# 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 (Emergency Management Entities) Rules 2022*

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. Paragraph 103(e) of the PGPA Act provides that the rules may make provision for the name or purposes of a non-corporate Commonwealth entity that is prescribed by the rules to be a listed entity.

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 (Emergency Management Entities) Rules 2022* (Amendment Rules) amend Schedule 1 to the PGPA Rule by:

* inserting a new clause 12A to prescribe the National Emergency Management Agency (NEMA) as a listed entity for the purposes of the finance law as defined by the PGPA Act; and
* repealing clause 15A, which prescribes the National Recovery and Resilience Agency (NRRA) as a listed entity.

These amendments reflect the Government’s decision to abolish the Commonwealth entity, the NRRA, and replace it with a new Commonwealth entity, the NEMA, that would subsume the functions of the NRRA and the Emergency Management Australia group in the Department of Home Affairs. The effect of this is to integrate all the Commonwealth’s disaster preparedness, emergency management, recovery and resilience functions into a single Commonwealth entity. The Department of Home Affairs is responsible for high-level policy, legislation and budgetary matters relating to emergency management, resilience and recovery, as the relevant Department of State.

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 contain three provisions, each of which commence on separate dates.

Sections 1 to 4 commence the day after the Amendment Rules are registered.

Schedule 1, Part 1 commences on 1 September 2022. This commencement date aligns the commencement of the NEMA as a non-corporate Commonwealth entity with its commencement as an Executive Agency as established by the Governor-General in the *Order to Establish the National Emergency Management Agency as an Executive Agency*.

Schedule 1, Part 2 commences on 3 September 2022. This commencement date is consistent with the effect of the *Order to Abolish the National Recovery and Resilience Agency as an Executive Agency* made by the Governor-General.

**Consultation**

The Amendment Rules were developed by the Office of Parliamentary Counsel in consultation with the Department of Home Affairs, the Department of the Prime Minister and Cabinet and the NRRA, in accordance with section 17 of the *Legislation Act 2003.*

**Details of the *Public Governance, Performance and Accountability Amendment (Emergency Management Entities) Rules 2022***

 **Section 1 – Name**

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (Emergency Management Entities) Rules 2022.*

**Section 2 – Commencement**

This section provides that each provision of the instrument specified in column 1 of the table commences in accordance with column 2 of the table.

Sections 1 to 4 and anything in the instrument not elsewhere covered by the table commence the day after the instrument is registered.

Schedule 1, Part 1 commences on 1 September 2022.

Schedule 1, Part 2 commences on 3 September 2022.

**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**

**Part 1 – Amendments relating to the National Emergency Management Agency**

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

**Item 1 – After clause 12 of Schedule 1**

This item inserts a new clause 12A in Schedule 1.

The new clause 12A makes the National Emergency Management Agency (NEMA) 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 NEMA for the purposes of the finance law. The NEMA will comprise of the Coordinator‑General of the NEMA, as the accountable authority, and persons engaged under the *Public Service Act 1999* (PS Act) to assist the Coordinator-General of the NEMA.

The NEMA was established as an Executive Agency under section 65 of the PS Act by the *Order to Establish the National Emergency Management Agency as an Executive Agency* (Order), made on 18 August 2022 and commencing on 1 September 2022. The Order specifies the functions for the NEMA, which are reflected in the purposes of the NEMA by the new clause 12A.

The NEMA will establish a single Commonwealth entity responsible for the Commonwealth’s disaster preparedness, emergency management, recovery and resilience functions, integrating the activities previously managed by the National Recovery and Resilience Agency (NRRA) and Emergency Management Australia.

Among other functions, the NEMA will be responsible for developing, leading and coordinating the Commonwealth’s all-hazard approach to emergency management, preparedness, response, relief, recovery, reconstruction, risk reduction and resilience for emergencies and disasters. The NEMA would also provide national leadership and strategic coordination for these activities, working in collaboration with State, Territory and municipal governments, industry and other non-government sectors.

At the time of establishment the responsible Minister for the NEMA is the Minister for Emergency Management.

**Part 2 – Amendments relating to the National Recovery and Resilience Agency**

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

**Item 2 – Clause 15A of Schedule 1**

This item repeals clause 15A of Schedule 1 of the PGPA Rule which prescribes the NRRA as a listed entity. The effect of this is that from the commencement of this item the NRRA will cease as a non-corporate Commonwealth entity for the purposes of the PGPA Act.

This item is consistent with the *Order to Abolish the National Recovery and Resilience Agency as an Executive Agency*.

**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 (Emergency Management Entities) Rules 2022***

The *Public Governance, Performance and Accountability Amendment (Emergency Management Entities) Rules 2022*(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. Paragraph 103(e) of the PGPA Act provides that the rules may make provision for the name or purposes of a Commonwealth entity prescribed to be a listed entity by the rules.

The Amendment Rules amend Schedule 1 tothe *Public Governance, Performance and Accountability Rule 2014* made under the PGPA Act by:

* inserting a new clause 12A to prescribe the National Emergency Management Agency (NEMA) as a listed entity for the purposes of the finance law as defined by the PGPA Act; and
* repealing clause 15A, which prescribes the National Recovery and Resilience Agency as a listed entity.

**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 Katy Gallagher**

**Minister for Finance**