

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 (Digital Transformation Agency) Rules 2021

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) set out a framework for regulating resource management by Commonwealth entities and companies. Section 101 of the PGPA Act provides that the Finance Minister may make rules by legislative instrument to prescribe matters necessary or convenient to be prescribed for carrying out or 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 (Digital Transformation Agency) Rules 2021* (Amendment Rules) amend Schedule 1 to the PGPA Rule by:

- amending the purposes of the Digital Transformation Agency (DTA), including in relation to strategic and policy leadership, whole of government and shared information and communication technology investments and digital service delivery; and
- repealing the clause prescribing that the DTA sunset as a listed entity for the PGPA Act on 30 June 2022.

The Digital Transformation Office (DTO) was first established as an Executive Agency for the purposes of the *Public Service Act 1999* by an Executive Order on 12 March 2015. The Order commenced on 1 July 2015. The listing of the DTO in Schedule 1 to the PGPA Rule, which made it a non-corporate Commonwealth entity for the purposes of the PGPA Act, commenced on 23 June 2015 with a sunset date of 30 June 2020.

The Order was amended on 27 October 2016 to rename the Executive Agency to the DTA and update its functions. The listing in Schedule 1 to the PGPA Rule was also amended to reflect these changes and commenced on 18 November 2016. An additional amendment to the listing in Schedule 1 to the PGPA Rule commenced on 26 June 2020 which amended the sunset clause allowing the listed entity for 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 1 July 2021.

Consultation

The Amendment Rules were developed by the Office of Parliamentary Counsel in consultation with the Department of the Prime Minister and Cabinet and the Digital Transformation Agency in accordance with section 17 of the *Legislation Act 2003*.

Details of the *Public Governance, Performance and Accountability Amendment (Digital Transformation Agency) Rules 2021*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (Digital Transformation Agency) Rules 2021*.

Section 2 – Commencement

This section provides that this instrument commences on 1 July 2021.

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 Schedule 1 to this instrument.

Schedule 1 – Amendments

Public Governance, Performance and Accountability Rule 2014

Item 1 – Subclause 10(1) of Schedule 1

This item omits (1) from the listing at clause 10.

Item 2 – Paragraph 10(1)(e) of Schedule 1

This item repeals paragraph 10(1)(e) of Schedule 1 and substitutes with a new paragraph 10 (1)(e) which sets out the Digital Transformation Agency's (DTA) purposes for the finance law.

The purposes of the listed entity reflect the functions set out in the *Order to identify the Minister responsible for the Digital Transformation Agency, and to Specify functions for the Digital Transformation Agency* made under section 65 of the *Public Service Act 1999*. The Order amends the functions of the Executive Agency, the DTA, to reflect the refocus of DTA's functions around a central whole of government role relating to strategic and policy leadership in order to drive digital innovation; whole of government and shared information and communication technology (ICT) investments; and digital service delivery.

This item amends the purposes of the listed entity to align with the functions in the Order. The purposes set out DTA's role in providing whole of government and shared ICT investments; and digital service delivery. DTA's purposes also relate to digital and ICT procurement; strategic coordination and oversight throughout the digital and ICT investment lifecycle; providing advice to maximise reuse capabilities; and managing whole of government digital procurement.

The DTA continues to have the responsibility of advising the responsible Minister on matters relating to the listed entity and undertaking other relevant tasks as the responsible Minister may require from time to time.

References to responsible Minister are consistent with the definition of “responsible Minister” in section 8 of the PGPA Act.

Item 3 – Subclause 10(2) of Schedule 1

This item repeals the sunset provision at subclause 10(2) of Schedule 1 of the PGPA Rule to allow the DTA to continue as a listed entity for 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 (Digital Transformation Agency) Rules 2021

The *Public Governance, Performance and Accountability Amendment (Digital Transformation Agency) Rules 2021* (Amendment Rules) is 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 Commonwealth entities and companies. 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 *Public Governance, Performance and Accountability Amendment (Digital Transformation Agency) Rules 2021* (Amendment Rules) amend Schedule 1 to the PGPA Rule by:

- amending the purposes of the Digital Transformation Agency (DTA), including in relation to whole of government and shared information and communication technology investments and digital service delivery; and
- repealing the clause prescribing that the DTA cease to exist as a listed entity for the PGPA Act on 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 Simon Birmingham
Minister for Finance**