



Public Governance and Resources Legislation Amendment Act (No. 1) 2017

No. 92, 2017

An Act to amend the law relating to the governance, performance and accountability of, and the use and management of resources by, the Commonwealth, Commonwealth entities and Commonwealth companies, and to deal with consequential and transitional matters in connection with the *Public Governance, Performance and Accountability Act 2013*, and for other purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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[Assented to 23 August 2017]

No. 92, 2017 *Public Governance and Resources Legislation Amendment Act (No. 1)* 1
2017

The Parliament of Australia enacts:

1 Short title

This Act is the *Public Governance and Resources Legislation Amendment Act (No. 1) 2017*.

2 Commencement

- (1) Each provision of this Act 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day this Act receives the Royal Assent.	23 August 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Listed entities

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 At the end of section 209

Add:

- (4) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) AUSTRAC is a listed entity; and
 - (b) the AUSTRAC CEO is the accountable authority of AUSTRAC; and
 - (c) the following persons are officials of AUSTRAC:
 - (i) the AUSTRAC CEO;
 - (ii) the staff of AUSTRAC referred to in section 224;
 - (iii) consultants engaged under subsection 225(1);
 - (iv) persons whose services are made available to the AUSTRAC CEO under subsection 225(3); and
 - (d) the purposes of AUSTRAC include:
 - (i) the function of AUSTRAC referred to in section 210; and
 - (ii) the functions of the AUSTRAC CEO referred to in section 212.

Competition and Consumer Act 2010

2 Section 29A

Before “The”, insert “(1)”.

3 At the end of section 29A

Add:

- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) the Council is a listed entity; and

- (b) the Council President is the accountable authority of the Council; and
- (c) the following persons are officials of the Council:
 - (i) the Council President;
 - (ii) the other Councillors;
 - (iii) the staff referred to in subsection 29M(1);
 - (iv) consultants engaged under section 29N; and
- (d) the purposes of the Council include the functions of the Council referred to in section 29B.

Schedule 2—Amendments relating to the Public Governance, Performance and Accountability Act 2013

Part 1—Consequential amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 218

Repeal the section.

2 Paragraph 219(2)(d)

Repeal the paragraph, substitute:

- (d) the AUSTRAC CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or

3 Subsection 219(3)

Omit “whether because of a notification under section 218 or otherwise”, substitute “whether because of a disclosure under section 29 of the *Public Governance, Performance and Accountability Act 2013* or otherwise”.

4 Division 5 of Part 16

Repeal the Division.

Australian Renewable Energy Agency Act 2011

5 Section 4 (definition of *Finance Minister*)

Omit “*Financial Management and Accountability Act 1997*”, substitute “*Public Governance, Performance and Accountability Act 2013*”.

6 Subsection 7(2) (note)

Repeal the note, substitute:

Note: The *Public Governance, Performance and Accountability Act 2013* applies to ARENA. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

7 Section 36

Repeal the section, substitute:

36 Disclosure of interests to the Minister

- (1) A disclosure by a Board member under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Board member is taken not to have complied with section 29 of that Act if the member does not comply with subsection (1) of this section.

8 Paragraph 38(2)(b)

Omit “; or”, substitute “.”.

9 Paragraphs 38(2)(c) and (d)

Repeal the paragraphs.

10 At the end of subsection 38(2)

Add:

Note: The appointment of an appointed member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

11 Paragraph 43(2)(a)

Omit “section 27J of the *Commonwealth Authorities and Companies Act 1997*”, substitute “rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*”.

12 Section 57

Repeal the section, substitute:

57 Disclosure of interests to the Minister

- (1) A disclosure by the CEO under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1) of this section.

13 Paragraph 59(3)(c)

Omit “section 57”, substitute “section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section”.

14 Subsection 67(4)

Repeal the subsection, substitute:

- (4) Subsection (2) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of ARENA.

15 Section 68

Repeal the section.

16 Section 70

Omit “Each annual report on ARENA under section 9 of the *Commonwealth Authorities and Companies Act 1997*”, substitute “The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period”.

17 Paragraph 70(a)

Omit “the financial year covered by the report”, substitute “the period”.

18 Paragraphs 70(b) and (c)

Omit “the year”, substitute “the period”.

19 Paragraph 70(d)

Omit “the year” (wherever occurring), substitute “the period”.

Building and Construction Industry (Consequential and Transitional Provisions) Act 2016

20 Subitem 3(1) of Schedule 2

Omit “report under”, substitute “report referred to in”.

21 Subitem 3(1) of Schedule 2

Omit “to the Minister a report in accordance with that section”, substitute “such a report to the Minister”.

22 Subitem 3(2) of Schedule 2

Omit “report under”, substitute “annual report referred to in”.

23 Subitem 11(2) of Schedule 2 (table item 4, column headed “is taken to be a reference to this term...”)

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

***Building and Construction Industry (Improving Productivity)
Act 2016***

24 Section 4

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

25 Section 5 (definition of *Commonwealth authority*)

Repeal the definition.

26 Section 5 (paragraph (c) of the definition of *constitutionally-covered entity*)

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

27 Section 5

Insert:

corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

28 Subsection 20(1A)

After “report”, insert “(a *quarterly report*)”.

29 Subsection 20(1)

Repeal the subsection.

30 Subsection 20(2)

Omit “A report under subsection (1A) or (1)”, substitute “Each quarterly report, and each annual report prepared by the ABC Commissioner and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a reporting period (an *annual report*)”.

31 Subsection 20(2)

Omit “year” (wherever occurring), substitute “period”.

32 Subsection 20(3)

Omit “The report”, substitute “Each quarterly report, and each annual report for a period.”.

33 Subsection 20(3)

Omit “year” (wherever occurring), substitute “period”.

34 Subsection 20(4)

Omit “the report”, substitute “a quarterly report or an annual report”.

35 Subsection 20(5)

Omit “the report”, substitute “each quarterly report and each annual report”.

36 Section 26

Repeal the section, substitute:

26 Disclosure of interests

- (1) A disclosure by a Commissioner under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, a Commissioner is taken not to have complied with section 29 of that Act if the Commissioner does not comply with subsection (1) of this section.

37 Paragraph 28(2)(d)

Repeal the paragraph, substitute:

- (d) in any case—the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or with rules made for the purposes of that section.
-

38 At the end of section 29

Add:

- (3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
- (a) the Commission is a listed entity; and
 - (b) the ABC Commissioner is the accountable authority of the Commission; and
 - (c) the following persons are officials of the Commission:
 - (i) the ABC Commissioner;
 - (ii) the staff of the Commission referred to in subsection 30(1);
 - (iii) persons whose services are made available to the ABC Commissioner under section 31;
 - (iv) consultants engaged under section 32; and
 - (d) the purposes of the Commission include the functions of the ABC Commissioner referred to in section 16.

39 Subsection 34(2E)

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

40 Paragraph 34(3)(c)

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

41 Section 36

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

42 Paragraph 38(a)

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

43 Section 43

Omit “Commonwealth authority” (wherever occurring), substitute “corporate Commonwealth entity”.

44 Paragraphs 70(2)(a) and (b)

Omit “Commonwealth authority”, substitute “corporate Commonwealth entity”.

45 Subsection 81(7)

Omit “The *Financial Management and Accountability Act 1997* does not apply in relation to those amounts.”.

46 At the end of paragraph 106(5)(c)

Add “of this Act or section 46 of the *Public Governance, Performance and Accountability Act 2013* (which deals with annual reports)”.

47 Subsection 106(6) (heading)

Repeal the heading, substitute:

Disclosure in certain reports

48 Paragraph 106(6)(a)

Omit “under”, substitute “referred to in”.

49 Subsection 107(1)

Omit “under”, substitute “referred to in”.

Classification (Publications, Films and Computer Games) Act 1995

50 Subsection 22CG(2) (note)

Omit “, or a Commonwealth authority or agency”, substitute “or a Commonwealth entity”.

Clean Energy Finance Corporation Act 2012

51 Section 4 (definition of *Finance Minister*)

Omit “*Commonwealth Authorities and Companies Act 1997*”, substitute “*Public Governance, Performance and Accountability Act 2013*”.

52 Section 4 (definition of *subsidiary*)

Omit “*Commonwealth Authorities and Companies Act 1997*”, substitute “*Public Governance, Performance and Accountability Act 2013*”.

53 Subsection 8(2) (note)

Repeal the note, substitute:

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Corporation. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

54 Paragraph 23(e)

Repeal the paragraph.

55 At the end of section 23

Add:

Note: The appointment of a Board member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

56 Paragraph 27(2)(a)

Omit “section 27J of the *Commonwealth Authorities and Companies Act 1997*”, substitute “rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*”.

57 Section 39

Repeal the section, substitute:

39 Disclosure of interests

- (1) A disclosure by the CEO under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Board.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.

- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1) of this section.

58 Subsection 45(2)

Omit “Special Account for the purposes of the *Financial Management and Accountability Act 1997*”, substitute “special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*”.

59 Subsection 53(3)

Repeal the subsection, substitute:

- (3) Subsection (2) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Corporation.

60 Subsection 55(1)

After “or (3)”, insert “or under section 57 of the *Public Governance, Performance and Accountability Act 2013*”.

61 Subsection 55(4)

Repeal the subsection.

62 Subsection 55(6)

Omit “Section 29 of the *Commonwealth Authorities and Companies Act 1997*”, substitute “Section 86 of the *Public Governance, Performance and Accountability Act 2013* (which deals with subsidiaries of corporate Commonwealth entities)”.

63 Subsection 73(1)

Omit “paragraph 16(1)(b) or (c) of the *Commonwealth Authorities and Companies Act 1997*”, substitute “paragraph 19(1)(b) of the *Public Governance, Performance and Accountability Act 2013*”.

64 Subsection 74(1)

Omit “Each annual report on the Corporation under section 9 of the *Commonwealth Authorities and Companies Act 1997*”, substitute “The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period”.

65 Subsection 74(1)

Omit “financial year” (wherever occurring), substitute “period”.

66 Subsection 74(2)

Omit “financial year”, substitute “period”.

Competition and Consumer Act 2010

67 At the end of section 7

Add:

Note: Under section 23 of the *Public Governance, Performance and Accountability Act 2013*, the Chairperson may enter into contracts and other arrangements on behalf of the Commonwealth.

68 Subsection 8A(7)

Omit “under”, substitute “referred to in”.

69 Subsection 8AB(1)

Omit “A State/Territory”, substitute “For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, a State/Territory”.

70 Subsection 8AB(2)

Omit “14, 15 and 17”, substitute “14 and 15 and for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*”.

71 At the end of paragraph 13(2)(a)

Add “or”.

72 Paragraph 13(2)(b)

Repeal the paragraph, substitute:

- (b) fails to comply with his or her obligations under:
 - (i) for any member (including the Chairperson)—section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
 - (ii) for the Chairperson—section 17 of this Act; or

73 Paragraph 14(2)(b)

Omit “section 17”, substitute “section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section”.

74 Section 17

Repeal the section, substitute:

17 Disclosure of interests by Chairperson

- (1) The Chairperson must give written notice to the Minister of all pecuniary interests that the Chairperson has or acquires in any business carried on in Australia or in any body corporate carrying on any such business.
- (2) Subsection (1) applies in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

17A Disclosure of certain interests by members of the Commission when taking part in determinations of matters

- (1) If, as a result of rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests), the Chairperson becomes aware that:
 - (a) a member of the Commission is taking part, or is to take part, in the determination of a matter; and
-

(b) the member has a pecuniary interest that could conflict with the proper performance of his or her functions in relation to the determination of the matter;

then:

(c) the Chairperson must cause the interest of the member to be disclosed to each person concerned in the matter (if the matter has not already been disclosed to that person in accordance with the rules); and

(d) unless each person concerned in the matter consents to the member taking part, or continuing to take part, in the determination of the matter—the member must not take part, or continue to take part, in the determination of the matter.

(2) In this section, *member of the Commission* includes an associate member of the Commission.

75 Paragraph 29H(2)(b)

Repeal the paragraph, substitute:

(b) fails to comply with his or her obligations under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section;

76 Section 29K

Repeal the section.

77 Subsection 29O(1)

Repeal the subsection.

78 Subsection 29O(2)

Omit “(2) The report must also”, substitute “An annual report prepared by the Council President and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must”.

79 At the end of section 44AY

Add:

- (3) Section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply in relation to a person who is an AER member when he or she is acting in his or her capacity as an AER member.

Note: Section 29 of the *Public Governance, Performance and Accountability Act 2013* will apply in relation to a person who is an AER member when he or she is acting in his or her capacity as an associate member of the Commission.

80 Subsection 60Q(7) (note)

Repeal the note, substitute:

Note: For the appropriation for the refund, see section 77 of the *Public Governance, Performance and Accountability Act 2013*.

81 Subsection 171(1)

Repeal the subsection.

82 Subsection 171(2)

Omit “The report”, substitute “An annual report prepared by the Chairperson and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period”.

Public Service Act 1999

83 Section 44

Repeal the section, substitute:

44 State of the Service report

- (1) As soon as practicable after the end of each financial year, the Commissioner must give a report to the Agency Minister, for presentation to the Parliament, on the state of the APS during the year.
- (2) An Agency Head must give the Commissioner whatever information the Commissioner requires for the purpose of preparing the report referred to in subsection (1).

- (3) The Agency Minister must cause a copy of the report given to the Minister under subsection (1) to be laid before each House of the Parliament by 30 November after the financial year to which the report relates.

84 Subsection 51(2)

Repeal the subsection.

85 Subsection 51(3)

Omit “report under subsection 44(1)”, substitute “annual report”.

86 Section 63

Repeal the section.

87 Section 70

Repeal the section.

Tertiary Education Quality and Standards Agency Act 2011

88 Paragraph 155A(a)

Omit “*Financial Management and Accountability Act 1997*”, substitute “*Public Governance, Performance and Accountability Act 2013*”.

Part 2—Other amendments

Public Governance, Performance and Accountability Act 2013

89 Paragraph 107(2)(a)

Omit “57(b)”, substitute “57(1)(b)”.

Schedule 3—Amendments consequential on the sale of Medibank Private

Health Insurance Commission (Reform and Separation of Functions) Act 1997

1 Subsection 47(1)

Omit “or section 45”.

2 Subsection 47(1) (note 1)

Omit “Note 1”, substitute “Note”.

3 Subsection 47(1) (note 2)

Repeal the note.

4 Subsection 47(4)

Repeal the subsection.

Privacy Act 1988

5 Subsection 6(1) (paragraph (j) of the definition of *agency*)

Repeal the paragraph.

6 Subsection 6(1) (paragraph (b) of the definition of *eligible hearing service provider*)

Omit “, (h) or (j)”, substitute “or (h)”.

7 Subsection 6(1) (definition of *nominated AGHS company*)

Repeal the definition.

8 Section 37 (item 8 of the table)

Repeal the item.

9 Subsection 54(2) (definition of *agency*)

Omit “the nominated AGHS company or”.

10 Subsection 57(2) (definition of agency)

Omit “the nominated AGHS company or”.

Remuneration Tribunal Act 1973

11 Subsection 3(1) (paragraph (h) of the definition of *principal executive office*)

Repeal the paragraph.

Schedule 4—Transitional and application provisions

1 Annual reports

An amendment made by an item of Schedule 2 that relates to an annual report applies in relation to reporting periods that commence on or after 1 July 2016.

2 Disclosing interests

- (1) This item applies if:
 - (a) before this item commences, a person discloses an interest in accordance with a provision in an Act; and
 - (b) the provision is:
 - (i) amended; or
 - (ii) repealed; or
 - (iii) repealed and substituted;by an item of Schedule 2.
- (2) The person is taken to have disclosed the interest in accordance with section 29 of the *Public Governance, Performance and Accountability Act 2013* and rules made for the purposes of that section.

3 Saving instruments in force at commencement

- (1) This item applies if:
 - (a) a provision of an Act provides that an instrument (whether or not a legislative instrument) may be made under, or for the purposes of, the provision; and
 - (b) the provision is:
 - (i) amended; or
 - (ii) repealed and substituted;by an item of Schedule 2; and
 - (c) an instrument made under, or for the purposes of, the provision is in force immediately before the commencement of the item; and
 - (d) after the provision has been amended or repealed and substituted, the provision still provides in the same or similar

terms that an instrument may be made under, or for the purposes of, the provision.

- (2) If the provision is amended, the amendment referred to in subparagraph (1)(b)(i) does not affect the continuity of the instrument.
- (3) If the provision is repealed and substituted, the instrument is taken, after the commencement of the item, to have been made under, or for the purposes of, the provision as substituted.

4 Amendments to legislative instruments

Despite subsections 12(2) and (3) of the *Legislation Act 2003*, if:

- (a) a legislative instrument (the **amending instrument**) is made under an Act (the **enabling Act**); and
- (b) the amending instrument amends another legislative instrument made under the enabling Act; and
- (c) the amendment is consequential on:
 - (i) the amendments or repeals made by this Act; or
 - (ii) the enactment of this Act;

the amending instrument may be expressed to take effect from a date before the amending instrument is registered under the *Legislation Act 2003*.

5 Transitional rules

- (1) The Finance Minister may, by legislative instrument (and subject to subitem (3)), make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
 - (2) Rules may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act.
 - (3) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
-

- (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (4) This Act does not limit the rules that may be made under this item.
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*[Minister's second reading speech made in—
House of Representatives on 22 June 2017
Senate on 16 August 2017]*

(138/17)
