

EXPLANATORY STATEMENT

Issued by 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 (Anti-Corruption)
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.

Among other things section 102(1) of the PGPA Act states that the rules may make provision for the following in relation to the Commonwealth and Commonwealth entities:

- ensuring or promoting the proper use and management of public resources;
- ensuring or promoting proper accountability for the use and management of public resources; and
- risk oversight and management.

The *Public Governance, Performance and Accountability Amendment (Anti-Corruption) Rules 2023* (Amendment Rules) amends section 10 of the PGPA Rule which is currently concerned with preventing, detecting and dealing with fraud. The changes expand the application of all sub-clauses of section 10 to include corruption, requiring accountable authorities to take all reasonable measures to prevent, detect and respond to fraud and corruption relating to the entity.

The Amendment Rules also create new requirements within section 10. The accountable authority of a Commonwealth entity will be required to conduct periodic reviews of the effectiveness of the entity's fraud and corruption controls. The accountable authority of a Commonwealth entity will also be required to ensure the entity:

- has governance structures and processes to effectively oversee and manage risks of fraud and corruption relating to the entity;
- has officials who are responsible for managing risks of fraud and corruption relating to the entity; and
- keeps records identifying those structures, processes and officials.

The Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

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

The whole of the instrument commences 1 July 2024.

Consultation

The Attorney-General's Department shared a consultation paper with Commonwealth entities on the proposed amendments. The Attorney-General's Department also subsequently shared an exposure draft of the Amendment Rules with Commonwealth entities.

The Amendment Rules were developed by the Office of Parliamentary Counsel in consultation with the Attorney-General's Department, in accordance with section 17 of the *Legislation Act 2003*.

The Office of Impact Assessment was consulted and the proposal is unlikely to have a more than minor regulatory impact (OIA23-04930).

ATTACHMENT A

Details of the *Public Governance, Performance and Accountability Amendment (Anti-Corruption) Rules 2023*

Section 1 – Name of instrument

This section states that the name of this instrument is the *Public Governance, Performance and Accountability Amendment (Anti-Corruption) Rules 2023* (the Amendment Rules).

Section 2 – Commencement

This section provides that the whole of the instrument commences 1 July 2024.

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 10 (General amendments)

This item repeals the section and substitutes a new section 10 into the PGPA Rule. The purpose of this section is to ensure there is a minimum standard for accountable authorities of Commonwealth entities to prevent, detect and respond to fraud and corruption.

Section 10 of the PGPA Rule provides a legislative basis for Commonwealth fraud and corruption control arrangements and sets out clear, consistent and unambiguous requirements for fraud and corruption risk management and controls, to assist accountable authorities to meet their obligations under the PGPA Act.

Paragraphs (a) and (b) of the section require accountable authorities to conduct fraud and corruption risk assessments and develop fraud control plans. Paragraph (c) requires that accountable authorities conduct periodic reviews of the effectiveness of the entity's fraud and corruption controls.

Paragraph (d) requires that the accountable authority ensures the entity:

- has governance structures and processes to effectively oversee and manage risks of fraud and corruption relating to the entity; and

- has officials who are responsible for managing risks of fraud and corruption relating to the entity; and
- keeps records identifying those structures, processes and officials.

Paragraph (e) requires the accountable authority to ensure the entity has appropriate mechanisms for preventing fraud and corruption, including by ensuring that all officials in the entity are made aware of what constitutes fraud and corruption. Paragraph (e) also requires accountable authorities to ensure that the risk of fraud is taken into account in planning and conducting the activities of the entity.

Paragraph (f) requires that accountable authorities have appropriate mechanisms for detecting, investigating and otherwise responding to fraud or corruption or suspected fraud and corruption. Paragraph (f) also requires that accountable authorities have an appropriate mechanism for recording and reporting incidents of fraud or corruption or suspected fraud and corruption.

Item 2 – Paragraph 17AG(2)(a)

This item amends paragraph 17AG(2)(a) to read “preventing, detecting and responding to fraud and corruption”. This paragraph currently requires that entities’ annual reports include information on compliance with section 10 of the PGPA Rule which currently deals only with fraud. This section will therefore need to be updated to reflect the changes to section 10 to include corruption.

Item 3 – Subparagraph 17AG(2)(b)(i)

This item amends subparagraph 17AG(2)(b)(i) to reference fraud and corruption risk assessments and control plans, to reflect the changes to section 10 to include corruption.

Item 4 – Subparagraphs 17AG(2)(b)(ii) and (iii)

This item inserts the words ‘and corruption’ to reflect the changes to section 10.

Items 5 – 8 Schedule 2 (table amendments)

Schedule 2 of the PGPA Rule provides the list of requirements for non-corporate Commonwealth entities with regards to annual reports. Items 5 – 8 amend references in Schedule 2 to reflect the changes made to annual reporting for non-corporate Commonwealth entities with regards to section 10.

Item 9 – Transitional provisions

This item inserts section 42 which provides that the amendments to section 17AG and Schedule 2 by the Amendment Rules apply to any reporting period that begins on or after 1 July 2024.

ATTACHMENT B

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 (Anti-Corruption) Rules 2023

This Legislative Instrument 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) sets out 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.

Among other things section 102(1) of the PGPA Act states that the rules may make provision for the following in relation to the Commonwealth and Commonwealth entities:

- ensuring or promoting the proper use and management of public resources;
- ensuring or promoting proper accountability for the use and management of public resources; and
- risk oversight and management.

The *Public Governance, Performance and Accountability Amendment (Anti-Corruption) Rules 2023* (Amendment Rules) amends section 10 of the *Public Governance, Performance and Accountability Rule 2014* which is currently concerned with preventing, detecting and dealing with fraud. The changes expand the application of all sub-clauses of section 10 to include corruption, requiring accountable authorities to take all reasonable measures to prevent, detect and respond to fraud and corruption relating to the entity.

The Amendment Rules also create new requirements within section 10. The accountable authority of a Commonwealth entity will be required to conduct periodic reviews of the effectiveness of the entity's fraud and corruption controls. The accountable authority of a Commonwealth entity will also be required to ensure the entity:

- has governance structures and processes to effectively oversee and manage risks of fraud and corruption relating to the entity;
- has officials who are responsible for managing risks of fraud and corruption relating to the entity; and
- keeps records identifying those structures, processes and officials.

The Amendment Rules also make consequential changes to annual reporting requirements for non-corporate Commonwealth entities.

Human rights implications

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

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Katy Gallagher
Minister for Finance**