

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 108**

Issued by the authority of the Minister for Finance and Deregulation

*Financial Management and Accountability Act 1997*

*Financial Management and Accountability Amendment Regulations 2008  
(No. 2)*

The *Financial Management and Accountability Act 1997* (FMA Act) provides a framework of rules for the proper management of public money and public property by Chief Executives and officials of FMA Act agencies.

Subsection 65(1) of the FMA Act provides that the Governor-General may make regulations prescribing matters required or permitted by the FMA Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the FMA Act.

Section 5 of the FMA Act provides that for the purposes of the FMA Act, a prescribed Agency means a body, organisation or group of persons prescribed by the regulations for the purposes of that definition. Agencies are currently prescribed in Schedule 1 to the *Financial Management and Accountability Regulations 1997* (the Principal Regulations).

The amending Regulations make several administrative amendments to the Principal Regulations. Item 1 of Schedule 1 amends the reference to the former Minister for Justice, as the Government's ministry does not currently have such a Minister. Consequently, the amending Regulations would amend the Principal Regulations to replace the reference to the former Minister in regulation 19 with a reference to the Minister for Home Affairs. Additionally, to streamline current practices in relation to electronic investments, item 2 of Schedule 1 inserts a definition of "dematerialised securities" into regulation 22.

Section 31 of the FMA Act, which relates to receipts received by agencies, was amended by the *Financial Framework Legislation Amendment Act (No. 1) 2007* (FFLA Act). This section permits certain prescribed amounts which are received by an agency (such as receipts from the sale of goods, or from the provision of services) to be added to the agency's annual departmental appropriation, and then spent by the agency, without the further authorisation of Parliament. Under this new scheme, regulations rather than agreements give agencies authority to spend amounts equivalent to the prescribed receipts that they may collect. As a result, item 1 of Schedule 2 to the amending Regulations inserted two new regulations which prescribe Relevant Agency receipts that may be retained by agencies and used to increase their departmental appropriation.

Item 2 of Schedule 2 to the amending Regulations also prescribes Old Parliament House (OPH). An Order was made by the Governor-General in Council on 1 May 2008 to establish OPH as an Executive Agency, with the Order to commence on 1 July 2008. The amending Regulations prescribed OPH under the FMA Act. Further,

Schedule 2 to the amending Regulations re-ordered the prescribed agencies alphabetically.

Details on the Schedules to the amending Regulations are included in the Attachment.

The FMA Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The amending Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

In accordance with section 17 of the *Legislative Instruments Act 2003*, consultation was undertaken with the Department of Environment, Water, Heritage and the Arts and the Department of the Prime Minister and Cabinet in relation to prescribing OPH; with the Treasury in relation to the definition of “dematerialised securities”; and with all agencies in relation to “Relevant Agency Receipts”. External consultation did not occur due to the regulation only affecting government agencies.

Regulations 1, 2, 3, 4 and Schedule 1 to Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Regulation 5 and Schedule 2 commenced on 1 July 2008.

**ATTACHMENT**

**Details on Schedules to the *Financial Management and Accountability Amendment Regulations 2008 (No. 2)***

**Schedule 1**

**Item [1] - Guidelines on fraud control**

This item amends the references to the former Minister for Justice in regulation 19, to reflect the Government's current Ministry. As such the references in regulation 19 will be amended to the "Minister for Home Affairs."

**Item [2] – Investment of Public Money**

This item inserts a new regulation 22 in the Principal Regulations. The amended regulation inserts a definition of "dematerialised security" into regulation 22 in order to streamline current practices in relation to electronic investments. The definition refers to debt obligations registered on Austraclear, Australia's computerised cash and securities settlement and depository system for the Australian money market. Austraclear holds more than 95% of the total issuance of fixed income securities in the Australian financial markets and provides protection to all parties included in the clearing and settlement of securities.

**Item [3] – Renumbering items**

This item renumbers the item in Part 2 of Schedule 1.

**Schedule 2**

**Item [1] – Part 5, Regulation 15 and 16**

This item inserts a new Part 5, called "Relevant Agency Receipts," including regulations 15 and 16, into the Principal Regulations. Regulation 15 prescribes those kinds of receipts which are received by an agency (such as receipts from the sale of goods, or from the provision of services) which may be added to the agency's annual departmental appropriation, and then spent by the agency, without the further authorisation of Parliament.

Regulation 16 places a limit on agency receipts that may be retained and prescribes those types of receipts that are not able to be retained under regulation 15.

Consistent with the passage of the *Financial Framework Legislation Amendment Act (No.1) 2007*, these regulations replace over 80 net appropriation agreements from 1 July 2008, improving consistency and transparency.

**Item [2] – Schedule 1, Part 1, including the notes**

This item substituted a new list of prescribed agencies, with the agencies now listed in correct alphabetical order. The new list also includes Old Parliament House, an executive agency from 1 July 2008.