corporate Commonwealth entity making the grants, as well as the Ministers who approve or request them. In particular:

- Corporate Commonwealth entities will be required to produce grant guidelines and provide appropriate written advice to Ministers before a Minister makes a decision on a corporate Commonwealth entity grant;
- Grant guidelines and grants awarded are to be published on GrantConnect, the Australian Government whole-of-government web-based facility. Where a decision is made that publication is not appropriate, the reasons for that decision must be recorded in writing;
- Ministers will have reporting requirements, when a Minister is involved in making a grant:
  - to their own electorate (own electorate reporting); and/or,
  - they make a decision to award a grant that was recommended not be made by the corporate Commonwealth entity (annual reporting).
- The Amendment Rules do not confer a general power for Ministers to approve a CCE grant.

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 *Legislative Instruments Act 2003* and is a disallowable instrument.

### Consultation

The Amendment Rules were developed in consultation with all corporate Commonwealth entities, some non-corporate Commonwealth entities and the Office of Parliamentary Counsel.

**Details of the *Public Governance, Performance and Accountability Amendment (Grant Rules for Corporate Commonwealth Entities) Rules 2020***

**Section 1—Name**

This section provides that the title of the instrument is the *Public Governance, Performance and Accountability Amendment (Grant Rules for Corporate Commonwealth Entities) Rules 2020* (the Amendment Rules).

**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 first day this instrument is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 (disallowance) of the *Legislation Act 2003*.

**Section 3—Authority**

This section states that the Amendment Rules are 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 Amendment Rules are 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—Amendments**

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

**Item 1 – Section 4**

This item inserts a definition of ‘*CCE grant*’ in section 4 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

The definition of ‘*CCE grant*’ includes some arrangements for the provision of financial assistance by or on behalf of a corporate Commonwealth entity that are not arrangements for the purposes of a CCE grant. Such payments excluded are a payment falling under the *Commonwealth Procurement Rules* and payments of compensation or a benefit or entitlement under other legislation.

**Item 2 – After Division 6 of Part 2-4**

Item 2 inserts and creates a new division “Division 6A—CCE grants made by or on behalf of corporate Commonwealth entities” within the PGPA Rule to reflect the amendments to the PGPA Rule and ensure the PGPA Rule sequencing aligns with the PGPA Act.

## **Section 25A Guide to this Division**

Section 25A provides a guide to explain that the purpose of Division 6A is to set out the requirements relating to certain grants of relevant money made by or on behalf of corporate Commonwealth entities in circumstances where a Minister is involved in making the grant.

## **Section 25B Requirements for making CCE grants where Minister involved**

New section 25B establishes requirements for accountable authorities of corporate Commonwealth entities and Ministers, where a Minister is involved in the making of one or more CCE grants by or on behalf of a corporate Commonwealth entity.

Where a Minister is to approve the making of a CCE grant, the accountable authority must prepare written guidelines, otherwise known as grant guidelines, for that kind of CCE grant and those guidelines are then to be published on GrantConnect. GrantConnect is the Australian Government whole-of-government web-based facility, which can be found at <https://www.grants.gov.au>. There are minimum requirements for the grant guidelines to contain certain information, which includes the purpose and objectives of the CCE grant, the application process, selection criteria and assessment process.

The guidelines are not required to be published where the accountable authority or Minister decide that there is a specific policy reason not to publicise the grant guidelines or where the CCE grant is provided on a one-off or ad hoc basis. However, an entity can decide to publish guidelines for a one-off or ad hoc grant on GrantConnect. A one-off or ad hoc grant generally does not involve planned selection processes, but is used to address a specific need often due to urgent and unforeseen or unexpected circumstances. These kind of CCE grants are not available to a range of potential grantees or on an ongoing basis.

Should it be decided not to publish the grant guidelines on GrantConnect, the accountable authority or Minister must record the reason for not publishing in writing in accordance with the record-keeping requirements under section 25G.

Before a Minister approves or requests the making of a CCE grant, the Minister must first receive the written notice produced under section 25C and assess the CCE grant having regard to the matters in the notice and the merits of the application against the grant guidelines. The Minister must also create a record of that assessment. There is a note referring to subsection 71(1) of the PGPA Act which provides that before a Minister approves the proposed expenditure of relevant money, they must first be satisfied that the expenditure would be a proper use of relevant money.

## **Section 25C Requirements for advising Ministers involved in making CCE grants**

New section 25C establishes the minimum requirements for advising a Minister involved in making CCE grants via a written notice, which is to include:

- a statement that the payment is a CCE grant subject to this new Division;
- the legal or administrative basis for the Minister to approve the making of the CCE grant, such as setting out the legal framework and authority for the grant, as well as the relevant requirements of the PGPA Act and Rule where a Minister is considering proposed expenditure of relevant money;
- an outline of the Minister's reporting obligations under sections 25D (own electorate reporting) and 25E (annual reporting) in relation to making CCE grants;
- an outline of the process used by the entity to select potential grant recipients, including the application process and criteria used to assess the applications for that CCE grant;
- a copy of the written (grant) guidelines for that CCE grant, as prepared under section 25B(2);

- an assessment of the CCE grant against those guidelines;
- an assessment of whether the CCE grant achieves value with relevant money;
- a list of applications, making clear where any of the applications for that kind of CCE grant satisfy all, some or none of the selection criteria within the grant guidelines. Note that where an application does not satisfy any of the selection criteria for the CCE grant, and if the Minister is inclined to approve such a CCE grant, the decision may be subject to the annual reporting requirements under section 25E;
- any other recommendations of the entity for the CCE grant.

### **Section 25D Reporting requirements for Minister where Minister approves CCE grant in Minister's electorate**

New section 25D establishes reporting requirements for a Minister, who is a member of the House of Representatives, where the Minister approves or requests the making of a CCE grant that relates to matters inside that Minister's electorate and that kind of CCE grant is not otherwise being made across a region by applying a formula. This type of reporting is commonly known as "own electorate reporting". On such occasion, the Minister must give a written notice, as soon as practicable after the CCE grant is made, to the Finance Minister, or if the Minister is the Finance Minister—to the Prime Minister.

These own electorate reporting requirements do not apply to Ministers who are Senators. Senators do not need to report on grants they decide to award in their own state or territory.

Where CCE grants are awarded Australia-wide, state-wide, or across a region on the basis of a formula by a Minister, and any of those kind of CCE grants fall in the relevant Minister's own electorate, the Minister does not need to report to the Finance Minister, or if it is the Finance Minister—to the Prime Minister. Examples of grants that may be provided by a corporate Commonwealth entity across a region by applying a formula could include the Murray-Darling Basin or drought, flood and/or bushfire affected areas.

The written notice must include details of the CCE grant and reasons the Minister approved the making of the CCE grant in the Minister's electorate, a copy of any correspondence between the Minister and the recipient of the CCE grant and, if applicable, a statement that the CCE grant was made despite the recommendation of a corporate Commonwealth entity.

### **Section 25E Reporting requirements for Minister where Minister approves CCE grant despite recommendation of corporate Commonwealth entity**

New section 25E requires that Ministers must give a written notice to the Finance Minister, or if it is the Finance Minister—to the Prime Minister, by 31 March each year for the preceding calendar year, where a Minister approves a CCE grant to be made by or on behalf of the corporate Commonwealth entity that was recommended not be made.

This section applies to all Ministers, including Senators, and is commonly known as the "annual reporting" requirements. The written notice must include details of the CCE grant and the Minister's reasons for approving the making of the CCE grant.

Ministers may approve CCE grants that are not recommended by the CCE or relevant officials. When a Minister makes such a decision, the Minister must report annually on all instances where the Minister has decided to approve a particular CCE grant which was recommended not be made. If the decision also relates to a Minister's own electorate (House of Representatives members only), the Minister must include this information in accordance with the written notice required under new section 25D (own electorate reporting).

## **Section 25F Publication requirements for CCE grants made with Minister's approval**

New section 25F provides that the accountable authority of the corporate Commonwealth entity must publish information about a CCE grant approved by a Minister on GrantConnect within 21 days after the day on which the CCE grant commences or is made by or on behalf of a corporate Commonwealth entity. GrantConnect is the Australian Government whole-of-government web-based facility, which can be found at <https://www.grants.gov.au>.

The information to be published about the CCE grant on GrantConnect includes the name of the recipient, value, purpose and any other information relevant on the CCE grant, as well as whether there are confidentiality provisions relating to the CCE grant such as in a grant agreement.

There may be circumstances where it is determined that public reporting of particular information about a CCE grant would be contrary to the *Privacy Act 1988*, other statutory requirements, or the specific terms or conditions of a grant, such as via a grant agreement. Alternatively, the accountable authority or Minister may decide that publishing particular information about a CCE grant could reasonably be expected to adversely affect the achievement of a government policy outcome. In these circumstances, the accountable authority should publish as much information as legally possible on GrantConnect. For example, it may be possible to omit the name of the CCE grant recipient and other personal information that may contravene the *Privacy Act 1988*, but report other CCE grant details.

Should it be decided not to publish information on the CCE grant on GrantConnect, the accountable authority or Minister must record the reasons for not publishing that information in writing in accordance with the record-keeping requirements under section 25G.

## **Section 25G Additional record-keeping requirement where information not published**

New section 25G requires that should it be decided not to publish on GrantConnect either the written (grant) guidelines under paragraph 25B(2)(b) or information on a CCE grant approved or requested by a Minister under sub-section 25F(3), the accountable authority or Minister must record the reasons for that decision in writing.

## **Section 25H Other matters**

New section 25H states that there is nothing in this Division that confers power on a Minister to approve the making of a CCE grant.

**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 (Grant Rules for Corporate Commonwealth Entities) Rules 2020***

The *Public Governance, Performance and Accountability Amendment (Grant Rules for Corporate Commonwealth Entities) Rules 2020* (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 Amending Rule**

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 PGPA Rule to implement Recommendation No. 4 of the 2019-20 Auditor-General Report No. 23: *Award of Funding under the Community Sport Infrastructure Program*. The Amendment Rules introduce advising, decision-making and reporting requirements to apply when a Minister is involved in the making of a corporate Commonwealth entity grant.

**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**