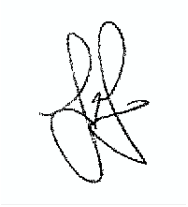

Attachment D to the Finance Submission to the JCPAA

Draft explanatory statement to the

Exposure draft of the

Public Governance, Performance and Accountability Rule 2014

EXPLANATORY STATEMENT

Select Legislative Instrument 2014 No.

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability Rule 2014

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The PGPA Act will replace the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The substantive provisions of the PGPA Act will commence on 1 July 2014.

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.

The *Public Governance, Performance and Accountability Rule 2014* (the PGPA Rule) is being made to support the implementation of the PGPA Act. The PGPA Rule contains provisions that predominantly relate to significant accountability and control mechanisms, that is, the elements of the framework that support the transactions of the Commonwealth and Commonwealth entities. The provisions relate to:

- defining government business enterprises;
- listed entities;
- listed law enforcement agencies;
- accountable authorities;
- preventing, detecting and dealing with fraud;
- recovery of debts;
- officials' duty to disclose interests;
- audit committees for Commonwealth entities and for wholly owned Commonwealth companies;
- approving commitments of relevant money;
- banking;
- investment by the Commonwealth;
- insurance obtained by corporate Commonwealth entities;
- authorisations of amounts by the Finance Minister;
- payment of amount owed to person at time of death;
- minister to inform Parliament of certain events;
- receipts of amounts by non-corporate Commonwealth entities; and
- other CRF money.

Details of the PGPA Rule are set out at Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

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

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003,* the Department of Finance consulted stakeholders from across the Commonwealth in the development of the PGPA Rule. A project board chaired by the Department of Finance oversaw the development process and five steering committees were constituted to work on particular subjects within the framework. The Australian National Audit Office was engaged as an observer and participated in all committees.

Membership of the steering committees was drawn from a wide range of Commonwealth entities including Departments of State, prescribed agencies, Departments of Parliament, statutory authorities and Commonwealth companies.

In addition to steering committees, consultation was also undertaken with key stakeholders in regional and remote communities and in Sydney, Melbourne and Adelaide.

Once drafted, the components of the PGPA Rule were posted on the Department of Finance website and were open for public comment for at least 30 days.

The PGPA Rule only applies to Commonwealth entities and does not adversely affect the private sector. The Office of Best Practice Regulation has advised that a regulation impact statement is not required as the PGPA Rule would have no more than a minor regulatory impact on business, community organisations or individuals.

Attachment A

Details of the Public Governance, Performance and Accountability Rule 2014

Chapter 1 – Introduction
Part 1-1 – Introduction

Division 1 – Preliminary

Section 1 – Name of Rule

This section provides that the title of the rule is the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

Section 2 – Commencement

This section sets out the commencement provisions of the PGPA Rule. Sections 1 to 3 commence on the day after the rule is registered on the Federal Register of Legislative Instruments (FRLI). Sections 4 to 29 and Schedule 1 of the PGPA Rule commence on either the day after registration on FRLI or the day section 101 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) commences, whichever is the later. However, if section 101 of the PGPA Act does not commence, the substantive provisions of the PGPA Rule will not commence.

Section 3 – Authority

This section provides that the PGPA Rule is made under the PGPA Act.

Division 2 – Definitions

Section 4 – Definitions

This section defines certain terms that are used in the PGPA Rule.

Part 1-2 – Provisions relating to the Dictionary in the Act

Each section of the PGPA Rule has a guide which summarises the purpose of the section.

Section 5 - Government business enterprise

Section 5 of the PGPA Rule is made for section 8 of the PGPA Act to prescribe certain corporate Commonwealth entities and companies as government business enterprises for the purposes of the Act.

The relationship that the Commonwealth has in relation to its government business enterprises is similar to the relationship between a holding company and its subsidiaries.

Under section 101 of the PGPA Act, the Finance Minister may make rules prescribing matters or making different provisions in relation to particular Commonwealth entities or companies, or classes of Commonwealth entities or companies. It is proposed that under the scheme to be put in place under the Act and its rule, particular accountability and reporting requirements apply to government business enterprises in areas like corporate planning in

recognition of the commercial nature of their activities or the entrepreneurial skills required from the accountable authority responsible for the entity.

Subsection 5(1) lists the following corporate Commonwealth entities as government business enterprises for the purpose of section 8 of the PGPA Act: the Australian Government Solicitor; the Australian Postal Corporation; and the Defence Housing Authority. These entities are currently listed in regulation 4 of the *Commonwealth Authorities and Companies Regulations 1997* (CAC Regulations) for the purposes of section 4 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

Subsection 5(2) lists the following Commonwealth companies as a government business enterprise for the purpose of section 8 of the PGPA Act: ASC Pty Limited; Australian Rail Track Corporation Limited; Medibank Private Limited; Moorebank Intermodal Company Limited; and NBN Co Limited. The section ensures that a change of name for a company will not affect its government business enterprise status. These Commonwealth companies are also currently listed in regulation 4 of the CAC Regulations for the purposes of section 4 of the CAC Act.

Section 6 – Listed entities

Section 6 is made for the purpose of section 8 of the PGPA Act to define listed entities those set out in Schedule 1 to this rule. Schedule 1 lists bodies, persons, groups or organisations that are listed entities for the purposes of the PGPA Act.

Section 7 – Listed law enforcement agency

Section 7 is made under paragraph 104(2)(b) of the PGPA Act to prescribe certain Commonwealth entities as listed law enforcement agencies for the purposes of the Act. The section is made for section 8 of the PGPA Act to define a listed law enforcement agency.

Under section 101 of the PGPA Act, the Finance Minister may make rules prescribing matters or making different provisions in relation to particular or different Commonwealth entities or companies, or classes of Commonwealth entities or companies. It is proposed that under the scheme to be put in place under the Act and its rule, particular accountability and reporting requirements may be modified in relation to listed law enforcement agencies in recognition of the sensitivities that apply to particular law enforcement operations. These could include the level of public reporting required in relation to operational activities, and banking in certain operational contexts.

This section lists the following Commonwealth entities as law enforcement agencies for the purpose of paragraph 104(2)(b) of the PGPA Act: the Australian Federal Police; the Australian Commission for Law Enforcement Integrity; and the Australian Crime Commission. These entities are currently listed in Schedule 3 to the FMA Regulations in relation to regulation 28 for the purposes of section 58 of the FMA Act.

Attachment A

Chapter 2 – Commonwealth entities and the Commonwealth
Part 2-1 – Core provisions about Commonwealth entities and the Commonwealth

Section 8 – Accountable authorities – listed entities

Section 8 provides that the accountable authority for a listed entity is as specified in Schedule 1 to the rule. The section is made for item 3 of the table in subsection 12(2) of the PGPA Act.

Section 9 – Officials

Section 9 identifies which individuals are officials of a Commonwealth entity and is made for subparagraph 13(3)(a)(iii) of the PGPA Act. The section specifies that members of the Australian Defence Force, other than members who are officials of the Defence Materiel Organisation, are officials of the Department of Defence.

Part 2-2 - Accountable authorities and officials
Division 1 – Requirements applying to accountable authorities

Section 10 - Preventing, detecting and dealing with fraud

Section 10 is made for paragraph 102 (a), (b) and (d) of the PGPA Act to prescribe the minimum standard for managing fraud risk and incidents under the Act. The section requires the accountable authority of a Commonwealth entity to take all reasonable measures to prevent, detect and deal with fraud relating to the entity. The section is binding on both non-corporate and corporate entities under the PGPA Act and provides for the continuity of effective Commonwealth fraud control arrangements.

The PGPA Act replaces the Commonwealth financial management framework which included provision for the Minister for Justice to issue the Commonwealth Fraud Control Guidelines (Guidelines). The Guidelines were a binding legislative instrument that set out the Commonwealth's fraud control policy and requirements for managing fraud within Commonwealth entities.

Under the PGPA Act, Commonwealth fraud control is underpinned by the rules. Section 10 of the PGPA Rule provides a legislative basis for Commonwealth fraud control arrangements and sets out clear, consistent and unambiguous requirements for fraud risk management and controls, to assist accountable authorities to meet their obligations under the PGPA Act. The section draws on the Guidelines which are based on established principles of fraud control necessary for maintaining minimum standards within entities.

Paragraphs (a) and (b) of the section set out the requirements to conduct fraud risk assessments and develop fraud control plans. Paragraph (c) requires that accountable authorities have in place an appropriate mechanism for preventing fraud, including by taking into account the risk of fraud when planning and conducting activities of the entity. Paragraph (c) also requires that accountable authorities ensure that officials in the entity are made aware of what constitutes fraud.

Paragraphs (d) and (e) require that accountable authorities have in place appropriate mechanisms for detecting, investigating and dealing with incidences of fraud or suspected fraud. Paragraph (f) requires that accountable authorities have in place an appropriate mechanism for recording and reporting incidences of fraud or suspected fraud.

Section 11 - Recovery of debts

Section 11 is made under paragraph 103(c) of the PGPA Act to require the accountable authorities of non-corporate Commonwealth entities to pursue the recovery of debts owing to the Commonwealth.

A debt owing to the Commonwealth is money that the holder is not lawfully entitled to keep. It is highly desirable, from the point of view of having a common scheme governing the proper use of public resources, to ensure that consistent requirements apply to the recovery of Commonwealth monies. This includes imposing a responsibility to pursue the recovery of a debt except in limited and specified circumstances.

The section provides that the accountable authority of a non-corporate Commonwealth entity must pursue recovery of each debt for which the accountable authority is responsible unless the accountable authority considers that it is not economical to pursue recovery of the debt; or the accountable authority is satisfied that the debt is not legally recoverable; or the debt has been written off by an Act.

Comparable provisions are currently vested in the chief executives of agencies subject to the FMA Act by virtue of section 47 of that Act. The non-corporate Commonwealth bodies that would be subject to this section currently fall under the ambit of the FMA Act.

Division 2 - Officials' duty to disclose interests
Subdivsion A – When duty does not apply

Section 12 - When duty does not apply

The duty to disclose material personal interests related to the affairs of an entity is an accepted standard of good governance and management. It is a feature of the CAC Act, the *Corporations Act 2001*, and the enabling legislation of a number of Commonwealth entities. The sections in the PGPA Rule on the disclosure of interests replace the requirements under the CAC Act and the enabling legislation of numerous Commonwealth entities, and complement the requirements in the *Public Service Act 1999* and the *Parliamentary Service Act 1999*.

The requirements for officials' duty to disclose interests are divided into five sections. The first section explains when the duty does not apply. The second section describes how the section applies to officials who are themselves the accountable authority of the entity. The third section relates to members who are members of the accountable authority of the entity. The fourth section relates to the consequences of having an interest for officials who are members of the accountable authority. The fifth section relates to other officials.

Attachment A

The first section (section 12) is made for paragraph 29(2)(a) of the PGPA Act and prescribes circumstances where the duty, under subsection 29(1) of the Act, of an official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity to disclose details of the interest, does not apply. Section 12 of the PGPA Rule applies to officials who are the accountable authority or who are members of the accountable authority.

Subsection 12(1) provides that an official who is the accountable authority or a member of the accountable authority is not required to disclose a material personal interest if the interest relates to:

- the official's remuneration; or
- a contract that insures, or would insure, the official against liabilities the official incurs as an accountable authority or as a member of the accountable authority (but only if the contract does not make the entity or a subsidiary of the entity the insurer); or
- relates to any payment by the entity, or a subsidiary of the entity, in relation to an indemnity permitted under section 61 of the PGPA Act, or any contract relating to an indemnity permitted under section 61 of the PGPA Act.

The table in subsection 12(1) also provides that where an official is a member of the governing body of a subsidiary, the official is not required to give notice of an interest if it arises in a contract, or a proposed contract, with, or for the benefit of, or on behalf of, a subsidiary of the authority and it arises merely because the official is, or is a member of, the governing body of the subsidiary.

These provisions continue exceptions contained in paragraph 27F(2)(a) of the CAC Act that, in turn, correspond to exceptions that apply to directors of companies in section 191 of the *Corporations Act 2001*.

Subsection 12(2) provides that where the material personal interest relates to the member of an Indigenous Land Council who has a traditional ownership right in relation to land, then, to the extent that they are "traditional Aboriginal owners" of the land within the definition of this term in the *Aboriginal Land Rights (Northern Territory) Act 1976*, that conflict does not need to be disclosed under the PGPA Act.

Subdivision B – Officials who are the accountable authority

Section 13 - Officials who are the accountable authority

Section 13 is made to ensure that there are consistent requirements for how and when an official who is the accountable authority of a Commonwealth entity must disclose material personal interests that relate to the affairs of the entity. It is made for paragraph 29(2)(b) of the PGPA Act.

Subsection 13(1) of this section requires that the official must disclose the interest, in writing, to the entity's responsible Minister.

Subsection 13(2) requires that the disclosure must include details of the nature and extent of the interests and how the interest relates to the affairs of the entity.

Subsection 13(3) requires that the official must make the disclosure as soon as practicable after the official becomes aware of the interest and, if there is a change in the nature or extent of the interest after the official has disclosed the interest under this section, as soon as practicable after the official becomes aware of that change.

The term "material" is not defined in the section. Guidance on the section will deal with the concept of materiality, drawing on the existing precedents established through the common law, Australian accounting standards and other relevant references. These existing precedents generally note that materiality depends on the size and nature of the interest and the surrounding circumstances.

Subdivision C – Officials who are members of the accountable authority

Section 14 – Officials who are members of the accountable authority – how and when to disclose interests

Section 14 is made to ensure that there are consistent requirements for how and when an official who is a member of the accountable authority of a Commonwealth entity must disclose material personal interests that relate to the affairs of the entity. It is made for paragraph 29(2)(b) of the PGPA Act.

Subsection 14(1) of this section requires that the official must disclose the interest, orally or in writing, to each other member of the accountable authority.

Subsection 14(2) requires that the disclosure must include details of the nature and the extent of the interest and how the interest relates to the affairs of the entity.

Subsection 14(3) requires that the official must make the disclosure at a meeting of the members of the accountable authority as soon as practicable after the official becomes aware of the interests, and, if there is a change in the nature or extent of the interest after the official has disclosed the interest under this section, as soon as practicable after the official becomes aware of that change.

Subsection 14(4) requires an official to ensure that the disclosure is recorded in the minutes of the meeting.

These requirements are based on the requirements in sections 27F and 27G of the CAC Act, but simplify those arrangements.

Section 15 - Officials who are members of the accountable authority – consequences of having interests

Section 15 restricts members of an accountable authority of a Commonwealth entity who have a material personal interest in a matter from being present, or voting, at a meeting on the matter. It is made for paragraphs 29(2)(c) and subsections 102(a), (b) and (d) of the PGPA Act.

Subsection 15(1) outlines to whom the section applies.

Subsections 15(2) and (3) set out the consequences of having an interest.

Subsection 15(2) requires that if a matter in which the official has the interest is being considered at a meeting of the members of the accountable authority, the official must not be present while that matter is being considered at the meeting, or vote on the matter.

Subsection 15(3) provides that the official may be present or vote at a meeting where they have a conflict of interest in certain circumstances. These are where the responsible Minister for the entity has declared, in writing, that the official may be present or vote or both, or where the members of the accountable authority who do not have a material interest in the matter have decided that the official is not disqualified from being present or voting or both, and the decision is recorded in the minutes of a meeting of the members. However, the official may be present or vote, or both, only in accordance with the declaration or decision.

Subsection 15(4) provides for the scope of the declaration in writing that can be made by the responsible Minister of an entity for an official who has the conflict of interest. The responsible Minister may declare that the official may be present while the matter is being considered at the meeting, or that the official may vote on the matter; or both.

Subsection 15(5) provides that the responsible Minister may only make the declaration if the number of members of the accountable authority entitled to be present and vote on the matter would be less than the quorum for a meeting of the accountable authority if the official were not allowed to be present or vote on the matter at the meeting; or the matter needs to be dealt with urgently; or there is a compelling reason for the matter being dealt with at the meeting. This is to ensure that ministerial declarations are only made in relation to limited and pressing circumstances.

Subsection 15(6) provides that a contravention of this section of the rule by an official does not affect the validity of any resolution made by the accountable authority at any meeting in relation to which the conflict of interest should have been declared.

Subdivision D – Other officials

Section 16 - Officials who are not the accountable authority or a member of the accountable authority
[This section relies on proposed changes to the Act being approved.]

This section of the PGPA Rule is to ensure that there are consistent requirements for how and when other officials of Commonwealth entities must disclose material personal interests that relate to the affairs of the entity. It is made for paragraph 29(2)(b) of the PGPA Act.
It provides that an official must disclose an interest in accordance with any instructions given by the accountable authority of the entity of which the official is a part.

The guide to the section mentions that if the *Public Service Act 1999* also applies to the official, there is a similar, but separate, requirement in subsection 13(7) of that Act to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.

Attachment A

Part 2-3 – Planning, performance and accountability

Section 17 - Audit committee for Commonwealth entities

Section 17 is made for subsection 45(2) of the PGPA Act to set out the minimum requirements relating to establishing an audit committee for a Commonwealth entity. It applies to both non-corporate and corporate Commonwealth entities. Under subsection 45(1) of the PGPA Act, each entity is required to have an audit committee. Section 17 of the PGPA Rule helps to ensure that the committee provides independent advice and assurance to the entity's accountable authority. Audit committees have no management function; the value of a committee is that it is independent of management and can provide advice from this perspective.

Subsections 17(1) and (2) outline the functions of an audit committee that is established under subsection 45(1) of the PGPA Act. Subsection 17(1) requires the accountable authority to determine the functions of an audit committee in a written charter. Subsection 17(2) requires that the functions of an audit committee must include reviewing the appropriateness of the accountable authority's financial reporting, performance reporting, system of risk oversight and management, and system of internal control for the entity.

Subsections 17(3) and (4) outline the membership of an audit committee. Subsection 17(3) requires that the audit committee must consist of at least three persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions.

Subsection 17(4) provides that, from 1 July 2015, the majority of the members of the audit committee of a non-corporate Commonwealth entity must not be officials of the entity; and for the audit committee of a corporate Commonwealth entity, the majority of members must not be employees of the entity. This is a change to existing legislative requirements. The FMA Act requires the Chief Executive to ensure, as far as practicable, that the audit committee includes at least one member who is not an employee of the entity. The CAC Act limits membership to one person who is an executive director of the authority. The requirement in relation to independent membership is intended to help ensure that the audit committee is able to provide independent advice and assurance to the entity's accountable authority.

Subsection 17(5) requires that the following persons must not be a member of an audit committee: the accountable authority, or, if the accountable authority has more than one member, the head of the accountable authority; the Chief Financial Officer of the entity; or the Chief Executive Officer of the entity, however these persons are described. This is a requirement to help ensure that there is a degree of independence between an audit committee and particular senior leadership and management roles in an entity. This requirement does not limit the ability of a corporate Commonwealth entity to appoint non-executive board members, other than the chair, to an audit committee.

While the PGPA Act requires an accountable authority to help ensure that the entity has an audit committee and this section of the PGPA Rule requires the accountable authority to determine the committee's functions, section 17 does not prevent the same audit committee being established for multiple Commonwealth entities.

Current provisions on audit committees of non-corporate Commonwealth entities are contained in regulation 22C of the FMA Regulations; and regulation 6A of the CAC Regulations for corporate Commonwealth entities. This single section replaces these separate requirements. It simplifies the requirements on membership and functions currently set out under regulation 22C for non-corporate Commonwealth entities, and, in contrast to regulation 6A, spells out the functions of an audit committee for corporate Commonwealth entities.

Part 2-4 – Use and management of public resources
Division 1 – Commitments of relevant money

Section 18 – Approving commitments of relevant money
[This section relies on proposed changes to the Act being approved.]

Section 18 of the rule is made for section 52 of the PGPA Act to prescribe matters relating to the commitment and expenditure of relevant money by the Commonwealth or a Commonwealth entity. It relates to both non-corporate and corporate Commonwealth entities.

The accountable authority responsible for relevant money has a duty to promote the proper use of the money under paragraph 15(1)(a) of the PGPA Act. Under section 8 of the PGPA Act, proper use means efficient, effective, economical and ethical. For non-corporate Commonwealth entities, section 21 of the PGPA Act adds the requirement that the proper use and management of public resources under paragraph 15(1)(a) is not inconsistent with the policies of the Australian Government. This duty applies when approving commitments of money.

If the accountable authority delegates its power to approve commitments of money to an official, or otherwise authorises an official to exercise that power, the accountable authority will be able to help ensure the proper use of the money through the delegation or authorisation, and through an appropriate system of internal control which it must establish and maintain under subsection 16(b) of the PGPA Act. This system of internal control can include written instructions or requirements. The accountable authority will be able to achieve this whether the official is of the same entity as the accountable authority, or a different Commonwealth entity. The delegation of authority to a different Commonwealth entity can occur in situations where there are machinery of government changes or in joined-up activities between agencies.

Subsection 18(1) requires an official who is approving the commitment of relevant money for which the accountable authority of a Commonwealth entity is responsible to record the approval in writing as soon as practicable after giving it. Under section 12 of the *Electronic Transactions Act 1999*, under a law of the Commonwealth, if a person is required to record an approval in writing, then that requirement is taken to have been met if the person records the information in electronic form, and that record could be accessible for subsequent reference. Recording an approval in an entity's electronic financial management system or by an e-mail that was properly stored for future reference, would, therefore, meet the requirements of this provision.

Subsection 18(2) requires that the official must also approve the commitment consistently with any written requirement, including spending limits, specified by the accountable

authority in instructions given by the accountable authority; or the instrument that delegates to the official, or otherwise authorises the official to exercise, the accountable authority's power to approve the commitment of relevant money; or a direction to the official in relation to the exercise of that power. It is expected in setting its system of internal controls around the commitment of relevant money, the accountable authority of an entity, consistent with its general duties under section 16 of the PGPA Act, will have proper regard to the overall risk environment of the entity, and the particular risks that attach to particular transactions or classes of transaction.

The exercising of the power to approve the commitment of relevant money consistently with the accountable authority's instructions and with the terms of the delegation or authorisation, the official must comply with his or her general duties under sections 25 to 29 of the PGPA Act. These include a duty of care and diligence; a duty to act in good faith and for a proper purpose; a duty in relation to use of position; a duty in relation to use of information; and a duty to disclose interests.

This section of the PGPA Rule replaces the current requirements under regulations 9 and 12 of the FMA Regulations for non-corporate entities. In summary, these provisions require that an approver of a spending proposal must be satisfied, after reasonably making inquiries, that giving effect to spending proposals would be a proper use of Commonwealth resources, and that the terms of the approval must be recorded in writing as soon as practicable after giving the approval. No provisions exist in relation to the commitment and expenditure of money for corporate Commonwealth entities under the CAC Act or the CAC Regulations. The extension of a requirement around commitment of relevant monies to all Commonwealth entities improves the coherence of arrangements across the Commonwealth in relation to the management of public resources.

Division 2 – Banking etc. of relevant money received by officials

Section 19 – Banking of bankable money received by officials
[This section relies on proposed changes to the Act being approved.]

Section 19 is made for the proposed amended subparagraph 55(2)(a)(i) of the PGPA Act to require officials who receive relevant money that can be banked to deposit the money in a bank either by the next banking day or within the period prescribed in the accountable authority's instructions. The section is made to help ensure that relevant money in the form of cash is held in proper custody and can yield commercial returns to the advantage of the Commonwealth or corporate Commonwealth entities.

Certain money cannot be banked. A separate section of the rule is made for money that cannot be banked.

Subsection 19(1) requires an official of a Commonwealth entity who receives bankable money to deposit the money in a bank before the end of the next banking day after they have received the money, or, if the instructions of the accountable authority of a Commonwealth entity that is responsible for the money prescribe a period in which the money must be so deposited, before the end of that period.

Subsection 19(2) defines banking day as a day other than a Saturday, a Sunday or a day that is a public holiday in the place where the money was received.

The provision in paragraph 19(1)(b) that allows an accountable authority to prescribe a period in which the money must be deposited other than before the next banking day is to allow for officials of entities who operate in regional and remote areas of Australia where banking facilities are not readily accessible, or in overseas countries that operate banking systems with different access arrangements to Australia, to hold money until such time as they can access a bank. Similar provisions are found in the current arrangements that are made in relation to section 10 of the FMA Act under regulation 17 of the FMA Regulations.

Section 20 – Otherwise dealing with bankable money received by officials
[This section relies on proposed changes to the Act being approved.]

Section 20 is made for the proposed amended paragraph 55(2)(b) of the PGPA Act to require officials who receive relevant money that can be banked to deal with the money in accordance with the accountable authority's instructions as an alternative to banking it.

The section requires an official of a Commonwealth entity who receives bankable money that is to be held for the purposes of making payments in relation to a Commonwealth entity to deal with the money in accordance with any requirements prescribed by the instructions of the accountable authority of a Commonwealth entity that is responsible for the money.

This allows for arrangements where cash floats are managed by an entity or where monies received are used to pay for goods and services purchased, which may be the case in regional and remote areas of Australia, or in overseas locations. It also allows for situations when an accountable authority considers it uneconomical to bank money – for example where coins of a small denomination are collected in a remote area like a donations box in a national park. An accountable authority may decide to store the coins until a sufficient number are collected to warrant the cost of transporting the coins to an appropriate bank.

Section 21 – Dealing with unbankable money received by officials
[This section relies on proposed changes to the Act being approved.]

Section 21 is made for the proposed new subsection 55(3) of the PGPA Act, to require officials who receive relevant money that cannot be banked to deal with the money in accordance with the instructions of the accountable authority that is responsible for the money. Certain money cannot be banked, for example, money in the form of foreign coins, or money that is not accepted by a bank because it is damaged, or money that is not recognised as legal tender.

Regulation 18 of the FMA Regulations, which contains the current arrangements in relation to money that cannot be banked, requires that "an official who receives public money in a non-bankable currency must take reasonable steps to safeguard the money". In order to meet this requirement, a number of entities have been found to have incurred disproportionate costs in relation to securing such money.

Under the proposed scheme, any instruction made by an accountable authority in relation to relevant money that cannot be banked, must be made in accordance with the duty on an accountable authority under paragraph 15(1)(a) of the PGPA Act to promote the proper use and management of public resources for which the authority is responsible, and section 16 of the PGPA Act which requires an accountable authority to establish and maintain an

appropriate system of risk oversight and management and an appropriate system of internal control for the entity. The same is true of any instruction that an accountable authority issues in relation to prescribing a period for, or otherwise, dealing with relevant money that can be banked. Officials handling relevant money under these provisions are subject to the duties on officials contained in section 25 to 29 of the PGPA Act, including a duty of care and diligence.

Division 3 – Investment

Section 22 - Investment by the Commonwealth

Section 22 is made for subparagraph 58(8)(a)(iii) of the PGPA Act and sets out the additional forms of investment that the Finance Minister and the Treasurer are authorised to make on behalf of the Commonwealth.

Section 58 of the PGPA Act gives authority to the Finance Minister and the Treasurer to invest relevant money on behalf of the Commonwealth. By implication, no other person may invest on behalf of the Commonwealth, unless expressly authorised by legislation or through a delegation made by the Finance Minister under section 107 or the Treasurer under section 108 of the PGPA Act.

Delegations of investment powers by the Finance Minister are usually given to the accountable authorities of non-corporate Commonwealth entities and in relation to specified monies. The Treasurer has currently delegated investment powers to the Australian Office of Financial Management in relation to the management of the Commonwealth's public debt. A small number of non-corporate Commonwealth entities have enabling legislation that permits investment activities. These arrangements are not limited by the provisions in section 58 of the PGPA Act.

Section 58 enables the making of investments by describing the technical arrangements for investments in relation to trusts, special accounts and the CRF more broadly, and to enable investment in particular securities guaranteed by an Australian government and deposits with a bank. Paragraph 58(8)(b) allows the Treasurer to invest in particular debt instruments with an investment grade credit rating.

Paragraph 58(8)(a) of the PGPA Act provides limitations of the types of instruments that can be used by the Finance Minister and the Treasurer for authorised investment. Subparagraph 58(8)(a)(iii) allows for rules to be made about any form of investment other than securities of, or guaranteed by, the Commonwealth, a State or a Territory, which are outlined in subparagraph 58(8)(a)(i) of the PGPA Act; or a deposit with a bank, including a deposit evidenced by a certificate of deposit (subparagraph 58(8)(a)(ii) of the PGPA Act).

Section 22 of the PGPA Rule provides that the Finance Minister and the Treasurer are authorised to invest in the following additional forms of investment: a bill of exchange accepted or endorsed by a bank; a professionally-managed money market trust and a dematerialised security (a security that exists in book-entry form, as opposed to paper form). The section provides for limitations in relation to each of these.

Under paragraph (a) of this section, a bill of exchange may only be of a type that is accepted or endorsed by a bank. Bank is defined in section 8 of the PGPA Act as an authorised

deposit-taking institution within the meaning of the *Banking Act 1959*; the Reserve Bank of Australia; or a person who carries on the business of banking outside Australia.

Under paragraph (b) of this section, a professionally-managed money market trust can only be invested in if the Finance Minister or the Treasurer are satisfied that the only investments managed by the trust are investments referred in paragraph (a) of this section, or subparagraphs 58(8)(a)(i) or 58(8)(a)(ii) of the PGPA Act; and a charge over trust assets does not support any borrowing by the trustee in relation to the trust.

Under paragraph (c), a dematerialised security can only be invested in if it is deposited in the Austraclear System and is the equivalent of an investment referred to in paragraph (a) of the section or subparagraph 58(8)(a)(ii) of the PGPA Act. At this time, securities in a dematerialised form only exist in the Austraclear System, and, given that the Austraclear System is the system adopted by Australia's financial markets, this is not expected to change in the foreseeable future. The link is provided to give the Parliament confidence that should any other system be established for depositing dematerialised securities, then the Parliament will be consulted before Commonwealth investments can be made in this other system.

The arrangements under section 58 of the PGPA Act and section 22 of the PGPA Rule are comparable to the existing arrangements for the investment of public money by the Commonwealth in section 39 of the FMA Act and regulation 22 of the FMA Regulations.

Division 4 – Insurance

Section 23 - Insurance obtained by corporate Commonwealth entities

Section 23 is made under section 62 of the PGPA Act and applies to corporate Commonwealth entities that are not members of the Comcover self-managed fund. The Government's policy requires non-corporate Commonwealth entities within the General Government Sector to be members of the Comcover fund, while corporate Commonwealth entities in the General Government Sector are encouraged to be members of the Comcover fund. The section restricts corporate Commonwealth entities from insuring officials of the entity against liabilities relating to breach of duty.

The official of a Commonwealth entity is defined under section 13 of the PGPA Act to include a person who is, or is a member of, the accountable authority of an entity; or is an officer, employee or member of the entity; or is an individual or an individual in a class prescribed by the rules.

All corporate Commonwealth entities include officials who have duties under the PGPA Act. Section 25 of the PGPA Act imposes a duty of care and diligence; section 26 imposes a duty to act in good faith and proper purpose; section 27 imposes a duty in relation to use of position; section 28 imposes a duty in relation to use of information; and section 29 imposes a duty to disclose interests.

Paragraph 23(1)(a) of this section provides that a corporate Commonwealth entity must not insure an official of the entity against a liability, other than one for legal costs, arising out of conduct involving a wilful breach of duty arising at common law, the law of equity or under the finance law in relation to the entity. Finance law is defined in section 8 of the PGPA Act

as meaning the Act itself, the rules or any instrument made under the Act or an Appropriation Act.

Paragraph 23(1)(b) of this section provides that a corporate Commonwealth entity must not insure an official of the entity against a liability, other than one for legal costs, arising out of any contravention of section 27 (duty in relation to position) or section 28 (duty in relation to use of information) of the PGPA Act.

Subsection 23(2) provides that anything that purports to insure a person against, or exempt a person from, a liability is void to the extent that it contravenes this section.

Section 23 prevents an entity obtaining insurance, including the payment of premiums for a contract in relation to insurance, for the breaches of duty outlined in the section. This requirement is consistent with the legislative arrangements in relation to directors that applied under section 27N of the CAC Act to certain corporate Commonwealth entities. Other forms of insurance can be obtained in line with standard business practice, including in relation to officials, or former officials, against any other liabilities incurred by that person as an official.

Division 5 – Authorisations and payments by the Finance Minister

Section 24 – Authorisations of amounts by the Finance Minister
[This section relies on proposed changes to the Act being approved.]

Section 24 is made for subsection 63(2), proposed new subsection 64(1A) and subsection 65(2) of the PGPA Act to require the Finance Minister to consider the report of an advisory committee before making authorisations in relation to waivers, set-offs and act of grace payments relating to the Commonwealth involving amounts of money above $500,000.

Waivers of the Commonwealth's right to payment of amounts owed to it can occur where a debt arises as a direct result of an act of omission by a Commonwealth entity, or where repayment could be inequitable or cause severe ongoing financial hardship. Setting off arrangements represent a cost effective mechanism for handling debts in particular circumstances. Act of grace arrangements are discretionary payments to a person because of special circumstances under which it is appropriate to provide redress.

Subsection 63(1) of the PGPA Act allows the Finance Minister, on behalf of the Commonwealth, to waive an amount owing to the Commonwealth or otherwise modify the terms and conditions on which an amount owing to the Commonwealth is to be paid to the Commonwealth. Subsection 64(1) allows the Finance Minister, on behalf of the Commonwealth, to set off amounts owing to the Commonwealth by a person against amounts owing by the Commonwealth to that same person. Subsection 65(1) allows the Finance Minister, on behalf of the Commonwealth, to authorise an act of grace payment be made to a person if the Finance Minister considers it appropriate to do so because of special circumstances.

Subsection 24(1) provides that this section applies if the Finance Minister proposes to authorise the waiver of an amount owing to the Commonwealth, or the setting off of an amount owing to the Commonwealth or an act of grace payment for amounts of more than $500,000.

Subsection 24(2) requires that before making a decision in relation to authorising the waiver, set-off or payment of an amount under subsections 63(2), 64(1) and 65(1) of the PGPA Act, the Finance Minister must consider a report of the advisory committee established under subsection 24(3) in relation to the authorisation.

Subsection 24(3) provides that the Finance Minister must establish an advisory committee to report on the appropriateness of an authorisation of an amount under subsections 63(2), 64(1) and 65(1) of the PGPA Act. The advisory committee must consist of the Chief Executive Officer of the Australian Customs and Border Protection Service, the Secretary of the Department of Finance, and the accountable authority of the Commonwealth entity to which the authorisation relates. There is the provision for the Finance Minister to nominate alternative members of the Committee should the Australian Customs and Border Protection Service or the Department of Finance be responsible for the matter that is the subject of the decision, or if there is no Commonwealth entity for the matter.

Subsection 24(4) allows the member of the advisory committee to appoint a deputy to act in his or her place if the member is, for any reason, unable to perform the duties of the member. Such acting appointments are required to be consistent with sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Subsection 24(5) allows the advisory committee to conduct itself as it sees fit, and allows for a report to be prepared without the advisory committee having a meeting. This recognises the ability to communicate and decide issues electronically.

Section 24 replaces the provisions of regulation 29 made under the FMA Regulations which relates to sections 33 and 34 of the FMA Act. Section 24 extends these current arrangements by requiring the Finance Minister to consult an advisory committee in relation to set-off amounts, and by raising the minimum monetary threshold requiring a report from an advisory committee from $250,000 to $500,000.

Section 25 - Payment of amount owed to person at time of death

Section 25 is made under paragraph 103(f) of the PGPA Act to allow the Finance Minister to authorise a payment of an amount that is owed by the Commonwealth to a person who has died. It allows the Finance Minister to decide who to make the payment to, and to authorise the payment without needing probate or letters of administration.

The section supplements arrangements in various statutory payment schemes that allow payments owed to a recipient who has died to be made to the deceased person’s estate or to others. The section applies where there is no alternate provision to make such a payment.

Subsection 25(1) outlines that the Finance Minister can make the payment of the amount owed to the deceased person to another person who the Finance Minister considers should receive the payment.

Subsection 25(2) empowers the Finance Minister to authorise the payment without requiring production of probate of the will of the deceased person or letters of administration of the estate of the deceased person.

Subsection 25(3) provides that in deciding who should receive the payment, the Finance Minister must consider the people who are entitled to the property of the deceased person under the deceased person's will; and the law relating to the disposition of the property of the deceased person.

Subsection 25(4) provides that after the payment is made, the Commonwealth has no further liability in relation to the amount that was owed.

Subsection 25(5) provides that the section does not relieve the recipient from a liability to deal with the money in accordance with the law.

This section replaces regulation 30 of the FMA Regulations. Practically, the provision of this regulation has been mostly used where a Commonwealth employee with accrued salary and entitlements has died, and payment is required to be made to a spouse or immediate family member to satisfy a debt or other requirement before probate or letters of administration can be produced.

Division 6 – Special Provisions applying to Ministers only

Section 26 - Minister to inform Parliament of certain events

Section 26 of the PGPA Rule is made under subsection 72(3) of the PGPA Act to ensure that notice is given to the Parliament about government operations relating to companies. In the interest of transparency, Ministers are required to table in the Parliament a notice with particulars prescribed in the rules about particular events relating to the Commonwealth or a corporate Commonwealth entity that relates to a company.

Section 72 of the PGPA Act provides that the Minister who has responsibility for any of the following events must cause a notice of the event to be tabled in each House of the Parliament as soon as practicable after the event occurs: the Commonwealth or a corporate Commonwealth entity forms or participates in forming, becomes or ceases to be, a member of a company or relevant body; a variation occurs in the rights of the Commonwealth or a corporate Commonwealth entity as a member of a company or a relevant body; or the Commonwealth or a corporate Commonwealth entity acquires or disposes of shares in a company or a variation occurs in the rights attaching to such shares. Exclusions to the operation of the section are contained in subsection 72(4).

The table in the section requires five topic items to be contained in any notice tabled by a Minister and particulars to be included in relation to each of those topic items. These relate to the name and portfolio of the Minister who has the responsibility for the event; the nature and reasons for the event; the consequences of the event, including a range of particulars about the amounts of money involved and liabilities, duties, obligations and interests that arise or are affected as the result of the event; the identity of the company and whether it is a public company; and if the company is a foreign company, details that relate to that company. The particulars relating to the identity of either a company or foreign company are referenced to the meaning of section 9 of the *Corporations Act 2001*.

Subsection 72(2) allows the term "relevant body" to be prescribed by the rules, but this has not been done for the purposes of the current section in this rule, which relates only to companies.

A provision requiring a Minister to inform Parliament of involvement in a company by the Commonwealth or a prescribed body is at section 39A of the FMA Act. Together with regulation 22AA of the FMA Regulations, they provide a similar scope to section 72 and section 26 in this rule. Similar provisions in section 45 of the CAC Act were repealed in 2010.

Part 2-5 - Appropriations

Section 27 - Receipts of amounts by non-corporate Commonwealth entities
[This section relies on proposed changes to the Act being approved.]

Section 27 of the PGPA Rule is made under subsection 74(1) of the PGPA Act. It sets out which amounts received by a non-corporate Commonwealth entity may be credited to increase an appropriation made by the Parliament and which appropriations can be increased. The section is necessary as the Constitution provides that no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

Subsection 27**(**1) establishes that the section applies to amounts received by a non-corporate Commonwealth entity.

Subsections 27**(**2) to (5) provide when received amounts of the kind set out in subsection 74(1) of the PGPA Act can be credited to an appropriation.

Subsection 27**(**2) provides that a received amount can be credited to an appropriation if it is specified in the table entitled "Kinds of amounts" that forms part of the subsection, and if it is received by the entity in relation to the entity's departmental activities. Eight items are identified in this table. They are:

- amounts that offset costs in relation to an activity of an entity;
- amounts that are a sponsorship, subsidy, gift, bequest or similar contribution;
- amounts that are a monetary incentive or rebate in relation to a procurement;
- amounts that are an insurance recovery;
- amounts that are in satisfaction of a claim for damages or other compensation;
- amounts that relate to an employee's leave, including paid parental leave;
- amounts that relate to a sale of departmental assets of the entity; and
- amounts received in relation to an application to the entity under the *Freedom of Information Act 1982*.

Subsection 27(3) provides that a received amount can be credited to an appropriation if it relates to a trust or similar arrangement.

Subsection 27(4) provides that a received amount can be credited to an appropriation if it is a repayment of the whole or part of an amount paid by the entity; and the most recent departmental item for the entity in an Appropriation Act, or another item in an Appropriation Act, or another appropriation or a special account was debited in relation to the amount paid by the entity.

Subsection 27(5) provides that if another item in an Appropriation Act, another appropriation or a special account was debited in relation to the amount paid, then that item, appropriation or special account is prescribed for paragraph 74(1)(b) of the PGPA Act.

Subsections 27(6) and (7) deal with the circumstances under which received amounts may not be credited.

Subsection 27(6) provides that despite subsections 27(2) and (3), a received amount is not of a kind for subsection 74(1) of the PGPA Act if a departmental or an administered item for the entity in an Appropriation Act has been appropriated in relation to the amount; or it is a tax, levy, fine or penalty; or it relates to the Goods and Services Tax (GST). Departmental and administered items are defined in each Appropriation Act.

Subsection 27(7) provides that despite subsection 27(2), if the total of the amounts received by the entity in a financial year in relation to a sale of departmental assets less the costs incurred by the entity in relation to the sale reaches 5 per cent of the total of all departmental items for the entity provided in an Appropriation Act in that financial year, then any further amount of that kind received by the entity in that financial year is not an amount of a kind for subsection 74(1) of the PGPA Act.

Section 27 of the PGPA Rule and section 74 of the PGPA Act replace the current provisions under sections 30 and 31 of the FMA Act. Section 30 provides that where an amount is repaid to the Commonwealth, the appropriation that was used earlier to make the related payment can be increased by the repaid amount. Section 31 permits agencies to increase their most recent departmental item with the types of receipts prescribed in regulation 15 of the FMA Regulations.

In contrast to regulation 15, section 27 of this rule does not make provision for an appropriation to be credited in relation to the GST. Separate arrangements are being made to appropriate entities for payments of this tax. Neither does this section provide for appropriations to be increased with schemes determined by the Finance Minister. Schemes provide a mechanism for administered appropriations or special appropriations to be used on expenses of a departmental nature, which may not be consistent with Parliament's intent in making an appropriation. Neither does the section provide for a departmental item to be credited with amounts debited from a Special Account. Amounts can only be debited from a Special Account if permitted by the legislative purposes of that Special Account. If the purposes of a Special Account permit making payments of a departmental nature, then debiting a Special Account and crediting a departmental item with amounts does not broaden the purposes of a Special Account and represents the unnecessary transfer of money.

Chapter 3 – Commonwealth companies

Section 28 - Audit committee for wholly-owned Commonwealth companies

This section is made for section 92 of the PGPA Act to set out the minimum requirements relating to establishing an audit committee for a wholly-owned Commonwealth company. Under subsection 92(1) of the PGPA Act, the directors of a wholly-owned Commonwealth company must ensure that the company has an audit committee.

Subsection 28(1) provides that section 17 of this rule relating to audit committees for Commonwealth entities also applies to wholly-owned Commonwealth companies in the same way as it applies to corporate Commonwealth companies. Subsection 28(2) provides that a

reference in section 17 of this rule to the accountable authority of the entity is taken to be a reference to the governing body of the company.

Current provisions on audit committees of wholly-owned Commonwealth companies are contained in regulation 6B of the CAC Regulations. This section of the rule replaces this regulation.

Chapter 4 - Miscellaneous

Section 29 - Other CRF Money

Money held by a private person for and on behalf of the Commonwealth forms part of the Consolidated Revenue Fund (CRF) for the purposes of section 81 of the Constitution. For the purposes of the FMA Act the concept of 'public money' extended to money held or controlled by an outside person for or on behalf of the Commonwealth, but the concept of 'relevant money' for the purposes of the PGPA Act does not. 'Other CRF money' is a new concept introduced under the PGPA Act. Accordingly, there is a need to regulate this new category of other CRF money.

Section 29 is made for subsection 105(1) of the PGPA Act to set out matters relating to arrangements for the receipt, custody or expenditure of other CRF money by a person outside the Commonwealth or a Commonwealth entity. It relates to non-corporate Commonwealth entities.

Subsection 29(1) provides that the accountable authority of a non-corporate Commonwealth entity must ensure that any arrangement entered into related to other CRF money must comply with the requirements prescribed in subsection 29(2).

Subsection 29(2) sets out the obligations and matters that must be included in an arrangement for the purposes of the receipt, expenditure, or custody of other CRF money by a person outside of the Commonwealth. These requirements are designed to help ensure that any arrangement made in relation to other CRF money meets the essential requirements for control, accountability and transparency in respect of the arrangement related to other CRF money.

Paragraph 29(2)(a) is designed to help ensure that the accountable authority applies the principles on proper use and management to the making and administering of an arrangement in relation to other CRF money. 'Proper' is defined in subsection 29(3). This paragraph makes clear that when an accountable authority enters into an arrangement for other CRF money, the accountable authority does not 'outsource' their obligations in terms of the promotion of proper use and management through an arrangement related to other CRF money. In light of this, an accountable authority making the arrangement should consider terms and conditions beyond those specified in this section of the rule that will enable the accountable authority to fulfil reporting requirements on the use of resources. For example, when a person outside the Commonwealth is making grant payments for or on behalf of the Commonwealth, the arrangement will need to include requirements to enable the entity to fulfil its obligations for reporting on grants.

Paragraph 29(2)(b) requires the arrangement to be in writing. This aims to provide accountability and transparency for the arrangement and to minimise risks to the Commonwealth related to the proper management of the money. For example, if a person outside the Commonwealth fails to comply with the terms and conditions of the written arrangement, the Commonwealth will be in a better position to pursue redress.

Paragraph 29(2)(c) requires the banking of other CRF money as soon as is practicable. This provision aims to minimise the risk to the Commonwealth by requiring other CRF money to be deposited in a bank account as soon as is practicable after receipt by the person outside the Commonwealth. 'As soon as is practicable' is not defined, however it would generally have its ordinary meaning. If the other CRF money is to be held by the person for any length of time, the accountable authority making the arrangement should consider specifying that interest should be earned on the money for the benefit of the Commonwealth (see further at paragraph 29(2)(e)).

Paragraph 29(2)(d) recognises that an accountable authority making the arrangement will still need to report on, and account for, the other CRF money received, in the custody of, or spent by the person outside the Commonwealth. Therefore, paragraph 29(2)(d) provides that the arrangement must require the person outside the Commonwealth who is acting for or on behalf of the Commonwealth to keep proper records in relation to the receipt, custody or expenditure of other CRF money. The arrangement will also need to require those records to be kept in such a form that will allow them to be conveniently and properly audited to ensure appropriate accountability.

Paragraph 29(2)(e) requires that any interest earned on other CRF money must be remitted in full to the Commonwealth. The section also requires that the arrangement should specify requirements in relation to the timing and frequency of remittance. The arrangement is required to address interest, as it would be inappropriate for a person outside the Commonwealth to receive any financial gain through the accrual of interest on other CRF money held by them. The interest earned on the other CRF money will become relevant money once held by, or standing to the credit of, a bank account of the non-corporate Commonwealth entity receiving the money.

Paragraph 29(2)(f) deals with the timing and frequency of any remittance of other CRF money to the Commonwealth under the arrangement and paragraph 29(2)(g) deals with the timing and frequency of any payments of other CRF money to another person under the arrangement.

Generally, the length of time and frequency of remittance to the Commonwealth should be based on an assessment of the risk of holding other CRF money in a non-Commonwealth bank account and the best cash management outcome for the Commonwealth. This should be balanced against any savings or cost advantages for remittances of greater or lesser frequency. Ideally, other CRF money should remain in a non-Commonwealth bank account for the shortest period of time that is reasonable in all the circumstances. When money is remitted to the Commonwealth entity the money becomes 'relevant money' and must be handled in accordance with PGPA legislative requirements.

When the person acting for or on behalf of the Commonwealth is making payments to a third party from the other CRF money (for example, the recipient of a grant), the arrangement must identify requirements in relation to the timing and frequency of payments to the third party.

These requirements would usually require the person to make specific payments at particular times to the third party. Generally, these requirements should also identify the third party and identify the purpose of the payments.

The concept of other CRF money and this section are comparable to the existing arrangements for 'outsiders' contained in section 12 of the FMA Act.

Schedule 1 – Listed entities

Clause 1 - Listed entities

[This Schedule is in the process of being drafted.]

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 Rule 2014

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

Outline of the Legislative Instrument

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) consolidates into a single piece of legislation the governance, performance and accountability requirements of the Commonwealth, setting out a framework for regulating resource management by the Commonwealth and relevant entities. The PGPA Act will replace the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. The substantive provisions of the PGPA Act will commence on 1 July 2014.

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.

The *Public Governance, Performance and Accountability Rule 2014* (the PGPA Rule) is being made to support the implementation of the PGPA Act. The PGPA Rule contains provisions that relate to accountability and control mechanisms, that is, the elements of the framework that support the transactions of the Commonwealth and Commonwealth entities. The provisions relate to:

- defining government business enterprises;
- listed entities;
- listed law enforcement agencies;
- accountable authorities;
- preventing, detecting and dealing with fraud;
- recovery of debts;
- officials' duty to disclose interests;
- audit committees for Commonwealth entities and for wholly-owned Commonwealth companies;
- approving commitments of relevant money;
- banking;
- investment by the Commonwealth;
- insurance obtained by corporate Commonwealth entities;
- authorisations of amounts by the Finance Minister;
- payment of amount owed to person at time of death;
- minister to inform Parliament of certain events;
- receipts of amounts by non-corporate Commonwealth entities; and
- other CRF Money.

Attachment B

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 they do not raise any human rights issues.

[name to be inserted on final document]