

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 (2023 Measures No. 2)
Rules 2023*

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. Paragraph (b) of the definition of “reporting period” in section 8 of the PGPA Act provides that the rules may prescribe the reporting period of a Commonwealth entity or company.

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 (2023 Measures No. 2) Rules 2023* (Amendment Rules) amends the PGPA Rule by inserting a new section 7AC to prescribe the first reporting period of the High Speed Rail Authority (HSRA) as beginning on 13 June 2023 and ending on 30 June 2024. The Amendment Rules also amends Schedule 1 to the PGPA Rule by repealing clause 13. Clause 13 prescribes the National Faster Rail Agency (NFRA) as a listed entity, a type of non-corporate Commonwealth entity, for the purposes of the finance law as defined by the PGPA Act.

These amendments reflect the government’s decision to abolish the non-corporate Commonwealth entity, the NFRA, and replace it with a new corporate Commonwealth entity, known as the HSRA, following commencement of the *High Speed Rail Authority Act 2022*. The effect of this is the functions of the NFRA would be split between the HSRA and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts from 13 June 2023.

The Amendment Rules also repeals the provisions that prescribed the first reporting periods for Snowy Hydro Limited and the National Housing Finance and Investment Corporation in the PGPA Rule, by:

- repealing section 7AA, which prescribed the first reporting period for Snowy Hydro Limited and is now a spent provision; and
- repealing section 7AB, which prescribed the first reporting period for the National Housing Finance and Investment Corporation and is now a spent provision.

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.

Sections 1 to 4 and Schedule 1, Part 2 commence the day after this instrument is registered.

Schedule 1, Part 1 commences on the later of the day after this instrument is registered; and the day on which the *High Speed Rail Authority Act 2022* commences.

Consultation

The Amendment Rules were developed by the Office of Parliamentary Counsel in consultation with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, in accordance with section 17 of the *Legislation Act 2003*.

Details of the *Public Governance, Performance and Accountability Amendment (2023 Measures No. 2) Rules 2023*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (2023 Measures No. 2) Rules 2023*.

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 Schedule 1, Part 2 commence the day after the instrument is registered.

Schedule 1, Part 1 commences the later of the day after this instrument is registered; and the day on which the *High Speed Rail Authority Act 2022* commences.

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

Part 1 – Amendments relating to the High Speed Rail Authority

Item 1 – At the end of Part 1-2

This item adds a new section 7AC to prescribe the first reporting period for the High Speed Rail Authority (HSRA) for the purposes of paragraph (b) of the definition of “reporting period” in section 8 of the PGPA Act. The first reporting period for HSRA will begin on 13 June 2023 and end on 30 June 2024. After the first reporting period, the dates will follow the standard financial year.

Amending the reporting period will allow the newly established accountable authority of the HSRA sufficient time to meet the high standards of transparency and accountability required of Commonwealth entities under the PGPA Act.

Item 2 – Clause 13 of Schedule 1

This item repeals clause 13 of Schedule 1 to the PGPA Rule which prescribes the National Faster Rail Agency (NFRA) as a listed entity. The effect of this is that from the commencement of this item the NFRA will cease as a non-corporate Commonwealth entity for the purposes of the PGPA Act.

Part 2 – Repeals of spent provisions

Public Governance, Performance and Accountability Rule 2014

Item 3 – Section 7AA and 7AB

This item repeals sections 7AA and 7AB from the PGPA Rule, which respectively prescribed the first reporting periods for Snowy Hydro Limited (from 29 June 2018 to 30 June 2019) and the National Housing Finance and Investment Corporation (from 30 June 2018 to 30 June 2019).

Repealing these reporting periods is administrative as the first reporting periods for Snowy Hydro Limited and the National Housing Finance and Investment Corporation have expired.

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 (2023 Measures No. 2) Rules 2023

The *Public Governance, Performance and Accountability Amendment (2023 Measures No. 2) Rules 2023* (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 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 non-corporate Commonwealth entity that is prescribed by the rules to be a listed entity. Paragraph (b) of the definition of “reporting period” in section 8 of the PGPA Act provides that the rules may prescribe the reporting period of a Commonwealth entity or company.

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

- inserting a new section 7AC to prescribe the first reporting period of the Hight Speed Rail Authority to begin on 13 June 2023 and end on 30 June 2024;
- repealing clause 13 of Schedule 1, which prescribes the National Faster Rail Agency as a listed entity for the purposes of the finance law as defined by the PGPA Act; and
- repealing sections 7AA and 7AB, which prescribed the first reporting periods for Snowy Hydro Limited (from 29 June 2018 to 30 June 2019) and National Housing Finance and Investment Corporation (from 30 June 2018 to 30 June 2019) respectively.

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**