

## **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. 3)  
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 Minister for Finance 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 (2023 Measures No. 3) Rules 2023* (Amendment Rules) amends section 4 of the PGPA Rule to insert a definition for the Department of Foreign Affairs and Trade. This definition is related to the amendment to Schedule 1 of the PGPA Rule.

Schedule 1 to the PGPA Rule is amended by inserting a new clause 6A to prescribe the Australian Submarine Agency (ASA) as a listed entity, a type of non-corporate Commonwealth entity, for the purposes of the finance law as defined by the PGPA Act.

The Amendment Rules reflect the Government's decision to establish the ASA as a non-corporate Commonwealth entity, for the purposes of the PGPA Act. The ASA will be responsible and accountable for the management and oversight of the safe and secure delivery of Australia's nuclear-powered submarine program including the acquisition, construction, delivery, sustainment and disposal of nuclear-powered submarines. The ASA will also be responsible for maintaining the technical governance of the nuclear-powered submarine capability.

The Amendment Rules set out: the entity name, the accountable authority; the officials; and the purposes of the listed entity for the finance law.

Details of the Amendment Rules are set out in [Attachment A](#). A Statement of Compatibility with Human Rights is in [Attachment B](#).

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Rules commence on 1 July 2023.

### **Consultation**

The Amendment Rules were developed by the Office of Parliamentary Counsel in consultation with the Department of Defence and the Department Foreign Affairs and Trade in accordance with section 17 of the *Legislation Act 2003*.

**Details of the *Public Governance, Performance and Accountability Amendment (2023 Measures No. 3) 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. 3) Rules 2023*.

**Section 2 – Commencement**

This section provides that this instrument commences on 1 July 2023.

**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 4**

This item amends section 4 of the PGPA Rule to define the “Department of Foreign Affairs and Trade” to mean the Department administered by the Minister administering the *Diplomatic Privileges and Immunities Act 1967*. This definition is similar to definitions of the Department of Foreign Affairs and Trade in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, the *Biosecurity Act 2015* and the *Crimes Act 1914*.

This definition is related to the amendment to Schedule 1 of the PGPA Rule which includes a reference to the Department of Foreign Affairs and Trade.

**Item 2 – After clause 6 of Schedule 1**

This item inserts a new clause 6A in Schedule 1.

The new clause 6A makes the Australian Submarine Agency (ASA) a non-corporate Commonwealth entity for the purposes of the finance law by prescribing it as a listed entity giving it a name, specifying its accountable authority and officials and setting out what its purposes include.

The ASA will comprise the Director General of the ASA as the accountable authority, and:

- persons engaged under the *Public Service Act 1999* (PS Act) to assist the Director General;
- members of the Australian Defence Force whose services are made available to the Director General;
- officials of other Commonwealth entities, and employees of Commonwealth companies, whose services are made available to the Director General.

Among the purposes set out for the listed entity, the ASA will be responsible for:

- managing and overseeing the acquisition, construction, delivery, sustainment, and disposal of nuclear-powered submarines;
- managing and executing trilateral engagement for the nuclear-powered submarine program, with the exception of submarine operations;
- working with the Department of Defence, the Department of Foreign Affairs and Trade and the Australian Safeguards and Non-Proliferation Office to develop and implement safeguards arrangements as agreed between Australia and the International Atomic Energy Agency;
- establishing other international agreements and arrangements, working with Commonwealth, State and Territory agencies, to support the implementation of the nuclear-powered submarine program;
- maintaining technical governance and developing systems of compliance, including by retaining technical authority of the nuclear propulsion plant during operations and supporting the Chief of Navy's responsibility to the Chief of the Defence Force as the Seaworthiness Authority and Submarine Operating Authority.

The establishment of this new non-corporate Commonwealth entity will ensure the safe and secure delivery of Australia's conventionally armed, nuclear-powered submarines. The ASA will provide robust management and oversight of the nuclear-powered submarine program in its role as a single point of accountability with a dedicated focus and adherence to the strict technical standards required for safe stewardship of the nuclear-powered submarine program. The ASA will work with Australian and international experts to ensure Australia sets the highest possible standards of nuclear safety, radiological protection, and adheres to security safeguards for regulation, construction, operation, maintenance, and disposal of nuclear-powered submarines which will include delivering to AUKUS partner requirements.

The ASA is part of the Defence portfolio to ensure integrated delivery of military capability and a strong understanding of the maritime operating environment.

At the time of commencement as a non-corporate Commonwealth entity, the responsible Minister for the ASA is the Minister for Defence.

The ASA was established as an Executive Agency under section 65 of the PS Act by the *Order to Establish the Australian Submarine Agency as an Executive Agency*, made on 27 April 2023 and commencing on 1 July 2023.

## **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. 3) Rules 2023***

The *Public Governance, Performance and Accountability Amendment (2023 Measures No. 3) Rules 2023* (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 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.

The *Public Governance, Performance and Accountability Amendment (2023 Measures No. 3) Rules 2023* (Amendment Rules) amend section 4 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) made under the PGPA Act to insert a definition for the Department of Foreign Affairs and Trade. This definition is related to the amendment to Schedule 1 of the PGPA Rule which includes a reference to the Department of Foreign Affairs and Trade.

Schedule 1 to the PGPA Rule is amended by inserting a new clause 6A to prescribe the Australian Submarine Agency (ASA) as a listed entity, a type of non-corporate Commonwealth entity, for the purposes of the finance law as defined by the PGPA Act.

The Amendment Rules reflect the Government's decision to establish the ASA as a non-corporate Commonwealth entity, for the purposes of the PGPA Act. The ASA will be responsible and accountable for the management and oversight of the safe and secure delivery of Australia's nuclear-powered submarine program including the acquisition, construction, delivery, sustainment and disposal of nuclear-powered submarines. The ASA will also be responsible for maintaining the technical governance of the nuclear-powered submarine capability.

The Amendment Rules set out: the entity name, the accountable authority; the officials; and the purposes of the listed entity for the finance law.

**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**