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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PUBLIC GOVERNANCE AND RESOURCES
LEGISLATION AMENDMENT BILL (No. 1) 2015**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,
Senator the Hon Mathias Cormann)

TABLE OF CONTENTS

Table of abbreviations and common terms.....	4
General outline.....	5
Financial Impact Statement.....	6
Statement of compatibility with human rights.....	6
The Bill in the context of broader reform activities.....	7
Consultation.....	7
Structure of the Bill.....	7
Main features of the Bill.....	8
Chapter 1 - Introduction.....	9
NOTES ON SCHEDULE 1 – <i>Public Governance, Performance and Accountability Act 2013</i>	10
Part 1 - Amendments.....	10
Amending definitions.....	10
Corporate plan titles.....	10
Arrangements for GST.....	10
Streamlining administration of transfers of functions between non-corporate Commonwealth entities.....	11
Part 2 – Application of amendments.....	11
NOTES ON SCHEDULE 2 – <i>Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014</i>	12
Amend items relating to reporting period references.....	12
Amend provision covering repayments by the Commonwealth.....	12
Amend transitional provisions.....	12
NOTES ON SCHEDULE 3 – Bodies ceasing to be bodies corporate.....	14
Part 1 - Amendments.....	14
<i>Clean Energy Regulator Act 2011</i>	14
<i>Climate Change Authority Act 2011</i>	15
Part 2 – Transitional provisions.....	15
NOTES ON SCHEDULE 4 – Listed entities.....	16
<i>Clean Energy Regulator Act 2011</i>	16
<i>Climate Change Authority Act 2011</i>	16
NOTES ON SCHEDULE 5 – Consequential amendments relating to the <i>Public Governance, Performance and Accountability Act 2013</i>	17
Part 1 – Amendments.....	17
<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>	17
<i>A New Tax System (Goods and Services Tax) Act 1999</i>	17
<i>Australian National Registry of Emissions Units Act 2011</i>	17

<i>Australian Securities and Investments Commission Act 2001</i>	17
<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>	18
<i>Clean Energy Regulator Act 2011</i>	18
<i>Climate Change Authority Act 2011</i>	18
<i>Corporations Act 2001</i>	19
<i>Financial Framework (Supplementary Powers) Act 1997</i>	19
<i>Income Tax Assessment Act 1936</i>	19
<i>Income Tax Assessment Act 1997</i>	19
<i>Infrastructure Australia Act 2008</i>	19
<i>National Land Transport Act 2014</i>	20
<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) (Transitional Provisions) Act 2014</i>	20
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	20
<i>Renewable Energy (Electricity) Act 2000</i>	20
<i>Social Security Act 1991</i>	20
<i>Social Security (Administration) Act 1999</i>	20
<i>Student Identifiers Act 2014</i>	20
<i>Superannuation Guarantee (Administration) Act 1992</i>	21
<i>Taxation Administration Act 1953</i>	21
<i>Water Act 2007</i>	21
Part 2 – Transitional and application provisions	21
NOTES ON SCHEDULE 6 – Other amendments	22
<i>Air Services Act 1995</i>	22
<i>Auditor-General Act 1997</i>	22
<i>Australian Trade Commission Act 1985</i>	22
<i>Future Fund Act 2006</i>	23
<i>Health Insurance Act 1973</i>	24
<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>	25
<i>International Organisations (Privileges and Immunities) Act 1963</i>	25
<i>Reserve Bank Act 1959</i>	25
<i>Terrorism Insurance Act 2003</i>	25
NOTES ON SCHEDULE 7 – Other transitional provisions	26

Table of abbreviations and common terms

Abbreviation or common term	Full term or description
Acts Interpretation Act	<i>Acts Interpretation Act 1901</i>
Auditor-General Act	<i>Auditor-General Act 1997</i>
ANAO	Australian National Audit Office
APS	Australian Public Service
AGS	Australian Government Solicitor
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAC Regulations	<i>Commonwealth Authorities and Companies Regulations 1997</i>
Commonwealth entity	An entity as defined in section 10 of the PGPA Act
Corporations Act	<i>Corporations Act 2001</i>
CRF	The Consolidated Revenue Fund established by section 81 of the Constitution
FFLA Act	<i>Financial Framework Legislation Amendment Act (No. 2) 2012</i>
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>
Finance Minister	The Minister with responsibility for administering the PGPA Act
GBE	government business enterprise
LI Act	<i>Legislative Instruments Act 2003</i>
OPC	Office of Parliamentary Counsel
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA (C&T) Act	<i>Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014</i>
PS Act	<i>Public Service Act 1999</i>
Rules or PGPA rules	The rules made under Part 4-1 of the PGPA Act

Public Governance and Resources Legislation Amendment Bill (No. 1) 2015

General outline

1. The *Public Governance and Resources Legislation Amendment Bill (No. 1) 2015* (the Bill) would, if enacted, amend 33 Acts across the Commonwealth to address matters of a governance or resource management nature.
2. The Bill follows on from the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (PGPA (C&T) Act) which implemented a range of amendments to the enabling legislation of Commonwealth entities and companies to harmonise their operation with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) from 1 July 2014.
3. The PGPA (C&T) Act amendments reflected the variety of governance and operational arrangements across the Commonwealth, with the nature of amendments required to individual enabling legislation varying from entity to entity. Given this, the policy approach has been to align entities' enabling legislation with the PGPA Act wherever possible, with the intention being to implement a more consistent and coherent resource management framework, while not impinging on the ability of entities to meet their statutory obligations to the Parliament and to the community. This Bill continues this approach.
4. The Bill includes:
 - technical amendments that would further improve the operation of the PGPA Act, including a provision to support the administration of GST obligations of non-corporate Commonwealth entities;
 - amendments to provisions within the PGPA (C&T) Act that would streamline transitional arrangements supporting the implementation of the PGPA Act;
 - amendments to the enabling legislation of Commonwealth entities intended for inclusion in the PGPA (C&T) Act but unable to proceed at that time; and
 - amendments to improve and clarify the governance and resource management arrangements of the enabling legislation of Commonwealth entities that have been identified in consultations with those entities during and since the development of the PGPA (C&T) Act.

Amendments to PGPA Act

5. The Bill proposes a number of amendments to the PGPA Act to remove ambiguities in relation to governance arrangements, provide support for the administration of entity GST obligations from 1 July 2015 and further clarify the meaning of provisions in relation to reporting periods and the description of corporate plans. The Bill also proposes amendments to section 75 of the Act regarding the transfer of functions between non-corporate Commonwealth entities to facilitate a more streamlined approach to the drafting of instruments modifying the appropriations available to entities as a result of these transfers.

Amendments to PGPA (C&T) Act

6. The PGPA (C&T) Act contains application and transitional provisions to clarify the operation of the PGPA Act from 1 July 2014 and the finalisation of accountability

arrangements for matters occurring before that date. The Bill contains amendments that would, if enacted, further clarify arrangements relating to the implementation of the resource management framework under the PGPA Act.

7. For example, the amendment to item 38 of schedule 2 of the PGPA (C&T) Act would provide that section 77 of the PGPA Act and not section 28 of the former *Financial and Management Accountability Act 1997* (FMA Act), applies to repayments by the Commonwealth for amounts received by the Commonwealth before or after 1 July 2014. The current provision provides that amounts received before 1 July 2014 would be actioned under section 28 of the FMA Act, and could lead to unnecessarily complex reporting requirements as repayment obligations emerge in future years, with entities needing to track amounts and repayments over multiple reporting periods.

Other Amendments

8. A range of amendments to other Acts have been identified that will achieve greater efficiency and consistency in governance and resource management arrangements across government. Amendments primarily relate to clarifying obligations such as disclosure of interests in accordance with section 29 of the PGPA Act, clarifying roles and responsibilities such as the composition of the accountable authority for relevant entities, and the clarification of a range of financial arrangements.

Financial Impact Statement

9. The Bill would add to, amend and repeal a number of provisions in the enabling legislation of Commonwealth entities to harmonise with the PGPA Act in a way that supports entities fulfilling their regulatory responsibilities and their obligations to manage and use public resources, within the context of a modernised financial regime.

10. While the proposed amendments are typically difficult to quantify in monetary terms, it is expected that simplification of the regulatory requirements will contribute to long-term efficiencies in terms of achieving improved governance, transparency and accountability arrangements for Commonwealth entities (including both non-corporate Commonwealth entities and corporate Commonwealth entities) within the Australian Government.

Statement of compatibility with human rights

11. The Bill, if enacted, will not affect any of the applicable rights or freedoms outlined in the *Human Rights (Parliamentary Scrutiny) Act 2011*, such as those in the *International Covenant on Civil and Political Rights*.

12. The Bill does not propose any new offences or penalties that limit any human rights, although it does maintain equivalent penalty arrangements in place in specific circumstances such as in the case of civil penalty arrangements in the *Future Fund Act 2006*.

13. The Bill is therefore compatible with the human rights and freedoms recognised or declared in the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Bill in the context of broader reform activities

14. The PGPA Act was enacted to provide a strong foundation for a modern, streamlined and adaptable Commonwealth public sector. It consolidated the governance, performance and accountability requirements for the Commonwealth within one Act, replacing the FMA Act and the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

15. Following on from this, the PGPA (C&T) Act was enacted to support the implementation of the PGPA Act and its associated rules and instruments. However, due to the complex nature of amendments required to a broad suite of enabling legislation, some matters were not able to be addressed in the PGPA (C&T) Act and have been incorporated into this Bill.

16. The Bill continues the work of the PGPA Act and the PGPA (C&T) Act to deliver amendments that would streamline public sector governance and resource management practices. Future Bills may be developed, as needed, to make amendments to further improve and streamline provisions of a governance and resource management nature, consistent with intended longer term governance and public management reforms.

Consultation

17. The PGPA Act was implemented following two years of consultation and consideration of issues. The PGPA (C&T) Act was also developed in consultation with Commonwealth entities over the course of 2013-2014, and many of the amendments included in this Bill were identified during those consultations. The period following the passage of the Acts has also provided an opportunity for reflection and consultation on the operation of the provisions of the Acts, and associated rules. In this context, the Bill has been developed to take opportunities to make further improvements to the operation of the resource management framework.

18. The Bill has been prepared in consultation with affected Commonwealth entities, in order to ensure that any amendment to the PGPA Act or enabling legislation will function to harmonise arrangements with the general application of the PGPA Act.

19. Following nominations for amendments from entities, draft legislative amendments were developed by the Office of Parliamentary Counsel.

20. The advice of the Australian Government Solicitor (AGS) has also been sought as the drafting of the Bill has progressed, to ensure both the efficacy of proposed provisions and alignment with policy intent.

Structure of the Bill

21. The Bill is structured in the following schedules:

- Schedule 1 – amendments to the PGPA Act;
- Schedule 2 – amendments to the PGPA (C&T) Act;
- Schedule 3 – bodies ceasing to be bodies corporate;
- Schedule 4 – listed entities;

- Schedule 5 – consequential amendments related to the PGPA Act;
- Schedule 6 – other amendments; and
- Schedule 7 – other transitional provisions.

Main features of the Bill

22. The Bill, if enacted, would:

- Clarify the operation of the PGPA Act, PGPA (C&T) Act and associated rules and instruments; and
- Improve alignment between the PGPA Act, PGPA (C&T) Act and enabling legislation; and
- Make amendments that are of a governance or resource management nature, separate to the PGPA Act, PGPA (C&T) Act and associated rules and instruments.

NOTES ON CLAUSES

Chapter 1 - Introduction

Part 1-1 - Introduction

Division 1 - Preliminary

Clause 1: Short title

1. Under this clause, if the Bill is enacted, it may be cited as the *Public Governance and Resources Legislation Amendment Act (No. 1) 2015*.

Clause 2: Commencement

2. Under this clause, if the Bill is enacted, then the legislation will commence on the day after the Bill receives the Royal Assent.

Clause 3: Schedules

3. This clause provides that the items set out in Schedule 1 to the Bill will amend the PGPA Act.

4. The items set out in Schedule 2 would amend the PGPA (C&T) Act.

5. The items set out in Schedule 3 would amend the enabling legislation of entities ceasing to be bodies corporate.

6. The items set out in Schedule 4 would amend the enabling legislation of listed entities.

7. The items set out in Schedule 5 would make consequential amendments related to the PGPA Act.

8. The items set out in Schedule 6 would amend other legislation.

9. The items set out in Schedule 7 provide for other transitional provisions.

Clause 4: Definitions

10. This item sets out the definition of “reporting period” as having the meaning given by the PGPA Act.

NOTES ON SCHEDULE 1 – *Public Governance, Performance and Accountability Act 2013*

11. The proposed amendments to the PGPA Act would, if enacted, improve the operation of the PGPA Act.

Part 1 - Amendments

Amending definitions

12. **Item 1** would insert definitions for the terms “GST”, “GST Act” and “GST qualifying amount” into section 8 of the PGPA Act. The defined terms replicate those previously provided for in section 30A of the FMA Act.

13. **Item 2** would amend the definition of “reporting period” in section 8 of the PGPA Act to allow for a reporting period to be any other period prescribed by an Act or the rules for an entity, company or subsidiary. The item would insert the words “an Act or” immediately after the words “prescribed by” in paragraph 8(b) for the definition of “reporting period” to reflect that enabling legislation prescribes reporting periods in some instances.

Corporate plan titles

14. **Item 3** would amend paragraph 35(1)(a) to insert the words “(however described)” after the words “corporate plan”. This would have the effect that a corporate plan, prepared under section 35, can be given a different title. **Item 8** would amend paragraph 95(1)(a) in the same way to ensure consistency in corporate plan requirements for Commonwealth entities and Commonwealth companies.

15. The purpose of the corporate plan requirement is to promote the development and use of medium term planning activities and documents. A number of entities are already engaged in such activities as a result of requirements in their enabling legislation, and attach a variety of names to such documents e.g. strategic plans or operational plans. As these names have an importance attached to them by their entities and key stakeholders, including other jurisdictions and industry bodies, it is not proposed to prevent them using these alternative titles as long as a plan is prepared that meets the corporate planning objectives of the PGPA Act.

Arrangements for GST

16. Non-corporate Commonwealth entities such as departments are legally part of the Commonwealth and, as a result of constitutional requirements, cannot make payments without access to the spending authority of a valid appropriation. Annual appropriations approved by the Parliament do not account for amounts that entities need to meet their GST obligations, as amounts appropriated in annual Appropriations Acts are finite amounts and at the time of preparing these Acts, the finite amount of GST payments to be made in the year ahead is not known.

17. Under the FMA Act, non-corporate Commonwealth entities were able to increase certain limited appropriations to cover the GST component of the price of acquiring goods and services, and could receive and forward amounts to the Australian Taxation Office (ATO). These arrangements were continued for 2014-15 while further consultation occurred on how such arrangements should be administered in future.

18. The proposed amendments consolidate these arrangements in a single provision, unlike the previous FMA Act arrangements, and include a rule making power in relation to the GST arrangements of non-corporate Commonwealth entities.

19. **Item 4** would amend section 73 to insert “or make payments relating to GST” after “certain amounts” to clarify that this part of the PGPA Act references GST arrangements.
20. **Item 5** would insert a new section 74A after section 74 to provide for appropriations to take account of recoverable GST.

Streamlining administration of transfers of functions between non-corporate Commonwealth entities

21. The proposed amendments would make minor changes to subsections 75(2) and (3), to ensure that it is clear that the Finance Minister is modifying, rather than making actual textual amendments to, the Appropriation Acts in Determinations made under that section of the Act. This is intended to simplify the process of preparing and updating determination instruments and allow for new arrangements that involve the instruments maintaining a running tally of transfers of appropriation to and from an entity, improving clarity and understanding of available appropriations.
22. **Item 6** would repeal subsection 75(2), not including the heading, and substitute a new subsection to provide that “the Finance Minister may determine that the operation of one or more Schedules to one or more Appropriation Acts is modified in a specified way. The modification must be related to the transfer of function”.
23. **Item 7** would amend subsection 75(3) to omit the words “the Schedule concerned were amended” and substitute the words “the operation of the Schedule concerned were modified”.
24. **Item 8** is discussed with **item 3** above.

Part 2 – Application of amendments

25. **Item 9** provides that the amendments proposed by **items 1, 4 and 5** contained in this Schedule are to apply in relation to payments that are made on or after 1 July 2015. Amounts relating to appropriation for GST in the 2014-15 financial year are covered by items 40 and 41 in the transitional provisions of Schedule 2 to the PGPA (C&T) Act.
26. The item also provides that the amendments proposed by **items 6 and 7** of this Schedule are to apply to determinations made by the Finance Minister after the commencement of the amendments, in relation to transfers of functions occurring before or after that commencement time.

NOTES ON SCHEDULE 2 – *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*

Amend items relating to reporting period references

27. **Item 1** would amend items 2, 4, 5 and 6 of Schedule 1 of the PGPA (C&T) Act to replace references to “after the commencement time” with “on or after 1 July 2014”. This technical amendment would clarify the operation of the PGPA (C&T) Act by providing that requirements relating to budget estimates, annual financial statements, audit of the financial statements of subsidiaries, annual reports and Australian Government financial reporting apply to reporting periods that commence on or after 1 July 2014.

Amend provision covering repayments by the Commonwealth

28. **Item 2** is connected with **item 4** and would amend item 21 of Schedule 1 to the PGPA (C&T) Act. The amendment would insert the words “before or” after the second occurring “Commonwealth”. This amendment has the effect that section 77 of the PGPA Act, relating to repayments by the Commonwealth, applies regardless of when the money was received.

29. **Item 3** is a technical amendment that would provide for the application of the amendment proposed by **item 2**, with the effect that the amendments would apply to amounts received by the Commonwealth, regardless of when they were received.

Amend transitional provisions

30. The proposed amendment in **item 4** would confirm the arrangements for the handling of repayments by the Commonwealth, which is now covered by section 77 of the PGPA Act, provided for by **items 2** and **3** of the Bill.

31. **Item 4** would repeal item 38 of Schedule 2 to the PGPA (C&T) Act. Item 38 was included in the PGPA (C&T) Act as a transitional provision, that required that where an event occurred prior to 1 July 2014 that required a repayment by the Commonwealth after 1 July 2014 then the repayment would use the FMA Act provision (section 28) in force at the time of the event. This could lead to unnecessarily complex reporting requirements as repayment obligations emerge in future years, with entities needing to track amounts and repayments over multiple reporting periods against different legislative provisions. The proposed amendment simplifies and clarifies these requirements.

32. **Item 5** would repeal and substitute item 2(1) of Schedule 3 to accommodate entities with non-financial year reporting periods, to ensure that current practices can continue for those entities.

33. **Item 6** would repeal item 16 of Schedule 3, which continues certain provisions of the CAC Act for application to the Future Fund Board of Guardians. This item is consequential to the amendment proposed to the *Future Fund Act 2006* (FF Act) in **items 10** to **21** of Schedule 6 to this Bill, which would align the FF Act with the operation of the PGPA Act, and would replace the civil penalty provisions in the CAC Act with similar provisions now contained in the *Regulatory Powers (Standard Provisions) Act 2014* (RPSP Act).

34. **Item 7** and **9** would amend items 2 and 6(3) of Schedule 14 of the PGPA (C&T) Act to substitute the references to the application time of items relating to annual reports and reporting periods as the commencement of the PGPA Act, with references to “on or after 1 July 2014” for the purpose of improving the clarity around the operation of the provisions.

35. **Item 8** is a technical amendment that would correct a drafting error in item 5 of Schedule 14 by omitting the last occurring “under the enabling Act” and substituting “under the *Legislative Instruments Act 2003*”.

NOTES ON SCHEDULE 3 – Bodies ceasing to be bodies corporate

36. The amendments contained in this Schedule would amend the enabling legislation of the Clean Energy Regulator (CER) and the Climate Change Authority (CCA) to provide that the entities are not bodies corporate and do not have a separate legal identity from that of the Commonwealth.

37. CER and CCA already hold assets and incur liabilities only for and on behalf of the Commonwealth. They do not require body corporate status to perform their statutory functions. Accordingly, the proposed amendments confirm the status of the CER and CCA as non-corporate Commonwealth entities.

Part 1 - Amendments

38. The amendments contained in Part 1 of Schedule 4 would amend the enabling legislation of the CCA and the CER to remove their body corporate status. This would result in these entities being non-corporate Commonwealth entities for the purposes of the PGPA Act.

Clean Energy Regulator Act 2011

39. **Item 1** would repeal the note in section 11 and substitute two notes that would provide that the CER does not have a separate legal identity from the Commonwealth and that references to the Regulator in the Act are to be taken to mean the Clean Energy Regulator.

40. **Item 2** would repeal sections 13 and 14 of the *Clean Energy Regulator Act 2011* (CER Act) and insert a new section 13, dealing with the powers of the Regulator. The item would also insert a note into the new section 13, detailing that the Chair of the Regulator may enter into contracts and arrangements on behalf of the Commonwealth in accordance with section 23 of the PGPA Act.

41. **Item 3** would replace the heading in Division 2 of Part 2 of the CER Act with “Division 2 – Membership of the Regulator”.

42. **Item 4** would repeal section 16 of the CER Act, which currently confers body corporate status on the CER.

43. **Item 5** would insert a new section 57A before section 57 of the CER Act, to provide for proceedings in the name of the Regulator. As a non-corporate Commonwealth entity, CER may bring proceedings in the name of the Commonwealth and proceedings may be brought against it as part of the Commonwealth. The proposed section 57A makes it clear that any proceedings in relation to the functions or powers of the Regulator may be brought by or against the Commonwealth in the name of the Regulator. In practice, this would mean that CER could sue or be sued in its own name, while being part of the Commonwealth.

44. The new subsection 57A(1) would provide that proceedings brought by the Commonwealth in relation to the functions or powers of CER may be brought in the name of the Regulator.

45. The new subsection 57A(2) would provide that proceedings brought against the Commonwealth in relation to the functions or powers of the CER may be brought in the name of the Regulator.

Climate Change Authority Act 2011

46. **Item 6** would repeal the note in section 10 and substitute two new notes that would provide that the Authority does not have a separate legal identity from the Commonwealth and that references to the Authority in the Act mean the CCA.

47. **Item 7** would repeal sections 13 and 14 of the *Climate Change Authority Act 2011* (CCA Act) and insert a new section 13, dealing with the powers of the Authority. The item would also insert a note in the new section 13, detailing that the CEO of the CCA may enter into contracts and arrangements on behalf of the Commonwealth in accordance with section 23 of the PGPA Act.

48. **Item 8** would replace the heading in Division 2 of Part 2 of the CCA Act with “Division 2 – Membership of the Authority etc”. In connection with this, **item 9** would repeal Subdivision A of Division 2 of Part 2.

Part 2 – Transitional provisions

49. **Item 10** would provide the transitional provisions for this Schedule of the Bill, with Part 2 of Schedule 5 of the PGPA (C&T) Act applying to the proposed amendments.

50. Part 2 of Schedule 5 of the PGPA (C&T) Act dealt with the decorporatisation of a number of other entities and included a range of standard supporting provisions relation to the treatment of assets and liabilities, the continued operation of contacts and leases and other administrative requirements. **Item 10** draws on these provisions to assist the decorporatisation process for CER and CCA.

NOTES ON SCHEDULE 4 – Listed entities

51. The amendments contained in this Schedule would amend the enabling legislation of the CER and the CCA to list the relevant roles, membership, functions and powers of each entity for the purposes of the PGPA Act.

Clean Energy Regulator Act 2011

52. **Items 1** and **2** would amend section 11 to provide that the CER is a listed entity for the purposes of the PGPA Act. **Item 2** would list the CER, the Chair as the accountable authority, the officials and functions of the CER. **Item 1** would renumber the paragraphs given the addition of a new subsection.

Climate Change Authority Act 2011

53. **Items 3** and **4** would amend section 10 to provide that the CCA is a listed entity for the purposes of the PGPA Act. **Item 4** would list the CCA, the CEO as the accountable authority, the officials and functions of the CCA. **Item 3** would renumber the paragraphs given the addition of a new subsection.

NOTES ON SCHEDULE 5 – Consequential amendments relating to the *Public Governance, Performance and Accountability Act 2013*

54. The amendments in this Schedule of the Bill are primarily directed at improving the operation of the PGPA Act and its interaction with entities' enabling legislation, by updating references to the PGPA Act and harmonising matters such as disclosure of interests, annual reporting, corporate planning and termination of appointments.

Part 1 – Amendments

Agricultural and Veterinary Chemicals (Administration) Act 1992

55. **Item 1** would insert a new section 25A at the end of Division 3 of Part 3 of the *Agriculture and Veterinary Chemicals (Administration) Act 1992*. The new section 25A would provide that advisory board members are officials for the purposes of the PGPA Act.

A New Tax System (Goods and Services Tax) Act 1999

56. **Item 2** would repeal subsection 177-1(5) and substitute a new definition of “Untaxable Commonwealth entity” that replaces references to the FMA Act and CAC Act with the PGPA Act.

57. **Item 3** would update the definition of Finance Minister in section 195-1 to replace a reference to the FMA Act with the PGPA Act.

Australian National Registry of Emissions Units Act 2011

58. **Item 4** would amend subsection 93(2) to replace a reference to the FMA Act with the PGPA Act.

Australian Securities and Investments Commission Act 2001

59. **Item 5** would replace a reference to the FMA Act in section 10A(a) of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) with the PGPA Act.

60. **Item 6** would repeal and substitute a new paragraph 111(1)(e), and insert a new paragraph 111(1)(f). This amendment would harmonise the termination arrangements in the ASIC Act with those under the PGPA Act.

61. **Item 7** would repeal section 124 of the Act, relating to requirements for members to disclose certain interests to the Chairperson of ASIC. This provision is not required as section 29 of the PGPA Act provides requirements of general application relating to disclosures of interest.

62. **Item 8** would repeal subsections 136(1) and (2) and substitute a new subsection 136(1), providing the requirements for the annual report of ASIC to align, to the extent possible, with those under section 46 of the PGPA Act.

63. **Item 9** would repeal subsection 136(3) as this is now covered by section 46 of the PGPA Act.

64. **Item 10** would repeal paragraph 235D(3)(c) and substitute a new paragraph 235D(3)(c) that would provide that the Chair is to include a copy of the advice provided by the Financial Reporting Council, as provided for under section 225(2)(b), and the reasons in the annual report, prepared under section 46 of the PGPA Act.

65. **Items 11 and 12** would replace a reference to the FMA Act in paragraphs 235F(3)(c) and 235H with the PGPA Act.

66. **Item 13** would repeal section 235J as annual reporting requirements are provided for in section 46 of the PGPA Act.
67. **Item 14** would replace a reference to the FMA Act in paragraph 236DB(3)(c) with the PGPA Act.
68. **Item 15** and **16** would replace a reference to the FMA Act in paragraph 236DD(3)(c) and section 236DF with the PGPA Act.
69. **Item 17** would repeal section 236DG, which relates to the tabling of the annual report for the Auditing and Assurance Standards Board as section 46 of the PGPA Act provides requirements for the provision of annual reports.

Carbon Credits (Carbon Farming Initiative) Act 2011

70. **Item 18** would repeal a note in subsection 183(1) that references section 28 of the FMA Act (which related to repayments by the Commonwealth) and would substitute an amended note which refers to section 77 of the PGPA Act, which is the equivalent provision.
71. **Item 19** would update a reference to the FMA Act in section 299(2) by substituting a reference to the PGPA Act to identify the relevant Minister as the Minister administering the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Clean Energy Regulator Act 2011

72. **Item 20** would harmonise disclosure of interest requirements for the CER with those in section 29 of the PGPA Act by inserting a new section 22.
73. **Item 21** would repeal section 23, as this provision would no longer be required due to the insertion of a new section 22 by **item 21**. In connection with this, **item 22** would amend paragraph 27(2)(d) to replace references to section 22 or 23 of the Act with section 29 of the PGPA Act, as this will now apply.
74. **Item 23** would repeal Division 7 of Part 2 of the Act and substitute new Division 7 – Planning and reporting obligations, contained sections 39 and 40, detailing requirements in relation to the corporate plan and annual report respectively. The new provisions have been amended to align with the general provisions in section 29 and 46 of the PGPA Act.
75. **Item 24** would amend a reference update to paragraph 42(a), replacing the FMA Act with the PGPA Act.

Climate Change Authority Act 2011

76. **Item 25** would repeal sections 26 and 27, substituting a new section 26 relating to disclosure of interests in accordance with the requirements of section 29 of the PGPA Act.
77. **Item 26** would repeal paragraph 31(2)(d) and substitute a new paragraph 31(2)(d) that refers to section 29 of the PGPA Act.
78. **Item 27** would amend subsection 36(2) to replace a reference to section 27 of the CCA Act with a reference to section 29 of the PGPA Act, which relates to disclosure of interests.
79. **Item 28** would repeal section 48 and substitute a new section 48 dealing with disclosure of interest by the CEO, aligning with the requirements set out in section 29 of the PGPA Act.
80. **Item 29** would repeal paragraph 50(2)(c), to substitute a new paragraph that references section 29 of the PGPA Act, which relates to disclosure of interests.

81. **Item 30** would repeal Division 8 of Part 2, substituting a new section 55 covering requirements for corporate plans that references section 35 of the PGPA Act.
82. **Item 31** is a technical amendment that would omit a reference to the FMA Act from section 58(a) of the CCA Act and insert the PGPA Act.

Corporations Act 2001

83. **Items 32, 33, 34, 35 and 36** would make technical amendments to paragraphs 45B(1)(d), 111K(b), 301(3)(a), 601AE(1A)(a) and 601AE(1A)(b)(ii) to update terminology in paragraphs to align with PGPA Act terminology.

Financial Framework (Supplementary Powers) Act 1997

84. **Item 37** would amend section 5 of the Act in relation to the definition of “Finance Minister”. The amendment would omit the words “this Act” and substitute the words “the *Public Governance, Performance and Accountability Act 2013*”.

Income Tax Assessment Act 1936

85. **Item 38** would update a reference in subsection 159ZR(1) to section 33 of the FMA Act (which related to act of grace payments) to its equivalent provision at section 65 of the PGPA Act.
86. **Item 39** would update a reference in subsection 160AAA(1) to section 33 of the FMA Act (which related to act of grace payments) to its equivalent provision at section 65 of the PGPA Act

Income Tax Assessment Act 1997

87. **Item 40** would amend subsection 995-1(1) in relation to the definition of the Finance Minister, and would update a reference to the FMA Act by substituting the PGPA Act.

Infrastructure Australia Act 2008

88. **Item 41** would amend section 3 of the Act to update the definition of Finance Minister, in line with the PGPA Act.
89. **Item 42** would repeal the note in subsection 4(2) and substitute a new note that references the PGPA Act as applying to Infrastructure Australia.
90. **Item 43** would repeal subsection 18(2) and substitute a new section dealing with termination of the appointment of a member to align with the general termination arrangements provided in section 30 of the PGPA Act.
91. **Item 44** would amend paragraph 21(2)(a) to omit a reference to the CAC Act and substitute the appropriate reference to section 29 of the PGPA Act.
92. **Item 45** would repeal section 34 and substitute a new section 34 that aligns disclosure of interests with the general requirements provided in section 29 of the PGPA Act.
93. **Item 46** would repeal sections 39B and 39C, and substitute new sections 39B and 39C that provide for corporate plans and annual reports in alignment with sections 35 and 46 of the PGPA Act.
94. **Item 47** would repeal subsection 39DA(2) and substitute a new subsection 39DA(2) that would reference section 59 of the PGPA Act, which deals with investment by corporate Commonwealth entities.

95. **Item 48** would repeal subsections 39DB(2) to (4). Subsection 39DB(2) is an exemption to the spending limit provisions in 39DB(1) for investing surplus money under the CAC Act. Under subsection 59(2) of the PGPA Act, there is a general exemption to spending limit provisions for investments by corporate Commonwealth entities under section 59(1). This makes subsection 39DB(2) unnecessary. Subsection 39DB(3) is not required because section 57 of the PGPA Act provides a general prohibition on borrowing by corporate Commonwealth entities, like Infrastructure Australia, unless expressly authorised. By extension subsection 39DB(4) is not required.

National Land Transport Act 2014

96. **Item 49** would update the definition of "non-corporate Commonwealth entity" in subsection 4(1) of the Act to align with the definition provided in the PGPA Act.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) (Transitional Provisions) Act 2014

97. **Item 50** would repeal and substitute the note in section 6 of the Act with a note that references section 77 of the PGPA Act, relating to repayments by the Commonwealth.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

98. **Item 51** would repeal and substitute a new subsection 65B(2) to update a reference to a special account in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Ozone Act).

99. **Item 52** would repeal and substitute new subsections 65C(2) and (3) of the Ozone Act to provide for the management of appropriations in relation to notional payments involving non-corporate Commonwealth entities. The amendment would update references to the PGPA Act.

Renewable Energy (Electricity) Act 2000

100. **Item 53** and **54** would amend subsection 5(1) of the *Renewable Energy (Electricity) Act 2000* (Electricity Act) to repeal the definition of "Minister for Finance" and substitute a new definition for "Finance Minister" that aligns with the PGPA Act.

101. **Item 55** would amend subsection 30R(2) of the Electricity Act to update a reference relating to a special account. **Item 56** and **57** follows this amendment in the notes to section 30S and 30T.

102. **Item 58** would update a reference to the Finance Minister in subsection 42(2).

103. **Item 59** would update the definition of "Commonwealth" in subsection 42(4).

Social Security Act 1991

104. **Item 60** would repeal the notes to subsections 1061PAAA(2) and 1061PAAB(3).

105. **Item 61** would repeal and replace section 1061PAAE to align the definition of "Department official" with the PGPA Act.

Social Security (Administration) Act 1999

106. **Item 62** would replace the note in subsection 123ZM(4) to reference subsection 56(1) of the PGPA Act, relating to borrowing arrangements.

Student Identifiers Act 2014

107. **Item 63** and **64** would update references to special accounts, in subsection 48(2) and note 1 to section 49 of the Act, to align with the PGPA Act.

108. **Item 65** would replace a reference to section 39 of the FMA Act, in note 2 to section 49 of the Act, with section 58 of the PGPA Act.

109. **Item 66** would update a note in section 50 to reference section 80 of the PGPA Act.

Superannuation Guarantee (Administration) Act 1992

110. **Item 67** and **68** would update the definition of “Commonwealth entity” and “Finance Minister” within subsection 5(5).

Taxation Administration Act 1953

111. **Item 69** would repeal the note in subsection 15B(4).

112. **Item 70** would update a reference to the FMA Act in subsection 15B(9) with a reference to section 103(c) of the PGPA Act, which relates to rules relating to the Commonwealth and non-corporate Commonwealth entities.

113. **Item 71** would repeal the note to subsections 15C(2) and (3).

114. **Item 72** would update a reference to the FMA Act in subsection 15D(8) with a reference to the PGPA Act.

Water Act 2007

115. **Item 73** would amend the *Water Act 2007* to provide that the Chief Executive of the Murray-Darling Basin Authority is the accountable authority for PGPA Act purposes.

Part 2 – Transitional and application provisions

116. **Item 74** provides that an amendment in this Schedule that relates to a corporate or strategic plan is to apply to reporting periods from 1 July 2015 onwards, when corporate planning requirements under sections 35 and 95 of the PGPA Act will commence.

117. **Item 75** provides that amendments relating to annual reports are to apply to reports for reporting periods commencing on or after 1 July 2014, as the annual reporting requirements under section 46 of the PGPA Act commenced from 1 July 2014.

118. **Item 76** provides for the application of amendments involving disclosure of interest requirements. The item provides that where a disclosure has been made in accordance with an Act and before the commencement of this item, then that disclosure will be taken to be have been made in accordance with section 29 of the PGPA Act.

119. **Item 77** provides a savings arrangement for instruments in force that are made under a provision of an Act that is amended by this Schedule.

NOTES ON SCHEDULE 6 – Other amendments

120. The amendments contained in this Schedule have been identified by entities and are of a governance or resource management nature.

Air Services Act 1995

121. Airservices Australia (Airservices) is currently restricted in its ability to manage foreign currency risk effectively, due to limitations on hedging in Section 50 of the *Air Services Act 1995* (AA Act).

122. These restrictions expose Airservices to significant unnecessary risk and cost. Other foreign currency transactions occur almost daily; however, foreign currency accounts are not permitted to be used to naturally hedge the timing of payments and receipts. Airservices has a significant capital expenditure program over the forward years, which includes a substantial portion of foreign suppliers and contractors.

123. **Item 1** would repeal and substitute paragraph 50(1)(c) of the AA Act, to provide for the acquisition of goods or services by Airservices.

124. **Item 2** would repeal and substitute section 50(4) of the AA Act to provide that the definition of “hedging purposes” means reducing or eliminating risks of adverse financial consequences to Airservices. The new definition would permit Airservices to reduce or eliminate that risk of adverse variations in the costs in relation to money raising or the revenue obtainable or the costs in relation to acquiring goods and services, and in maintaining the value of investments and property used as security for money raising, or proposed money raising.

Auditor-General Act 1997

125. **Item 3** would repeal and substitute subsection 36(3) of the *Auditor-General Act 1997* (AG Act) to ensure that exemptions from disclosing information currently accorded to proposed reports, prepared under section 19 of the AG Act. The proposed amendment would seek to extend this to drafts and extracts of proposed reports and to any other report (including drafts) created for the purposes of preparing a proposed report under section 19 of the AG Act.

126. These reports, drafts and extracts generally confirm factual information with public sector agencies and other key stakeholders and outline likely audit findings and conclusions for discussion with the recipient(s).

127. These reports, drafts and extracts currently have no legal status, as section 36(3) of the AG Act includes prohibition on disclosing information only to proposed reports. The amendment would ensure that these other documents are accorded requisite legal status.

128. **Item 3** would also continue the penalty arrangements currently in place, being imprisonment for 2 years should a person disclose information covered by section 36(3) of the AG Act. The item also inserts a note after subsection 36(4) that would provide that a defendant under subsection 36(4) bears an evidential burden.

129. **Item 4** provides for the application of the proposed amendments to the AG Act. The amendments are to apply in relation to any disclosure.

Australian Trade Commission Act 1985

130. The Bill would amend section 8 of the Act to include “domestic tourism” as part of the Australian Trade Commission (Austrade) CEO’s functions. This amendment seeks to reflect Austrade’s responsibility for domestic tourism via the Administrative Arrangement Order.

131. **Item 5** would amend section 8 of the *Australian Trade Commission Act 1985* (Austrade Act) to number the paragraph as (1).
132. **Item 6** would add the word “and” at the end of subparagraphs 8(a)(i) to (viii), indicating that the ways in which the Austrade CEO can facilitate and encourage trade between Australia and foreign countries are not mutually exclusive.
133. **Item 7** would insert new subsections 8(2) and 8(3) providing for the Austrade CEO’s functions in relation to domestic tourism.
134. **Item 8** would amend subsection 9(1) to insert “under subsection 8(1)” after “functions”.
135. **Item 9** would repeal paragraph 9(2)(b) and substitute a new paragraph 9(2)(b) relating to the duties of the Austrade CEO, requiring that the CEO have regard to the need to provide services as efficiently and economically. The item would also insert a new paragraph 9(2)(c) to require that in relation to the CEO’s duties under section 8(1), to have regard to the desirability of improving and extending the range of accessibility to advice, assistance and financial support available to persons involved in trade between Australia and foreign countries; and Australia’s obligations under international agreements.

Future Fund Act 2006

136. The PGPA Act was developed with the intention of not including penalties and sanctions within the Act (apart from a provision dealing with the termination of accountable authorities of corporate Commonwealth entities) and to rely on existing legislation or legal arrangements. The Future Fund Board of Guardians (the Board) is covered by the *Future Fund Act 2006* (FF Act) and is not subject to the PGPA Act but has been subject to the civil penalty provisions contained within the CAC Act. With the repeal of the CAC Act, the civil penalty arrangements in the CAC Act were preserved through Item 16 of Schedule 3 of the PGPA (C&T) Act pending resolution of a longer term arrangement.
137. Subsequently, the *Regulatory Powers (Standard Provisions) Act 2014* (RPSP Act) has been passed by the Parliament, providing an alternative on which to rely. The proposed amendments to the FF Act seek to rely on this framework to the greatest extent possible in maintaining consistency with the arrangements under which the Board operates.
138. **Items 10** would insert a new definition into section 5 of the FF Act, to define civil penalty provision as having the same meaning as in the RPSP Act.
139. **Items 11** would repeal the definition of Commonwealth authority.
140. **Item 12** would insert two new definitions for corporate Commonwealth entity and disqualifiable position.
141. **Item 13** would repeal the definition of “involved”.
142. **Item 14** would insert a new definition of “relevant court” into section 5 of the FF Act.
143. **Item 15** would insert a new heading before section 56 of the FF Act, Subdivision A-Civil Obligations and criminal offences.
144. **Items 16** would repeal the note to subsection 56(1) and substitute a new note that would reference the RPSP Act in relation to civil penalty provisions and units.
145. **Item 17** would repeal and substitute new sections 57 to 59 of the FF Act. Generally these amendments insert the maximum penalties for contravening the civil penalties, which are set at 2,000 penalty units and are generally consistent with similar arrangements in the *Corporations Act 2001*. Sections 57 to 59 would also be amended to remove reference to a

person being involved in a contravention of a civil penalty being subject to civil penalty proceedings. The RPSP Act addresses this in section 92.

146. **Item 18** would insert a new heading before section 63, Subdivision B-Other provisions relating to civil penalty provisions and criminal offences, for the provisions located in Subdivision B, which consists of sections 63 to 66.

147. **Item 19** would repeal and substitute section 66. The proposed section 66 would permit the Finance Minister to require a person to assist in relation to a civil penalty or offence committed against a provision of the FF Act. This section would broadly replicate the repealed clause 13 of Schedule 2 to the CAC Act. There is no equivalent in the RPSP Act.

148. **Item 20** would insert a new Subdivision C of Division 7 of Part 4 into the FF Act. The subdivision would include new sections 67A to E.

149. Proposed section 67A would provide civil penalty provisions for breach of duties and clarify how the FF Act provisions and RPSP Act provisions interact. For example, the proposed subsection 67A(2) would provide that the Finance Minister would be the “authorised applicant” under the RPSP Act, consistent with the arrangements formerly in place under the CAC Act, and proceedings could be taken in the Federal Court of Australia and each Supreme Court of a State or Territory.

150. Proposed section 67B would deal with compensation orders, which are not dealt with in the RPSP Act. This provision generally replicates the former clause 4 of Schedule 2 to the CAC Act. However, the provision has been clarified to only apply when a person contravenes a civil penalty provision and not when he or she commits an offence.

151. Proposed section 67C would permit a relevant court to disqualify a Board member from being on the Board or being a member of an accountable authority of a corporate Commonwealth entity. This provision is generally consistent with former subsections 27C(1) to (4) of the CAC Act.

152. Proposed section 67D would permit a relevant court to give a person subject to a disqualification order leave to hold a disqualified position. This provision generally replicates the former subsections 27C(5) to (8) of the CAC Act.

153. Proposed section 67E would permit a relevant court to grant relief to a person subject to civil penalty proceedings or civil proceedings in certain circumstances. The power to grant relief is generally consistent with the former clause 14 of Schedule 2 to the CAC Act.

154. **Item 21** would provide for the application of the amendments proposed to the FF Act, stating that they are to apply in relation to any conduct that occurs after the commencement of the amendments.

Health Insurance Act 1973

155. **Item 22** would amend paragraph 106ZPLA(b) to omit “Scheme”. This would correctly reflect the title of the Professional Services Review in legislation.

156. **Item 23** would insert a new section 106ZQ after paragraph 106ZPR requiring the annual report prepared under section 46 of the PGPA Act.

157. **Item 24** provides for the application of the proposed amendments to the Act, stating that the amendments are to apply to the reporting period commencing on 1 July 2014 and later reporting periods.

Industrial Chemicals (Notification and Assessment) Act 1989

158. **Item 25** would repeal and substitute a new section 108 of the Act. Section 108 relates to annual reports. The amendment would harmonise annual report arrangements for the National Industrial Chemicals Notification and Assessment Scheme.

159. **Item 26** provides that this amendment applies in relation to the reporting period commencing on 1 July 2014 and later reporting periods.

International Organisations (Privileges and Immunities) Act 1963

160. **Item 27** would insert a new section 12C in the *International Organisations (Privileges and Immunities) Act 1963* (IOPI Act) after existing section 12B that would explicitly provide that international and overseas organisations given body corporate status under this Act are not Commonwealth entities for the purposes of the PGPA Act. It is not the intention of the PGPA Act to impose the rules and requirements applicable to Commonwealth entities on international and overseas organisations conferred body corporate status through the IOPI Act. Despite this, the officials involved in making decisions about the allocation of resources to such entities will continue to be subject to the duties contained in the PGPA Act.

Reserve Bank Act 1959

161. The proposed amendments seek to ensure that disclosure requirements for members of the Reserve Bank Boards be varied to allow for their responsibilities in relation to monetary policy decisions, and the Bank's role in financial system stability, to be consistent with the former arrangements under the *Reserve Bank Act 1959* (RBA Act) and the CAC Act class order issued by previous Treasurers.

162. **Item 28** would repeal subsection 7A(5) and (6) of the Act and substitute a new subsection 7A(5) which deals with provision about general duties of officials, other than the duty to disclose interests.

163. **Item 29** would insert new sections 7B and 7C after section 7A. New section 7B would provide for the disclosure of interest requirements for members of the Reserve Bank Board in relation to certain matters – specifically relating to matters of monetary policy or the role of the Bank in financial system stability.

164. New section 7C would provide for the disclosure of material personal interests requirements for members of the Reserve Bank Board and the Payments System Board in relating to more general matters being considered by the Board.

Terrorism Insurance Act 2003

165. **Item 30** would replace a reference to “Minister” with “Corporation” in section 31. This change is being made to clarify that should the Chief Executive resign, this should be in writing to the Corporation rather than the Minister, as the Corporation is also responsible for the appointment of that person.

NOTES ON SCHEDULE 7 – Other transitional provisions

166. This Schedule would provide transitional provisions applicable to the Bill.

167. **Item 1** would deem an amending legislative instrument made after the commencement of the consequential and transitional amendments which relates to the consequential amendments to have been made at the time the amendments to the primary legislation were made.

168. This is a technical application provision which reflects that there are not the resources to comprehensively amend every single instrument that was made under the provision that is being amended. The instruments are only affected to the extent that they relate to a consequential amendment and primary legislation.

169. As an example, regulations may define the scope of the regulations applicability. This may not get updated for the definition of Agency is repealed, but item 5 would ensure that when the regulation is changed that it was deemed to change when the consequential amendments were made.

170. **Item 2** would provide a power for the Finance Minister to issue transitional rules as necessary or convenient to give effect to the Bill. Being transitional in nature, any rules issued by legislative instrument under this item would be temporary.

171. A transitional rule making power was provided for in Item 6 of Schedule 14 to the PGPA (C&T) Act. This item replicates this power, limited to the items in the Bill.

172. The rule-making power is not designed to undermine Parliament's legislative responsibility. This is demonstrated by the focus of sub-item (2), which specifies that the power is to used for matters of a transitional nature, such as providing for saving or application provisions in relation to amendments or repeals made by the Bill.