

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 (Procurement – High Speed Rail Authority) 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 105B(1)(b) of the PGPA Act provides the Finance Minister with authority to, by written instrument, make provisions about procurement for corporate Commonwealth entities that are prescribed by the rules. Corporate Commonwealth entities that are subject to the Commonwealth Procurement Rules (CPRs) are prescribed under section 30 of the PGPA Rule. Subsection 105B(2) provides that an instrument made under subsection 105B(1) is a legislative instrument, but is not subject to disallowance under section 42 of the *Legislation Act 2003*.

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 (Procurement – High Speed Rail Authority) Rules 2023* (Amendment Rules) amends section 30 of the PGPA Rule to add one corporate Commonwealth entity as an entity prescribed to comply with written instruments about procurement, including the CPRs. The entity is the High Speed Rail Authority (HSRA).

The amendment reflects the government's decision to abolish the non-corporate Commonwealth entity the National Faster Rail Agency (NFRA), and split its functions between the HSRA and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. The functions of the NFRA are subject to certain international obligations on government procurement, and the Amendment Rules ensure that coverage of those obligations will continue to apply to the HSRA.

The accountable authority of the HSRA may seek, at any time, to have the functions of this amendment reviewed, to the extent that it prescribes any functions of the HSRA that are not subject to international obligations referred to above. The functions of the HSRA are specified in its enabling legislation.

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 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 (Procurement – High Speed Rail Authority) Rules 2023*

Section 1 – Name

This section provides that the title of this instrument is the *Public Governance, Performance and Accountability Amendment (Procurement – High Speed Rail Authority) Rules 2023*.

Section 2 – Commencement

This section provides that this instrument 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.

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 – Section 30

This item prescribes the High Speed Rail Authority (HSRA) in section 30 of the PGPA Rule.

The table in section 30 of the PGPA Rule prescribes the corporate Commonwealth entities that are subject to the Commonwealth Procurement Rules (CPRs), or any written instrument created by the Finance Minister concerning procurement that affects those corporate Commonwealth entities. Non-corporate Commonwealth entities and their functions are automatically ‘relevant entities’ for the CPRs. Prescribed corporate Commonwealth entities are also considered ‘relevant entities’ for the CPRs. Corporate Commonwealth entities prescribed through section 30 of the PGPA Rule to date perform functions, either in part or in full, that are considered ‘covered procurement’ under Australia’s international government procurement obligations. Relevant international obligations have been incorporated in the CPRs.

The HSRA is expected to absorb some functions of the National Faster Rail Agency (a type of non-corporate Commonwealth entity) once it is abolished as a listed entity. The Amendment Rules will ensure the performance of these functions continues to comply with relevant international obligations upon their transfer to the HSRA.

The Amendment Rules are made under subsection 105B(1) of the PGPA Act, and are therefore a legislative instrument but they are exempt (due to the operation of subsection 105B(2) of the PGPA Act) from disallowance for the purposes of section 42 of the *Legislation Act 2003*.

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 (Procurement – High Speed Rail Authority) Rules 2023

The *Public Governance, Performance and Accountability Amendment (Procurement – High Speed Rail Authority) Rules 2023* (Amendment Rules) are compatible with the human rights and freedoms recognized 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 105B(1)(b) of the PGPA Act provides the Finance Minister with authority to, by written instrument, make provisions about procurement for corporate Commonwealth entities that are prescribed by the rules. Corporate Commonwealth entities that are subject to the Commonwealth Procurement Rules are prescribed under section 30 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). Subsection 105B(2) of the PGPA Act provides that an instrument made under subsection 105B(1) is a legislative instrument, but is not subject to disallowance under section 42 of the *Legislation Act 2003*.

The Amendment Rules amend section 30 of the PGPA Rule made under the PGPA Act by prescribing the High Speed Rail Authority as a corporate Commonwealth entity that must comply with written instruments about procurement, including the Commonwealth Procurement Rules.

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**