

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 (2019 Measures No. 3)
Rules 2019*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out 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.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *Public Governance, Performance and Accountability Amendment (2019 Measures No. 3) Rules 2019* (Amendment Rules) amend Schedule 1 to the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) to:

- prescribe the National Faster Rail Agency as a listed entity for the purposes of the finance law as defined by the PGPA Act;
- prescribe the National Indigenous Australians Agency as a listed entity for the purposes of the finance law as defined by the PGPA Act; and
- clarify references to the ‘Minister’ for three listed entities (the Digital Transformation Agency, the National Mental Health Commission, and the North Queensland Water Infrastructure Authority).

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 commence on 1 July 2019.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Infrastructure, Transport, Cities and Regional Development; the Department of the Prime Minister and Cabinet; the North Queensland Water Infrastructure Authority; the Digital Transformation Agency; Services Australia; the National Mental Health Commission; and the Department of Health.

Details of the *Public Governance, Performance and Accountability Amendment (2019 Measures No. 3) Rules 2019*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability (2019 Measures No. 3) Rules 2019* (Amendment Rules).

Section 2 – Commencement

This section provides that this instrument commences on 1 July 2019.

Section 3 – Authority

This section provides that this instrument is made under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Section 4 – Schedules

This section provides that the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) is amended as set out in the Schedule to this instrument.

Schedule 1 – Amendments

Public Governance, Performance and Accountability Rule 2014

Item 1 – Subparagraphs 10(1)(e)(v) and (vi) of Schedule 1

This item clarifies that the ‘Minister’ in clause 10 of Schedule 1 refers to the ‘responsible Minister’ for the Digital Transformation Agency. This is consistent with the meaning of ‘responsible Minister’ as defined in section 8 of the PGPA Act.

Item 2 – After clause 12 of Schedule 1

This item inserts two new clauses 13 and 14 in Schedule 1.

The new clause 13 makes the National Faster Rail Agency a non-corporate Commonwealth entity for the purposes of the PGPA Act by prescribing it as a listed entity in Schedule 1. It also sets out the accountable authority, officials and purposes of the National Faster Rail Agency, which will comprise the Chief Executive Officer and persons engaged under the *Public Service Act 1999* to assist in the performance of the functions of the National Faster Rail Agency.

The functions of the National Faster Rail Agency are specified in the *Order to Establish the National Faster Rail Agency as an Executive Agency* which commences on 1 July 2019. Among other functions, the National Faster Rail Agency will have responsibility for leading the development and implementation of the Commonwealth Government’s 20-year Fast Rail Plan, including engagement with state and territory governments, industry and stakeholders; overseeing the development of business cases; identifying additional rail corridors that would benefit from faster rail services; and supporting the delivery of faster rail construction projects. The functions of the National Faster Rail Agency are listed in the new clause 13 as the entity’s purposes for the finance law.

The new clause 14 makes the National Indigenous Australians Agency a non-corporate Commonwealth entity for the purposes of the PGPA Act by prescribing it as a listed entity in Schedule 1. It also sets out the accountable authority, officials and purposes of the National Indigenous Australians Agency, which will comprise the Chief Executive Officer and persons engaged under the *Public Service Act 1999* to assist in the performance of the functions of the National Indigenous Australians Agency.

The functions of the National Indigenous Australians Agency are specified in the *Order to Establish the National Indigenous Australians Agency as an Executive Agency* which commences on 1 July 2019. Among other functions, the National Indigenous Australians Agency will have responsibility for leading and coordinating Commonwealth policy development, program design and implementation, as well as service delivery for Aboriginal and Torres Strait Islander peoples, including across portfolio agencies with Indigenous responsibilities. The National Indigenous Australians Agency will also lead and coordinate the development and implementation of Australia's Closing the Gap targets in partnership with Indigenous Australians. The functions of the National Indigenous Australians Agency are listed in the new clause 14 as the entity's purposes for the finance law.

Item 3 – Subparagraphs 15(e)(vii) and 15B(1)(e)(iii) and (iv) of Schedule 1

This item clarifies that the 'Minister' in clauses 15 and 15B of Schedule 1 refers to the 'responsible Minister' for the National Mental Health Commission and the North Queensland Water Infrastructure Authority respectively. This is consistent with the meaning of 'responsible Minister' as defined in section 8 of the PGPA Act.

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 Amendment (2019 Measures No. 3) Rules 2019

The *Public Governance, Performance and Accountability Amendment (2019 Measures No. 3) Rules 2019* (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 Minister for Finance may make rules by legislative instrument to prescribe matters giving effect to the Act.

The Amendment Rules amend Schedule 1 to the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) to:

- prescribe the National Faster Rail Agency as a listed entity for the purposes of the finance law as defined by the PGPA Act;
- prescribe the National Indigenous Australians Agency as a listed entity for the purposes of the finance law as defined by the PGPA Act; and
- clarify references to the ‘Minister’ for three listed entities (the Digital Transformation Agency, the National Mental Health Commission, and the North Queensland Water Infrastructure Authority).

The Amendment Rules commence on 1 July 2019.

Human rights implications

The Amendment Rules do not engage any of the applicable rights or freedoms.

Conclusion

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

**Senator the Hon Mathias Cormann
Minister for Finance**