# EXPLANATORY STATEMENT

**Issued by the Authority of the Minister for Finance**

*Public Governance, Performance and Accountability Act 2013*

*Public Governance, Performance and Accountability Rule 2014*

*Public Governance, Performance and Accountability Amendment (Procurement by Corporate Commonwealth Entities) Rule**s 2017*

Section 105B of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides the Finance Minister with the authority to, by written instrument, make provisions about procurement by Commonwealth entities and companies.

Section 105B(1)(b) of the PGPA Act allows the Finance Minister to, by written instrument, make provisions about procurement for corporate Commonwealth entities who are prescribed in the rules. Corporate Commonwealth entities that the Finance Minister has designated as body corporates that are subject to the Commonwealth Procurement Rules are listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

The *Public Governance, Performance and Accountability Amendment (Procurement by Corporate Commonwealth Entities) Rules 2017* (the Amendment Rules) amends section 30 of the PGPA Rule to add two corporate Commonwealth entities as entities prescribed to adhere to the Commonwealth Procurement Rules. The entities are the National Portrait Gallery of Australia, and the Australian Digital Health Agency.

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

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Rules will come into effect on 1 January 2018.

**Consultation**

The Amendment Rules has been prepared in consultation with the relevant areas within the Department of Finance, the Trade and Investment Law Branch, Department of Foreign Affairs and Trade, National Portrait Gallery of Australia and the Australian Digital Health Agency.

**Attachment A**

Details of the *Public Governance, Performance and Accountability Amendment (Procurement by Corporate Commonwealth Entities) Rules 2017*

**Section 1—Name**

This section provides that the title of the Rules is the *Public Governance, Performance and Accountability Amendment (Procurement by Corporate Commonwealth Entities) Rules 2017* (the Amendment Rules)*.*

**Section 2—Commencement**

This section provides that the Amendment Rules will commence on 1 January 2018.

**Section 3—Authority**

This section provides that the Amendment Rules are made under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

**Section 4—Schedules**

This section provides that each instrument that is specified in a Schedule to the Amendment Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1—Amendments**

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

**Item 1—Section 30**

This item prescribes the Australian Digital Health Agency in section 30 of the PGPA Rule. The list in section 30 of the PGPA Rule prescribes the corporate Commonwealth entities that are subject to the Commonwealth Procurement Rules, or any instrument created by the Finance Minister concerning procurement that affects those corporate Commonwealth entities.

 **Item 2 – Section 30**

This item prescribes the National Portrait Gallery of Australia in section 30 of the PGPA Rule. The list in section 30 of the PGPA Rule prescribes the corporate Commonwealth entities that are subject to the Commonwealth Procurement Rules, or any instrument created by the Finance Minister concerning procurement that affects corporate Commonwealth entities.

**Attachment B**

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

The *Public Governance, Performance and Accountability Amendment (Procurement by Corporate Commonwealth Entities) Rules 2017* (the Amendment Rules) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

**Overview of the legislative instrument**

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) establishes a framework for regulating resource management by the Commonwealth and relevant entities. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters giving effect to the Act.

The Amendment Rules amend the *Public Governance, Performance and Accountability Rule 2014* to list two corporate Commonwealth entities: the National Portrait Gallery of Australia, and the Australian Digital Health Agency to prescribe them as corporate Commonwealth entities that must comply with the Commonwealth Procurement Rules.

**Human rights implications**

The Amendment Rules do not impinge on any applicable rights or freedoms.

**Conclusion**

The Amendment Rules are compatible with human rights as the rules do not raise any human rights issues.