

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 3

Issued by the authority of the Minister for Finance and Deregulation

Financial Management and Accountability Act 1997

Financial Management and Accountability Amendment Regulations 2010 (No. 1)

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 FMA Regulations).

The Amendment Regulations removed item 113, the Australian Industrial Registry, item 116A, the Australian National Preventive Health Agency (ANPHA), and item 182, the Workplace Authority, from Schedule 1 to the FMA Regulations. This removes those agencies from the list of prescribed agencies in the FMA Regulations.

The AIR and the Workplace Authority were removed to reflect their abolition dates, as detailed in Schedule 18 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. Legislation establishing Fair Work Australia provides for a staged cessation of its predecessor bodies, which include the AIR and the Workplace Authority.

The *Financial Management and Accountability Amendment Regulations 2009 (No. 7)* prescribed ANPHA as an FMA Act agency from 1 January 2010, in anticipation of the Parliament passing the *Australian National Preventive Health Agency Bill 2009*, the primary legislation that would establish ANPHA. However, the Parliament did not consider the Bill prior to the end of the 2009 Parliamentary Sitting period. Accordingly, the Amendment Regulations retrospectively amend the FMA Regulations, to confirm that ANPHA was not established on 1 January 2010.

The Amendment Regulations retrospectively tie the removal of the references to the now non-existent bodies, to the date on which each reference lost any legal effect, to protect the public from being misled on the face of the legislation about the possible validity of the references.

The Amendment Regulations do not contravene subsection 12(2) of the *Legislative Instruments Act 2003*, as the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would *not* be affected so as to disadvantage that person, and, *no* liabilities would be imposed on a person (other than

the Commonwealth or an authority of the Commonwealth), in respect of anything done or omitted to be done before the date of registration.

Schedule 1 of the Amendment Regulations, relating to AIR and ANPHA, is taken to have commenced on 31 December 2009. Schedule 2, relating to the Workplace Authority, is taken to have commenced on 31 January 2010.

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

The Amendment 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 Health and Ageing and the Department of Education, Employment and Workplace Relations.