

Financial Management and Accountability Amendment Regulations 1999 (No. 1) 1999 No. 44

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 44

Issued by the authority of the Minister for Finance and Administration

Financial Management and Accountability Act 1997

Financial Management and Accountability Amendment Regulations 1999 (No. 1)

The attached Statutory Rules make regulations under subsection 65(1) of the *Financial Management and Accountability Act 1997* (the Act) to amend the Financial Management and Accountability Regulations 1997. Section 58 of the Act provides that the application of the Act to an intelligence or security agency is subject to any modifications that are prescribed by the regulations. (Intelligence or security agency has the meaning given by section 85ZL of the *Crimes Act 1914*.) The amendments modify the application of the Act to the intelligence or security agencies.

The amendments insert a new Schedule 2 to the regulations setting out modifications of the Act in relation to activities of the agencies in the obtaining of intelligence, where disclosure, through the application of the Act, might prejudice those operations or the national interest. The modifications are triggered by a new definition of "operational money", to be inserted in section 5 of the Act. Operational money is public money that the Minister responsible for the Agency determines is needed to do things consistent with the Agency's charter, but is not money needed for staff and general administrative expenditure.

The modifications essentially replicate arrangements which applied under section 70D of the *Audit Act 1901* ("exempt accounts"). Those arrangements have been preserved until the making of these regulations under transitional arrangements following the repeal of the *Audit Act 1901* on 1 January 1998.

Details of the amendments are as follows:

Regulation 1

This names the regulations as the *Financial Management and Accountability Amendment Regulations 1998* in line with revised standards adopted by the Office of Legislative Drafting.

Regulation 2

Regulation 2 provides for the commencement on gazettal.

Regulation 3

This provides that Schedule 1 to these regulations amend the Financial Management and Accountability Regulations.

Schedule 1

[1]

This amends references in the Act to the current Schedule to "Schedule 1".

[2]

This amends existing regulation 9, to **read 9(1), to provide for** the addition of subregulation 9(2).

[3]

This amends existing regulation 9, which places conditions on the exercise of the authority to approve proposals to spend public money, so that those conditions do not apply to proposals to spend operational money (see Schedule 2, [1])

[4]

This inserts a new regulation 27 such that the application of the Act is subject to the modifications set out in Schedule 2.

[5]

This inserts a new Schedule 2.

Schedule 2

[1]

This inserts a new definition of "operational money" in section 5 of the Act. Operational money means public money that the Minister responsible for the Agency determines is needed to do things consistent with the Agency's charter, but does not include money needed for staff and general administrative expenditure. The expenditure of operational money will be directly related to the obtaining of intelligence, and disclosure of those transactions would be prejudicial to those operations and contrary to the national interest.

This definition will provide a trigger for the proposed modifications in the remainder of Schedule 2.

[2]

This modifies section 9 of the Act so that the word "Official" need not be included in the name of a bank account opened for the purposes of dealing with operational money.

[3] and [4]

This modifies section 11 of the Act to permit operational money to be deposited in other than an official account. This is a contingency provision to meet operational necessity, without the relevant official attracting a criminal penalty.

[5], [6], [7], [8], [9] and [10]

Section 49 of the Act requires Agency Chief Executives to prepare annual financial statements in accordance with the Finance Minister's Orders. This amendment modifies section 49 so that the annual financial statements for the Agency will be as agreed between the Finance Minister and the Minister responsible for the relevant Agency. This avoids the undesirable situation of the Finance Minister issuing Orders about the form of the financial statements of intelligence or security agencies, given that the Orders are public documents.

[11], [12] and [13]

Section 57 of the Act deals with arrangements for the audit of the annual financial statements of Agencies, including the inclusion of those statements, and the audit report thereon, in the Agency's annual report that is tabled in Parliament. These modify those requirements such that audit reports containing details of transaction of operational money need not be included in the Agency's annual report.