

## **EXPLANATORY STATEMENT**

### **Issued by 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 (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Rules 2024*

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 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 (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Rules 2024* (the Amendment Rules) amends Schedule 1 of the PGPA Rule to insert clause 12AA. The Amendment Rules prescribe the National Commission for Aboriginal and Torres Strait Islander Children and Young People (the Commission) 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 in the 2024-25 Budget to establish the Commission as a non-corporate Commonwealth entity. The Commission will be responsible for promoting and protecting the rights of Aboriginal and Torres Strait Islander children and young people and providing policy advice to Government to improve outcomes for Aboriginal and Torres Strait Islander children and young people and their families. The Commission will also be responsible for promoting and enhancing coordination across Commonwealth, State and Territory governments.

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

The Amendment Rules are subject to section 48A of the *Legislation Act 2003*, which automatically repeals legislative instruments whose only effect is to amend or repeal one or more other legislative instruments.

The principal instrument amended by the Amendment Rules, the PGPA Rule, is exempt from sunseting pursuant to paragraph 54(2)(b) of the *Legislation Act 2023*, which provides that instruments prescribed are not subject to sunseting. Further details on the basis for the exemption from sunseting can be found in the Explanatory Statement to the *Legislation (Exemptions and Other Matters) Amendment (2023 Measures No. 1) Regulations 2023* which amended the *Legislation (Exemptions and Other Matters) Regulations 2015* and provided for the exemption.

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

Details of the Amendment Rules are set out in [Attachment A](#). A statement of compatibility with human rights is at [Attachment B](#).

The whole of the instrument commences on 13 January 2025.

### **Consultation**

The amendments relating to inserting the Commission as a listed entity for the purposes of the PGPA Act were developed in consultation with the Department of Social Services.

The Amendment Rules were drafted by the Office of Parliamentary Counsel.

**Details of the *Public Governance, Performance and Accountability Amendment (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Rules 2024***

**Section 1 – Name of instrument**

This section states that the name of this instrument is the *Public Governance, Performance and Accountability Amendment (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Rules 2024* (the Amendment Rules).

**Section 2 – Commencement**

This section provides that the whole of the instrument commences on 13 January 2025.

**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 – Clause 12AA of Schedule 1**

This item inserts Clause 12AA into Schedule 1 of the PGPA Rule. Clause 12AA prescribes the National Commission for Aboriginal and Torres Strait Islander Children and Young People (the Commission) as a listed entity, a type of non-corporate Commonwealth entity, for the purposes of the finance law. From the commencement of the instrument on 13 January 2025, the Commission will commence as a non-corporate Commonwealth entity for the purposes of the PGPA Act, reflecting the Government’s decision to establish the entity in the 2024-25 Budget.

The establishment of the Commission aligns with the Government’s commitment to establish a ‘legislated, independent and empowered National Commissioner’ to achieve better outcomes for First Nations children, young people and their families, informed by the release of the *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023-2026*.

As a listed entity the Commission will comprise the following persons:

- the person occupying, or performing the duties of, the office known as the National Commissioner for Aboriginal and Torres Strait Islander Children and Young People; and
- persons engaged under the *Public Service Act 1999* (PS Act) to assist the National Commissioner for Aboriginal and Torres Strait Islander Children and Young People.

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

- promoting and protecting the rights of Aboriginal and Torres Strait Islander children and young people through strategic policy advice and reports to Government on matters affecting Aboriginal and Torres Strait Islander children and young people, and their families;
- providing advice to Government on, and inform the implementation of key policy frameworks, which seek to improve outcomes for Aboriginal and Torres Strait Islander children and young people and their families;
- promoting and enhancing coordination across Commonwealth, State and Territory governments, commissioners, guardians and advocates and non-government organisations on matters related to Aboriginal and Torres Strait Islander children and young people;
- undertaking consultation with Aboriginal and Torres Strait Islander children and young people and their families, relevant Commonwealth and State and Territory governments, commissioners, guardians and advocates and non-government organisations; and
- ensuring the voices of Aboriginal and Torres Strait Islander children and young people and their families are reflected in advice to Government.

The Commission is part of the Social Services portfolio.

At the time of commencement as a non-corporate Commonwealth entity, the responsible Minister for the Commission is the Minister for Social Services.

The Commission was established as an Executive Agency under section 65 of the PS Act by the *Order to Establish the National Commission for Aboriginal and Torres Strait Islander Children and Young People as an Executive Agency*, made on 26 September 2024 and commencing on 13 January 2025.

## **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 (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Rules 2024***

This Legislative Instrument 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) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) establish 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 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 (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Rules 2024* (Amendment Rules) amends Schedule 1 of the PGPA Rule by inserting clause 12AA. The Amendment Rules prescribe the National Commission for Aboriginal and Torres Strait Islander Children and Young People (the Commission) as a listed entity, a type of non-corporate Commonwealth entity for the purposes of finance law as defined in the PGPA Act. The Amendment Rules will establish the Commission as a listed entity on 13 January 2025.

The Amendment Rules accord with the 2024-25 Budget decision to establish the Commission and the Government's commitment to achieve better outcomes for First Nations children, young people and their families. The Commission will be responsible for promoting and protecting the rights of Aboriginal and Torres Strait Islander children and young people and providing policy advice to Government to improve outcomes for Aboriginal and Torres Strait Islander children and young people and their families. The Commission will also be responsible for promoting and enhancing coordination across Commonwealth, State and Territory governments.

### **Human rights implications**

The Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Katy Gallagher  
Minister for Finance**