

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 (Abolition of National Mental Health Commission) 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 (Abolition of National Mental Health Commission) Rules 2024* amends Schedule 1 of the PGPA Rule to repeal clause 15 and abolish the National Mental Health Commission (NMHC) as a listed entity on 30 September 2024.

Clause 15 of Schedule 1 of the PGPA Rule prescribes the NMHC as a listed entity, a type of non-corporate Commonwealth entity for the purposes of finance law as defined by the PGPA Act. Repealing this clause accords with the 2024-25 Budget decision to transfer the functions and funding of the NMHC to the Department of Health and Aged Care. The functions of the NMHC will be delivered by the Department of Health and Aged Care following its abolition as a listed entity.

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

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

The whole of the instrument commences on 30 September 2024.

Consultation

The amendments relating to repealing the NMHC as a listed entity for the purposes of the PGPA Act were developed in consultation with the Department of Health and Aged Care.

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

Details of the *Public Governance, Performance and Accountability Amendment (Abolition of National Mental Health Commission) Rules 2024*

Section 1 – Name of instrument

This section states that the name of this instrument is the *Public Governance, Performance and Accountability Amendment (Abolition of National Mental Health Commission) Rules 2024* (the Amendment Rules).

Section 2 – Commencement

This section provides that the whole of the instrument commences on 30 September 2024.

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 15 of Schedule 1

This item repeals clause 15 of Schedule 1 to the PGPA Rule which prescribes the National Mental Health Commission (NMHC) as a listed entity. From the commencement of this item on 30 September 2024, the NMHC will cease as a non-corporate Commonwealth entity for the purposes of the PGPA Act, reflecting the Government’s decision to abolish the NMHC.

The government announced its decision to reform the NMHC in the 2024-25 Budget. The reform responds to the findings from the independent investigation into the Commission in 2023, which found that the Commission had ‘outgrown its existing systems, practices and capabilities’.

As an interim step in the reform, the current functions and funding of the NMHC will transfer to the Department of Health and Aged Care while the most appropriate longer term arrangements are considered.

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 (Abolition of National Mental Health Commission) 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) establishes 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 (Abolition of National Mental Health Commission) Rules 2024* (Amendment Rules) amends Schedule 1 of the PGPA Rule by repealing clause 15, which prescribes the National Mental Health Commission (NMHC) as a listed entity for the purposes of finance law as defined in the PGPA Act. The Amendment Rules will abolish the NMHC as a listed entity on 30 September 2024.

The Amendment Rules accord with the 2024-25 Budget decision to transfer the functions and funding of the NMHC to the Department of Health and Aged Care.

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**