

# EXPOSURE DRAFT

**Submission 1 Attachment C  
6 March 2014**



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## **Attachment C to the Finance Submission to the JCPAA**

**Consolidated proposed rules  
(the *Public Governance, Performance and Accountability Rule  
2014*)**

**EXPOSURE DRAFT**

# EXPOSURE DRAFT



EXPOSURE DRAFT (05/03/2014)

## Public Governance, Performance and Accountability Rule 2014

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I, Senator Mathias Cormann, Minister for Finance, make the following rule under the *Public Governance, Performance and Accountability Act 2013*.

Dated: 2014

**[DRAFT ONLY—NOT FOR SIGNATURE]**

Minister for Finance

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# EXPOSURE DRAFT

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## Chapter 1—Introduction

### Part 1-1—Introduction

#### Division 1—Preliminary

##### 1 Name of rule

This rule is the *Public Governance, Performance and Accountability Rule 2014*.

##### 2 Commencement

Each provision of this rule specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this rule not elsewhere covered by this table	The day after this rule is registered.	
2. Sections 4 to 29	The later of: (a) the day after this rule is registered; and (b) the day section 101 of the Act commences.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
3. Schedule 1	At the same time as the provision(s) covered by table item 2.	

##### 3 Authority

This rule is made under the *Public Governance, Performance and Accountability Act 2013*.

#### Division 2—Definitions

##### 4 Definitions

In this rule:

*Act* means the *Public Governance, Performance and Accountability Act 2013*.

# EXPOSURE DRAFT

**Chapter 1** Introduction

**Part 1-1** Introduction

**Division 2** Definitions

Section 4

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*banking day*: see subsection 19(2).

*proper*, when used in relation to the use and management of other CRF money:  
see subsection 29(3).

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## Part 1-2—Provisions relating to the Dictionary in the Act

### 5 Government business enterprise

#### Guide to this section

The purpose of this section is to identify the Commonwealth entities and Commonwealth companies that are government business enterprises for the purposes of the Act. It is made for the definition of *government business enterprise* in section 8 of the Act.

- (1) Each of the following Commonwealth entities is a government business enterprise:
  - (a) the Australian Government Solicitor;
  - (b) the Australian Postal Corporation;
  - (c) Defence Housing Australia.
- (2) Each of the following Commonwealth companies is a government business enterprise:
  - (a) ASC Pty Limited (ACN 008 605 034);
  - (b) Australian Rail Track Corporation Limited (ACN 081 455 754);
  - (c) Medibank Private Limited (ACN 080 890 259);
  - (d) Moorebank Intermodal Company Limited (ACN 161 635 105);
  - (e) NBN Co Limited (ACN 136 533 741);even if the company changes its name.

### 6 Listed entities

#### Guide to this section

The purpose of this section is to identify which bodies, persons, groups or organisations are listed entities. It is made for the definition of *listed entity* in section 8 of the Act.

A:

- (a) body, person, group of persons or organisation; or
  - (b) combination of bodies, persons, groups of persons or organisations;
- referred to in column 1 of an item in the table in subclause 1(3) of Schedule 1 is a listed entity.

### 7 Listed law enforcement agency

#### Guide to this section

# EXPOSURE DRAFT

## Chapter 1 Introduction

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

#### Section 7

The purpose of this section is to identify the law enforcement agencies that are listed law enforcement agencies for the purposes of the Act. It is made for the definition of *listed law enforcement agency* in section 8 of the Act.

Each of the following is a listed law enforcement agency:

- (a) the Australian Federal Police;
- (b) the Australian Commission for Law Enforcement Integrity;
- (c) the Australian Crime Commission.



# EXPOSURE DRAFT

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

Section 8

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## Chapter 2—Commonwealth entities and the Commonwealth

### Part 2-1—Core provisions about Commonwealth entities and the Commonwealth

#### 8 Accountable authorities—listed entities

**Guide to this section**

The purpose of this section is to identify which person or group of persons is the accountable authority of a listed entity. It is made for item 3 of the table in subsection 12(2) of the Act.

The person or persons referred to in column 2 of an item in the table in subclause 1(3) of Schedule 1 is the accountable authority of the listed entity referred to in the item.

#### 9 Officials

**Guide to this section**

The purpose of this section is to identify which individuals are officials of a Commonwealth entity. It is made for subparagraph 13(3)(a)(iii) of the Act.

Members of the Australian Defence Force (other than members who are officials of the Defence Materiel Organisation) are officials of the Department of Defence.

# EXPOSURE DRAFT

Chapter 2 Commonwealth entities and the Commonwealth

Part 2-2 Accountable authorities and officials

Division 1 Requirements applying to accountable authorities

Section 10

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## Part 2-2—Accountable authorities and officials

### Division 1—Requirements applying to accountable authorities

#### 10 Preventing, detecting and dealing with fraud

##### Guide to this section

The purpose of this section is to ensure that there is a minimum standard for accountable authorities of Commonwealth entities for managing the risk and incidents of fraud. It is made for paragraphs 102(a), (b) and (d) of the Act.

The accountable authority of a Commonwealth entity must take all reasonable measures to prevent, detect and deal with fraud relating to the entity, including by:

- (a) conducting fraud risk assessments regularly and when there is a substantial change in the structure, functions or activities of the entity; and
- (b) developing and implementing a fraud control plan that deals with identified risks as soon as practicable after conducting a risk assessment; and
- (c) having an appropriate mechanism for preventing fraud, including by ensuring that:
  - (i) officials in the entity are made aware of what constitutes fraud; and
  - (ii) the risk of fraud is taken into account in planning and conducting the activities of the entity; and
- (d) having an appropriate mechanism for detecting incidents of fraud or suspected fraud, including a process for officials of the entity and other persons to report suspected fraud confidentially; and
- (e) having an appropriate mechanism for investigating or otherwise dealing with incidents of fraud or suspected fraud; and
- (f) having an appropriate mechanism for recording and reporting incidents of fraud or suspected fraud.

#### 11 Recovery of debts

##### Guide to this section

The purpose of this section is to require accountable authorities of non-corporate Commonwealth entities to pursue the recovery of debts owing to the Commonwealth. It is made for paragraph 103(c) of the Act.

The accountable authority of a non-corporate Commonwealth entity must pursue recovery of each debt for which the accountable authority is responsible unless:

- (a) the accountable authority considers that it is not economical to pursue recovery of the debt; or
- (b) the accountable authority is satisfied that the debt is not legally recoverable; or

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Commonwealth entities and the Commonwealth **Chapter 2**  
Accountable authorities and officials **Part 2-2**  
Requirements applying to accountable authorities **Division 1**

Section 11

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(c) the debt has been written off as authorised by an Act.

# EXPOSURE DRAFT

Chapter 2 Commonwealth entities and the Commonwealth

Part 2-2 Accountable authorities and officials

Division 2 Officials' duty to disclose interests

Section 12

## Division 2—Officials' duty to disclose interests

### Subdivision A—When duty does not apply

#### 12 When duty does not apply

##### Guide to this section

The purpose of this section is to set out when an official of a Commonwealth entity is not required to disclose a material personal interest that relates to the affairs of the entity. It is made for paragraph 29(2)(a) of the Act.

- (1) Subsection 29(1) of the Act does not apply to an official of a Commonwealth entity in the circumstances set out in the following table if the official is the accountable authority, or a member of the accountable authority, of the Commonwealth entity.

Note: Subsection 29(1) of the Act requires 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.

##### Circumstances when duty to disclose does not apply

Item	Topic	Circumstances
1	Official's remuneration	The interest arises in relation to the official's remuneration as the accountable authority or a member of the accountable authority.
2	Insurance against liability	The interest relates to a contract that insures, or would insure, the official against liabilities the official incurs as the accountable authority or a member of the accountable authority (but only if the contract does not make the Commonwealth entity or a subsidiary of the entity the insurer).
3	Payment or contract relating to indemnity	The interest relates to: (a) a payment by the Commonwealth entity or a subsidiary of the entity in relation to an indemnity permitted under section 61 of the Act; or (b) a contract relating to an indemnity permitted under section 61 of the Act.
4	Official is member of governing body of subsidiary	The interest: (a) is in a contract, or a proposed contract: (i) with; or (ii) for the benefit of; or (iii) on behalf of; a subsidiary of the Commonwealth entity; and (b) arises merely because the official is, or is a member of, the governing body of the subsidiary.

- (2) Subsection 29(1) of the Act also does not apply to an official of a Commonwealth entity who is a member of a Land Council established under

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Commonwealth entities and the Commonwealth **Chapter 2**

Accountable authorities and officials **Part 2-2**

Officials' duty to disclose interests **Division 2**

Section 13

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section 21 of the *Aboriginal Land Rights (Northern Territory) Act 1976* if the interest arises because the official is a traditional Aboriginal owner of land (within the meaning of that Act).

## **Subdivision B—Officials who are the accountable authority**

### **13 Officials who are the accountable authority**

#### **Guide to this section**

The purpose of this section is 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 Act.

- (1) An official of a Commonwealth entity who:
  - (a) is the accountable authority of the entity; and
  - (b) has a material personal interest that relates to the affairs of the entity; must disclose that interest, in writing, to the entity's responsible Minister.
- (2) The disclosure must include details of:
  - (a) the nature and extent of the interest; and
  - (b) how the interest relates to the affairs of the entity.
- (3) The official must make the disclosure:
  - (a) as soon as practicable after the official becomes aware of the interest; and
  - (b) 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.

## **Subdivision C—Officials who are members of the accountable authority**

### **14 Officials who are members of the accountable authority—how and when to disclose interests**

#### **Guide to this section**

The purpose of this section is 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 Act.

- (1) An official of a Commonwealth entity who:
  - (a) is a member of the accountable authority of the entity; and
  - (b) has a material personal interest that relates to the affairs of the entity; must disclose that interest, orally or in writing, to each other member of the accountable authority.
- (2) The disclosure must include details of:

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**Chapter 2** Commonwealth entities and the Commonwealth

**Part 2-2** Accountable authorities and officials

**Division 2** Officials' duty to disclose interests

## Section 15

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- (a) the nature and extent of the interest; and
  - (b) how the interest relates to the affairs of the entity.
- (3) The official must make the disclosure at a meeting of the members of the accountable authority:
- (a) as soon as practicable after the official becomes aware of the interest; and
  - (b) 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.
- (4) The official must ensure that the disclosure is recorded in the minutes of the meeting.

## 15 Officials who are members of the accountable authority—consequences of having interests

### Guide to this section

The purpose of this section is to restrict 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 102(a), (b) and (d) of the Act.

- (1) This section applies to an official of a Commonwealth entity who:
- (a) is a member of the accountable authority of the entity; and
  - (b) has a material personal interest.

### *Consequences of having interest*

- (2) 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:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter.
- (3) However, if:
- (a) the responsible Minister for the entity has declared, in writing, that the official may be present or vote (or both); or
  - (b) the members of the accountable authority who do not have a material personal 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;

then the official may be present or vote (or both) in accordance with the declaration or decision.

### *Minister's declaration*

- (4) The responsible Minister for the entity may declare in writing that the official may:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter; or

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Commonwealth entities and the Commonwealth **Chapter 2**

Accountable authorities and officials **Part 2-2**

Officials' duty to disclose interests **Division 2**

## Section 16

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- (c) be present while the matter is being considered at the meeting and vote on the matter.
- (5) The responsible Minister may only make the declaration if:
- (a) 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
  - (b) the matter needs to be dealt with urgently; or
  - (c) there is a compelling reason for the matter being dealt with at the meeting.

### *Contravention not to invalidate resolution*

- (6) A contravention of this section by an official does not affect the validity of any resolution.

## **Subdivision D—Other officials**

### **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.]*

#### **Guide to this section**

Section 29 of the Act requires an official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity to disclose that interest. The purpose of this section is to set out how the official must disclose the interest. It requires the official to disclose the interest in accordance with the accountable authority's instructions.

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.

This section is made for paragraph 29(2)(b) of the Act.

An official of a Commonwealth entity:

- (a) is not the accountable authority, or a member of the accountable authority, of the entity; and
  - (b) has a material personal interest that relates to the affairs of the entity;
- must disclose that interest in accordance with any instructions given by the accountable authority of the entity.

# EXPOSURE DRAFT

Chapter 2 Commonwealth entities and the Commonwealth

Part 2-3 Planning, performance and accountability

Section 17

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## Part 2-3—Planning, performance and accountability

### 17 Audit committee for Commonwealth entities

#### Guide to this section

The purpose of this section is to set out minimum requirements relating to establishing an audit committee for a Commonwealth entity to help ensure that the committee provides independent advice and assurance to the entity's accountable authority. While an audit committee needs to be established for each Commonwealth entity, and the accountable authority must determine the functions the committee is to perform for the entity, this section does not prevent the same audit committee being established for multiple Commonwealth entities.

This section is made for subsection 45(2) of the Act.

#### *Functions of the audit committee*

- (1) The accountable authority of a Commonwealth entity must, by written charter, determine the functions of the audit committee that is established for the entity as required by subsection 45(1) of the Act.
- (2) The functions must include reviewing the appropriateness of the accountable authority's:
  - (a) financial reporting; and
  - (b) performance reporting; and
  - (c) system of risk oversight and management; and
  - (d) system of internal control;for the entity.

#### *Membership of the audit committee*

- (3) The audit committee must consist of at least 3 persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions.
- (4) On and after 1 July 2015, the majority of the members of the audit committee must:
  - (a) for a non-corporate Commonwealth entity—be persons who are not officials of the entity; or
  - (b) for a corporate Commonwealth entity—be persons who are not employees of the entity.
- (5) Despite subsections (3) and (4), the following persons must not be a member of the audit committee:
  - (a) the accountable authority or, if the accountable authority has more than one member, the head (however described) of the accountable authority;
  - (b) the Chief Financial Officer (however described) of the entity;



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Commonwealth entities and the Commonwealth **Chapter 2**  
Planning, performance and accountability **Part 2-3**

Section 17

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(c) the Chief Executive Officer (however described) of the entity.

# EXPOSURE DRAFT

Chapter 2 Commonwealth entities and the Commonwealth

Part 2-4 Use and management of public resources

Division 1 Commitments of relevant money

Section 18

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## Part 2-4—Use and management of public resources

### Division 1—Commitments of relevant money

#### 18 Approving commitments of relevant money

*[This section relies on proposed changes to the Act being approved.]*

##### **Guide to this section**

The accountable authority responsible for relevant money has a duty to promote the proper use of the money (see section 15 of the Act). This duty applies when approving commitments of the money. If the accountable authority delegates its power to approve commitments of the money to an official, or otherwise authorises an official to exercise that power, the accountable authority will be able to ensure the proper use of the money through the delegation or authorisation. It can also ensure that through its instructions.

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 purpose of this section is to require an official who is approving the commitment of relevant money to record the approval. It is also to emphasise that the official must exercise the power to approve the commitment consistently with the accountable authority's instructions and with the terms of the delegation or authorisation. Of course, the official must also comply with his or her duties under sections 25 to 29 of the Act (which are about the general duties of officials).

This section is made for section 52 of the Act.

- (1) If an official of a Commonwealth entity is approving the commitment of relevant money for which the accountable authority of a Commonwealth entity is responsible, the official must record the approval in writing as soon as practicable after giving it.
- (2) To avoid doubt, the official must also approve the commitment consistently with any written requirements, including spending limits, specified by the accountable authority in:
  - (a) instructions given by the accountable authority; or
  - (b) 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
  - (c) a direction to the official in relation to the exercise of that power.

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Commonwealth entities and the Commonwealth **Chapter 2**  
Use and management of public resources **Part 2-4**  
Banking etc. of relevant money received by officials **Division 2**

Section 19

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## Division 2—Banking etc. of relevant money received by officials

### 19 Banking of bankable money received by officials

*[This section relies on proposed changes to the Act being approved.]*

#### **Guide to this section**

The purpose of this section is to require officials who receive bankable money to deposit the money in a bank either by the next banking day or within the period prescribed in the accountable authority's instructions. It is made for subparagraph 55(2)(a)(i) of the Act.

- (1) An official of a Commonwealth entity who receives bankable money must deposit the money in a bank:
  - (a) before the end of the next banking day; or
  - (b) 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.
- (2) A **banking day** is a day other than a Saturday, a Sunday or a day that is a public holiday in the place where the money was received.

### 20 Otherwise dealing with bankable money received by officials

*[This section relies on proposed changes to the Act being approved.]*

#### **Guide to this section**

The purpose of this section is to require officials who receive bankable money to deal with the money in accordance with the accountable authority's instructions as an alternative to banking it. It is made for paragraph 55(2)(b) of the Act.

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 must 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.

### 21 Dealing with unbankable money received by officials

*[This section relies on proposed changes to the Act being approved.]*

#### **Guide to this section**

The purpose of this section is to require officials who receive unbankable money (for example, foreign coins) to deal with the money in accordance with the accountable authority's instructions. It is made for subsection 55(3) of the Act.

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**Chapter 2** Commonwealth entities and the Commonwealth

**Part 2-4** Use and management of public resources

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

## Section 21

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An official of a Commonwealth entity who receives relevant money that is not bankable money must 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.

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Commonwealth entities and the Commonwealth **Chapter 2**

Use and management of public resources **Part 2-4**

Investment **Division 3**

Section 22

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## Division 3—Investment

### 22 Investment by the Commonwealth

#### **Guide to this section**

The purpose of this section is to set out additional forms of investment that the Finance Minister and Treasurer are authorised to make on behalf of the Commonwealth. It is made for subparagraph 58(8)(a)(iii) of the Act.

Each of the following forms of investment are an authorised investment:

- (a) a bill of exchange that is accepted or endorsed only by a bank;
- (b) a professionally—managed money market trust, but only if the Finance Minister or the Treasurer is satisfied that:
  - (i) the only investments managed by the trust are those referred to in paragraph (a) of this section or subparagraph 58(8)(a)(i) or (ii) of the Act; and
  - (ii) a charge over trust assets does not support any borrowing by the trustee in relation to the trust;
- (c) a dematerialised security that:
  - (i) is deposited in the Austraclear System; and
  - (ii) is the equivalent of an investment referred to in paragraph (a) of this section or subparagraph 58(8)(a)(ii) of the Act.

Note: Information about the Austraclear System can be found on the Australian Securities Exchange's website ([www.asx.com.au](http://www.asx.com.au)).

# EXPOSURE DRAFT

Chapter 2 Commonwealth entities and the Commonwealth

Part 2-4 Use and management of public resources

Division 4 Insurance

Section 23

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## Division 4—Insurance

### 23 Insurance obtained by corporate Commonwealth entities

#### Guide to this section

The purpose of this section is to restrict corporate Commonwealth entities from insuring officials of the entity against liabilities relating to breach of duty. It is made for section 62 of the Act.

- (1) A corporate Commonwealth entity must not insure an official of the entity against a liability (other than one for legal costs) arising out of:
  - (a) conduct involving a wilful breach of duty, arising at common law, in equity or under the finance law (other than section 27 or 28 of the Act), in relation to the entity; or
  - (b) a contravention of section 27 or 28 of the Act (which deal with the duties of officials in relation to use of position and use of information).
- (2) 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.

# EXPOSURE DRAFT

Commonwealth entities and the Commonwealth **Chapter 2**  
Use and management of public resources **Part 2-4**  
Authorisations and payments by the Finance Minister **Division 5**

Section 24

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## Division 5—Authorisations and payments by the Finance Minister

### 24 Authorisations of amounts by the Finance Minister

*[This section relies on proposed changes to the Act being approved.]*

#### **Guide to this section**

The purpose of this section is to require the Finance Minister to consider the report of an advisory committee before making certain authorisations that involve amounts of money above \$500,000 (for example, waivers, set-offs and act of grace payments). It is made for subsections 63(2), 64(1A) and 65(2) of the Act.

- (1) This section applies if:
  - (a) the Finance Minister proposes to authorise any of the following:
    - (i) the waiver of an amount owing to the Commonwealth or the modification of the terms and conditions of payment of such an amount under subsection 63(1) of the Act;
    - (ii) the set-off of an amount owing to the Commonwealth against another amount under subsection 64(1) of the Act;
    - (iii) the payment of an amount to a person under subsection 65(1) of the Act; and
  - (b) the amount to be so waived, modified, set off or paid is more than \$500,000.
- (2) Before making the authorisation, the Finance Minister must consider a report of the advisory committee established under subsection (3) in relation to the authorisation.
- (3) The Finance Minister must establish an advisory committee to report on the appropriateness of the authorisation. The advisory committee must consist of:
  - (a) the Chief Executive Officer of the Australian Customs and Border Protection Service; and
  - (b) the Finance Secretary; and
  - (c) the accountable authority of:
    - (i) the Commonwealth entity responsible for the matter to which the authorisation relates; or
    - (ii) if there is no Commonwealth entity responsible for that matter, or if the Commonwealth entity responsible for that matter is the Department or the Australian Customs and Border Protection Service—the Commonwealth entity nominated, in writing, by the Finance Minister.
- (4) A member of the advisory committee may 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.

# EXPOSURE DRAFT

**Chapter 2** Commonwealth entities and the Commonwealth

**Part 2-4** Use and management of public resources

**Division 5** Authorisations and payments by the Finance Minister

## Section 25

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Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901* (as those sections apply because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*).

- (5) The advisory committee may conduct itself as it sees fit and may prepare its report without having a meeting.

## 25 Payment of amount owed to person at time of death

### Guide to this section

The purpose of this section is 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. It is made for paragraph 103(f) of the Act.

- (1) If, at the time of a person's death (whether before or after this section commences), the Commonwealth owed an amount to the person, the Finance Minister may authorise payment of that amount to a person who the Finance Minister considers should receive the payment.
- (2) The Finance Minister may authorise the payment without requiring:
  - (a) production of probate of the will of the deceased person; or
  - (b) letters of administration of the estate of the deceased person.
- (3) 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:
  - (a) the deceased person's will; and
  - (b) the law relating to the disposition of the property of deceased persons.
- (4) After the payment is made, the Commonwealth has no further liability in relation to the amount that was owed.
- (5) This section does not relieve the recipient from a liability to deal with the money in accordance with law.



# EXPOSURE DRAFT

Commonwealth entities and the Commonwealth **Chapter 2**

Use and management of public resources **Part 2-4**

Special provisions applying to Ministers only **Division 6**

Section 26

## Division 6—Special provisions applying to Ministers only

### 26 Minister to inform Parliament of certain events

#### Guide to this section

The purpose of this section is to help ensure transparency about government operations relating to companies by requiring meaningful information to be given to Parliament about those operations. It is made for subsection 72(3) of the Act (which requires a notice to be given for certain events).

A notice of an event must contain the particulars set out in the following table.

Particulars for notice of event		
Item	Topic	Particulars to be included
1	Person giving the notice	The name and portfolio of the Minister who has the responsibility for the event.
2	The event	The nature of, and reasons for, the event.
3	Consequences of the event	The following: (a) the dollar value of any consideration paid or received by the Commonwealth or a corporate Commonwealth entity in relation to the event; (b) whether, because of the event, the Commonwealth or a corporate Commonwealth entity: (i) has a liability, duty or obligation (whether actual, contingent or prospective); or (ii) has control of a company; or (iii) no longer has control of a company; (c) whether, because of the event, there are other interests of the Commonwealth or a corporate Commonwealth entity that are affected by the event and, if so, details of the interests affected.
4	Event relating to a company	If the event relates to a company: (a) the name of the company; and (b) the company's ACN (within the meaning of section 9 of the <i>Corporations Act 2001</i> ) or ARBN (within the meaning of that section), if any; and (c) whether the company is a public company (within the meaning of that section).
5	Event relating to a foreign company	If the event relates to a foreign company (within the meaning of section 9 of the <i>Corporations Act 2001</i> ): (a) the jurisdiction in which the company is incorporated; and (b) if the company does not have an ARBN (within the meaning of that section)—an incorporation identifier for the company in that jurisdiction.

# EXPOSURE DRAFT

## Section 27

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### Part 2-5—Appropriations

#### 27 Receipts of amounts by non-corporate Commonwealth entities

*[This section relies on proposed changes to the Act being approved.]*

##### **Guide to this section**

The purpose of this section is to specify which amounts that are received by a non-corporate Commonwealth entity may be credited to a departmental item for the entity in an Appropriation Act (or another appropriation if otherwise provided for by this section). It is made for subsection 74(1) of the Act.

##### *Application of section*

- (1) This section applies to an amount (the **received amount**) that is received by a non-corporate Commonwealth entity.

##### *When received amounts may be credited to an appropriation*

- (2) The received amount is an amount of a kind for subsection 74(1) of the Act if:
  - (a) it is specified in the following table; and
  - (b) it was received by the entity in relation to the entity's departmental activities.

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##### **Kinds of amounts**

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<b>Item</b>	<b>Amount</b>
1	An amount that offsets costs in relation to an activity of the entity.
2	An amount that is a sponsorship, subsidy, gift, bequest or similar contribution.
3	An amount that is a monetary incentive or rebate in relation to a procurement arrangement.
4	An amount that is an insurance recovery.
5	An amount that is in satisfaction of a claim for damages or other compensation.
6	An amount that relates to an employee's leave (including paid parental leave).
7	An amount that relates to a sale of departmental assets of the entity.
8	An amount received in relation to an application to the entity under the <i>Freedom of Information Act 1982</i> .

- (3) The received amount is an amount of a kind for subsection 74(1) of the Act if it relates to a trust or similar arrangement.
- (4) The received amount is an amount of a kind for subsection 74(1) of the Act if:
  - (a) it is a repayment of the whole or part of an amount paid by the entity; and
  - (b) any of the following was debited in relation to the amount paid by the entity:

# EXPOSURE DRAFT

Commonwealth entities and the Commonwealth **Chapter 2**  
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## Section 27

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- (i) the most recent departmental item for the entity in an Appropriation Act;
  - (ii) another item in an Appropriation Act, another appropriation or a special account.
- (5) If, as referred to in subsection (4), 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 Act.

*When received amount may not be credited*

- (6) Despite subsections (2) and (3), the received amount is not an amount of a kind for subsection 74(1) of the Act if:
- (a) a departmental item or an administered item for the entity in an Appropriation Act has been appropriated in relation to the amount; or
  - (b) it is a tax, levy, fine, or penalty; or
  - (c) it relates to GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*).
- (7) Despite subsection (2), if:
- (a) the total of the amounts received by the entity in a financial year in relation to a sale of departmental assets (as referred to in item 7 of the table in subsection (2)); less
  - (b) the costs incurred by the entity in relation to the sale;
- reaches 5% of the total departmental items for the entity in an Appropriation Act for the 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 Act.

# EXPOSURE DRAFT

## Chapter 3 Commonwealth companies

### Section 28

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## Chapter 3—Commonwealth companies

### 28 Audit committee for wholly-owned Commonwealth companies

#### Guide to this section

The purpose of this section is to provide that the requirements in section 17 of this rule about establishing audit committees of corporate Commonwealth entities also apply to audit committees of wholly-owned Commonwealth companies. This is to help ensure that audit committees of wholly-owned Commonwealth companies provide independent advice and assurance to the governing bodies of those companies.

This section is made for section 92 of the Act.

- (1) Section 17 of this rule (which is about audit committees for Commonwealth entities) applies to a wholly-owned Commonwealth company in the same way as it applies to a corporate Commonwealth entity.
- (2) For the purposes of subsection (1), a reference in section 17 to the accountable authority of the entity is taken to be a reference to the governing body of the company.

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## Chapter 4—Miscellaneous

### 29 Other CRF money

#### Guide to this section

The purpose of this section is to set out requirements which the accountable authority of a non-corporate Commonwealth entity needs to comply with when entering into arrangements relating to the receipt, custody or expenditure of other CRF money by a person who is outside of the Commonwealth or a Commonwealth entity.

An example of this situation is where the accountable authority engages an agent to sell relevant property. When the agent receives an amount for the sale, that money is other CRF money. The accountable authority must ensure that the arrangement it enters into with the agent complies with the requirements in this section about how the agent is to deal with the money.

This section is made for subsection 105(1) of the Act.

- (1) The accountable authority of a non-corporate Commonwealth entity must ensure that any arrangement it enters into relating to the receipt, custody or expenditure of other CRF money complies with subsection (2).
- (2) The arrangement must:
  - (a) promote the proper use and management of the other CRF money; and
  - (b) be in writing; and
  - (c) require the other CRF money to be deposited in a bank as soon as is practicable; and
  - (d) require the other party to the arrangement:
    - (i) to cause records to be kept that properly record and explain the receipt, custody or expenditure of the other CRF money; and
    - (ii) to allow those records to be conveniently and properly audited; and
  - (e) require any interest earned on the other CRF money to be remitted in full to the Commonwealth (including a requirement about the timing and frequency of remitting such interest); and
  - (f) include a requirement about the timing and frequency of any remittance of the other CRF money to the Commonwealth required under the arrangement; and
  - (g) include a requirement about the timing and frequency of any payments of the other CRF money to another person required under the arrangement.
- (3) *Proper*, when used in relation to the use or management of other CRF money, means efficient, effective, economical and ethical.

# EXPOSURE DRAFT

## Schedule 1 Listed entities

Clause 1

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### **Schedule 1—Listed entities**

Note: See sections 6 and 8.

#### **1 Listed entities**

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

**EXPOSURE DRAFT**

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**EXPOSURE DRAFT**