

## 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 (2020 Measures No. 3)  
Rules 2020*

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, 102 and 103 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 (2020 Measures No. 3) Rules 2020* (Amendment Rules) make technical amendments to the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) relating to:

- extending the capacity for prescribed officials to exercise powers under the *Financial Framework (Supplementary Powers) Act 1997* in addition to the PGPA Act; and
- amending the clause in Schedule 1 of the PGPA Rule, prescribing the Digital Transformation Agency as a listed entity under the PGPA Act, to continue to the end of 30 June 2022.

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 the day after they are registered on the Federal Register of Legislation.

### Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of the Prime Minister and Cabinet, the Department of Education, Skills and Employment, the Department of Home Affairs, the Department of Industry, Science, Energy and Resources, the Attorney-General's Department, the Department of Social Services, Department of Health, the Department of Defence, the Department of Veterans' Affairs, the Department of the Treasury, the Department of Infrastructure, Transport, Regional Development and Communications, the Department of Agriculture, Water and the Environment, the Department of Foreign Affairs and Trade and the Digital Transformation Agency.



**Details of the Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020**

**Section 1 – Name**

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020* (Amendment Rules).

**Section 2 – Commencement**

This section provides that this instrument commences on the day after it is registered on the Federal Register of Legislation.

**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 each legislative instrument that is specified in a Schedule to this Rule is amended or repealed as set out.

**Schedule 1 – Amendments**

***Public Governance, Performance and Accountability Rule 2014* (PGPA Rule)**

**Item 1 – Subsection 9(1) (table item 1A, column 2, paragraph (b))**

This item repeals paragraph (b) in column 2 of the table item 1A at subsection 9(1) of the PGPA Rule and substitutes it with a new paragraph (b). The new paragraph (b) extends one of the three conditions that must apply before a consultant or an independent contractor, or their employees, can be prescribed as an official of a non-corporate Commonwealth entity (NCE) under the PGPA Act.

Currently item 1A of the table in subsection 9(1) of the PGPA Rule permits consultants or independent contractors, or their employees, who are not officials, to be prescribed as officials (prescribed officials) to enable them to be delegated and exercise statutory powers, perform functions or discharge duties under the PGPA Act and Rule when their services so require. This mechanism provides administrative flexibility to accountable authorities of NCEs where there is a functional requirement for consultants or independent contractors to exercise PGPA powers.

New paragraph (b) extends the capacity for consultants and independent contractors, or their employees, providing services to NCEs, to exercise powers, perform a function or discharge a duty under the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) when their services require it. This amendment is intended to facilitate greater administrative flexibility for accountable authorities managing arrangements under the FF(SP) Act who will now be able to delegate powers under that Act to prescribed officials. The FF(SP) Act provides an important source of power underpinning many Commonwealth activities,

including grants, and has a relationship, recognised in section 6 of the FF(SP) Act, with the finance law (as defined in section 8 of the PGPA Act).

The duties of an official in sections 25 to 29 of the PGPA Act will continue to apply to prescribed officials. As with current arrangements, the amendment only applies to NCEs.

**Item 2 - Subclause 10(2) of Schedule 1**

This item omits “30 June 2020” and substitutes “30 June 2022” in subclause 10(2) of Schedule 1 of the PGPA Rule to allow the Digital Transformation Agency to continue as a listed entity under the PGPA Act to the end of 30 June 2022.

## **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 (2020 Measures No. 3) Rules 2020***

The *Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020* (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) 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.

The Amendment Rules make technical amendments to the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) relating to:

- extending the capacity for prescribed officials to exercise powers under the *Financial Framework (Supplementary Powers) Act 1997* in addition to the PGPA Act; and
- amending the clause in Schedule 1 of the PGPA Rule, prescribing the Digital Transformation Agency as a listed entity under the PGPA Act, to continue to the end of 30 June 2022.

### **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**