

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability Rule 2014

*Public Governance, Performance and Accountability Amendment (2023 Measures No. 1)
Rules 2023*

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. Paragraph 103(e) of the PGPA Act provides that the rules may make provision for the name or purposes of a non-corporate Commonwealth entity that is prescribed by the rules to be a listed entity. Paragraph 105B(1)(b) provides that the Finance Minister may, by written instrument, make provision about procurement by corporate Commonwealth entities prescribed by the rules.

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 (2023 Measures No. 1) Rules 2023* (Amendment Rules) amend item 14 of the table in section 30 of the PGPA Rule by substituting ‘Independent Health and Aged Care Pricing Authority’ for ‘Independent Hospital Pricing Authority’. This name change aligns the name of the entity with the name prescribed in section 129(1) of the *National Health Reform Act 2011*.

The Amendment Rules also amend Schedule 1 to the PGPA Rule by repealing clause 10A. Clause 10A prescribes the Fair Work Ombudsman and Registered Organisations Commission Entity as a listed entity, a type of non-corporate Commonwealth entity, for the purposes of the finance law as defined by the PGPA Act.

This amendment is being made as a consequence of amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Fair Work Amendment Act). The Fair Work Amendment Act abolishes the Registered Organisations Commission and the Registered Organisations Commissioner as statutory bodies, and amends the *Fair Work Act 2009* to prescribe the Office of the Fair Work Ombudsman as a listed entity under enabling legislation.

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 contain three provisions.

Sections 1 to 4 and Schedule 1, item 1 commence the day after this instrument is registered.

Schedule 1, item 2 commences the later of the day after this instrument is registered; and the day on which Divisions 1 and 2 of Part 1 of Schedule 1 to the Fair Work Amendment Act commence.

Consultation

The Amendment Rules were developed by the Office of Parliamentary Counsel in consultation with the Department of Employment and Workplace Relations, in accordance with section 17 of the *Legislation Act 2003*.

Details of the *Public Governance, Performance and Accountability Amendment (2023 Measures No. 1) Rules 2023*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (2023 Measures No. 1) Rules 2023*.

Section 2 – Commencement

This section provides that each provision of the instrument specified in column 1 of the table commences in accordance with column 2 of the table.

Sections 1 to 4 and anything in the instrument not elsewhere covered by the table and Schedule 1, item 1 commence the day after the instrument is registered.

Schedule 1, item 2 commences the later of the day after this instrument is registered and the day on which Divisions 1 and 2 of Part 1 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commence.

Section 3 – Authority

This section provides that this instrument is 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 Rule 2014* (PGPA Rule) is amended as set out in Schedule 1 to this instrument.

Schedule 1 – Amendments

Public Governance, Performance and Accountability Rule 2014

Item 1 – Section 30 (table item 14, column headed “Corporate Commonwealth entity”)

This item amends item 14 of the table in section 30 of the PGPA Rule by substituting ‘Independent Health and Aged Care Pricing Authority’ for ‘Independent Hospital Pricing Authority’. Section 30 of the PGPA Rule is made for paragraph 105B(1)(b) of the PGPA Act which provides that the Finance Minister may, by written instrument, make provision about procurement by corporate Commonwealth entities prescribed by the rules.

The name change aligns the name of the entity in section 30 of the PGPA Rule with the name prescribed in section 129(1) of the *National Health Reform Act 2011*. The Independent Hospital Pricing Authority was renamed the Independent Health and Aged Care Pricing Authority through amendments made by the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022*.

Item 2 – Clause 10A of Schedule 1

This item repeals clause 10A of Schedule 1 of the PGPA Rule.

Clause 10A prescribes the combination of two bodies, the Office of the Fair Work Ombudsman and the Registered Organisations Commission, as a listed entity (a type of non-corporate Commonwealth entity) for purposes of the finance law as defined by the PGPA Act. The effect of the commencement of item 2, is that there will no longer be a single listed entity under the PGPA Rule that is a combination of these bodies.

This amendment is being made as a consequence of amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Fair Work Amendment Act). The Fair Work Amendment Act abolishes the Registered Organisations Commission and the Registered Organisations Commissioner as statutory bodies, and amends the *Fair Work Act 2009* to prescribe the Office of the Fair Work Ombudsman as a listed entity under enabling legislation.

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 (2023 Measures No. 1) Rules 2023

The *Public Governance, Performance and Accountability Amendment (2023 Measures No. 1) Rules 2023* (Amendment Rules) 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 Commonwealth entities and companies. Section 101 of the PGPA Act provides that the Minister for Finance may make rules by legislative instrument to prescribe matters giving effect to the Act. Paragraph 103(e) of the PGPA Act provides that the rules may make provision for the name or purposes of a Commonwealth entity prescribed to be a listed entity by the rules. Paragraph 105B(1)(b) provides that the Finance Minister may, by written instrument, make provision about procurement by corporate Commonwealth entities prescribed by the rules.

The Amendment Rules amend item 14 in the section 30 table of the PGPA Rule by substituting ‘Independent Health and Aged Care Pricing Authority’ for ‘Independent Hospital Pricing Authority’.

The Independent Hospital Pricing Authority was renamed the Independent Health and Aged Care Pricing Authority through amendments made by the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022*.

The Amendment Rules also amend Schedule 1 to the PGPA Rule by repealing clause 10A. Clause 10A prescribes the Fair Work Ombudsman and Registered Organisations Commission Entity as a listed entity, a type of non-corporate Commonwealth entity, for the purposes of the finance law as defined by the PGPA Act.

This amendment is being made as a consequence of amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Fair Work Amendment Act). The Fair Work Amendment Act abolishes the Registered Organisations Commission and amends the *Fair Work Act 2009* to prescribe the Office of the Fair Work Ombudsman as a listed entity under enabling legislation.

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 Katy Gallagher
Minister for Finance**