



# Financial Management and Accountability Amendment Regulations 2010 (No. 3)<sup>1</sup>

**Select Legislative Instrument 2010 No. 171**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Financial Management and Accountability Act 1997*.

Dated 29 June 2010

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

LINDSAY TANNER  
Minister for Finance and Deregulation

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**1 Name of Regulations**

These Regulations are the *Financial Management and Accountability Amendment Regulations 2010 (No. 3)*.

**2 Commencement**

These Regulations commence on 1 July 2010.

**3 Amendment of *Financial Management and Accountability Regulations 1997***

Schedule 1 amends the *Financial Management and Accountability Regulations 1997*.

**4 Transitional**

- (1) This regulation ceases to apply on 1 July 2011.
- (2) The amendments made by Schedule 1 apply in relation to any action, including the making of an instrument, done under the authority of:
  - (a) a provision or group of provisions of the old FMA Regulations that has been repealed; or
  - (b) a provision or group of provisions of the 2005 Orders that has been repealed; or
  - (c) a provision or group of provisions of the 2008 Orders that has been repealed;

as if the action had been done under the corresponding provision or group of provisions of the new FMA Regulations.

*Note* The actions include:

- (a) the making of delegations by a Chief Executive or the Finance Chief Executive; and
  - (b) the making of determinations by the Finance Chief Executive, specifying an activity of an Agency as a business operation.
- (3) If subregulation (2) applies, a reference in an instrument to a provision or group of provisions of:
    - (a) the old FMA Regulations; or

(b) the 2005 Orders; or

(c) the 2008 Orders;

is taken to include a reference to the corresponding provision or group of provisions of the new FMA Regulations.

(4) If:

(a) a provision or group of provisions of:

(i) the old FMA Regulations; or

(ii) the 2005 Orders;

has been repealed; and

(b) no provision or group of provisions of the new FMA Regulations corresponds to the repealed provision or group of provisions;

the amendments made by Schedule 1 apply in relation to any action, including the making of an instrument, done under the authority of the repealed provision or group of provisions as if the repeal had not occurred.

(5) In this regulation:

**2005 Orders** means the *Financial Management and Accountability Orders 2005* as in force immediately before 1 July 2010.

**2008 Orders** means the *Financial Management and Accountability Orders 2008* as in force immediately before 1 July 2010.

**instrument** includes a legislative instrument.

**new FMA Regulations** means the *Financial Management and Accountability Regulations 1997* as in force at any time on or after 1 July 2010.

**old FMA Regulations** means the *Financial Management and Accountability Regulations 1997* as in force immediately before 1 July 2010.

## Schedule 1 Amendments

(regulation 3)

**[1] Regulation 3, definition of *agency agreement***

*omit*

**[2] Regulation 3, after definition of *approver***

*insert*

***arrangement*** means an arrangement, including a contract or agreement, under which public money is payable or may become payable, other than:

- (a) an arrangement for:
  - (i) the engagement of an employee; or
  - (ii) the appointment of a person to a statutory office; or
  - (iii) the acquisition of particular property or services under a general arrangement with the supplier of those property or services, for the purposes of providing a statutory or employment entitlement; or
- (b) an international agreement governed by international law.

*Note* An arrangement includes an arrangement under which public money is payable or may become payable as a notional payment — see section 6 of the Act.

**[3] Regulation 3, definition of *Commonwealth contract***

*omit*

**[4] Regulation 3, definition of *spending proposal***

*substitute*

***spending proposal*** means a proposal that could lead to entering into an arrangement.

**[5] Regulation 3, definition of *Treasury Chief Executive***

*omit*

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**[6] Paragraph 3A (2) (k)**

*omit*

2003.

*insert*

2003;

**[7] After paragraph 3A (2) (k)**

*insert*

- (l) a payment of assistance for the purposes of Australia's international development assistance program, which is treated by the Commonwealth as official development assistance.

*Note* The Commonwealth has regard to the definition of *official development assistance* that the OECD has set out in its DAC Statistical Reporting Directives, available on the OECD's website.

**[8] Regulation 4, heading**

*substitute*

**4 Allocation of certain persons to Departments of State and Departments of the Parliament (Act s 5)**

**[9] Regulation 5, heading**

*substitute*

**5 Prescribed Agencies and Chief Executives of prescribed Agencies (Act s 5)**

**[10] Regulation 6**

*substitute*

**6 Chief Executive's Instructions (Act s 52)**

The Chief Executive of an Agency is authorised to give instructions (to be called *Chief Executive's Instructions*) to officials in that Agency on any matter necessary or convenient for carrying out or giving effect to the Act or these Regulations, including instructions relating to the matters mentioned in paragraphs 65 (2) (a) and (b) of the Act.

**[11] Regulations 7 and 7A**

*substitute*

**7 Commonwealth Procurement Guidelines (Act s 64)**

- (1) The Finance Minister may issue guidelines (to be called *Commonwealth Procurement Guidelines*) in relation to procurement, including:
  - (a) procurement policies and processes; and
  - (b) requirements regarding the publication of procurement details; and
  - (c) requirements regarding entering into procurement arrangements; and
  - (d) the disposal of public property.
- (2) An official performing duties in relation to procurement must act in accordance with the Commonwealth Procurement Guidelines.

**7A Commonwealth Grant Guidelines (Act s 64)**

- (1) The Finance Minister may issue guidelines (to be called *Commonwealth Grant Guidelines*) in relation to grants administration, including:
  - (a) grant policies and processes; and
  - (b) requirements regarding the publication of grant details; and

(c) requirements regarding entering into grants.

- (2) An official performing duties in relation to grants administration must act in accordance with the Commonwealth Grant Guidelines.

## **8 Entering into an arrangement**

A person must not enter into an arrangement unless:

- (a) a spending proposal has been approved under regulation 9;  
and  
(b) if required, written agreement has been given under regulation 10.

*Note 1* If an agreement under regulation 10 is required, the agreement does not have to be given before the proposal is approved under regulation 9. A Chief Executive may require, for example in the Chief Executive's Instructions, that these processes be done in a particular order.

*Note 2* A Chief Executive has the power to enter into arrangements, on behalf of the Commonwealth, in relation to the affairs of the Agency. Some Chief Executives have delegated this power under section 53 of the Act — see section 44 of the Act.

### **[12] Regulation 9, heading**

*substitute*

## **9 Approval of spending proposals**

### **[13] Regulation 9**

*omit*

after reasonable

*insert*

after making reasonable

### **[14] Regulation 9, note**

*substitute*

*Note 1* When this note commenced, subsection 44 (3) of the Act defined **proper use** to mean efficient, effective and ethical use that is not inconsistent with the policies of the Commonwealth.

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*Note 2* A spending proposal may be approved at any time prior to entering into the arrangement, and may be approved well before the arrangement is entered into. At the time the spending proposal is approved, the expectation is that an arrangement or arrangements will be entered into, consistent with the terms of the spending proposal.

*Note 3* Approvals may be given subject to conditions.

**[15] Regulations 10 and 11**

*substitute*

**10 Arrangements beyond available appropriation**

If:

- (a) a person proposes to enter into an arrangement; and
- (b) the relevant Agency has an insufficient appropriation of money, under the provisions of an existing law or a proposed law that is before Parliament, to meet expenditure that might be payable under the arrangement;

the person must not enter into the arrangement unless the Finance Minister has agreed, in writing, to the expenditure that might become payable under the arrangement.

*Note* In some circumstances the Finance Minister's agreement will not be required — see regulation 10A.

**10A Contingent liabilities**

(1) If:

- (a) an arrangement consists of, or includes, a contingent liability in relation to an event; and
- (b) the person proposing to enter the arrangement is satisfied, after making reasonable inquiries, that:
  - (i) the likelihood of the event occurring is remote; and
  - (ii) the most probable expenditure that would need to be made in accordance with the arrangement, if the event occurred, would not be material;

regulation 10 does not apply to that part of the arrangement.

- (2) For subparagraph (1)(b)(i), the likelihood of an event occurring is *remote* if there is a probability of less than 5% that it will occur.



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- (3) For subparagraph (1) (b) (ii), expenditure is *material* if it is at least:
- (a) an amount specified by the Finance Minister in a legislative instrument for this paragraph; or
  - (b) if the Finance Minister has not made a legislative instrument under paragraph (a) that applies to the Agency — \$5 000 000.

*Note* The Finance Minister may specify an amount for a particular Agency.

## **11 Entering into loan guarantees**

- (1) Despite regulation 10A, a person must not give a loan guarantee on behalf of the Commonwealth unless:
- (a) a spending proposal for the guarantee has been approved under regulation 9; and
  - (b) if required, written agreement has been given under regulation 10; and
  - (c) the Finance Minister has, in writing, approved the giving of the guarantee.
- (2) In subregulation (1):
- loan guarantee* means a guarantee of the due payment of one or more of the following:
- (a) the whole of the principal of a loan;
  - (b) the whole of the interest payable on a loan;
  - (c) a part of the principal of a loan;
  - (d) a part of the interest payable on a loan.

## **[16] Regulations 13 and 14**

*omit*

## **[17] Regulation 15, heading**

*substitute*

## **15 Relevant Agency receipts (Act s 31)**

**[18] Regulation 16A**

*substitute*

**16A Guidelines on fraud (Act s 64)**

- (1) The Minister for Home Affairs may issue guidelines (to be called *Fraud Control Guidelines*) about the control of fraud, dealing with fraud risk assessments, the preparation and implementation of fraud control plans and reporting of fraud.
- (2) An official performing duties in relation to the control and reporting of fraud must act in accordance with the Fraud Control Guidelines.

**[19] Regulation 17, heading**

*substitute*

**17 Prompt banking of received money (Act s 10)**

**[20] Regulation 18, heading**

*substitute*

**18 Public money in non-bankable currency (Act s 10)**

**[21] Regulation 19, heading**

*substitute*

**19 Withdrawals from official accounts and internal transfers between accounts (Act s 13)**

**[22] Regulation 20, heading**

*substitute*

**20 Custody of securities (Act s 40)**

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**[23] Regulation 21, heading**

*substitute*

**21 Credit cards (Act s 38, s 60)**

**[24] Regulation 22, heading**

*substitute*

**22 Investment of public money (Act s 39)**

**[25] Paragraph 22 (1) (b)**

*omit*

Minister

*insert*

Finance Minister

**[26] After subregulation 22 (1)**

*insert*

(1A) The Treasurer may delegate to an official, by signed instrument, the Treasurer's powers or functions under subregulation (1).

(1B) In exercising powers and functions under a delegation, the official must comply with any directions of the Treasurer.

**[27] Regulation 22A, heading**

*substitute*

**22A Preparation of annual financial statements by Finance Minister (Act s 55)**

**[28] Regulation 22B, heading**

*substitute*

**22B Audit of Finance Minister's annual financial statements (Act s 56)**

**[29] Regulation 22C, heading**

*substitute*

**22C Terms of reference of audit committee (Act s 46)**

**[30] Part 8, heading**

*substitute*

**Part 8 Found property**

**[31] Regulation 23, heading**

*substitute*

**23 Disposal of property found on Commonwealth premises etc (Act s 41)**

**[32] After regulation 23**

*insert*

**Part 8A Delegations and instruments**

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**[33] Regulations 24 to 26**

*substitute*

**24 Finance Minister may delegate powers**

- (1) The Finance Minister may delegate to an official, by written instrument, all of the Finance Minister's powers or functions under these Regulations (other than this power of delegation).
- (2) If a delegation by the Finance Minister relates to the Finance Minister's powers or functions under regulation 9 or 10, the Finance Minister may also delegate the power of delegation under subregulation (1) in relation to those powers or functions.
- (3) In exercising powers and functions under a delegation, the official must comply with any directions of the Finance Minister.
- (4) This regulation does not, by implication, limit:
  - (a) any other power of the Finance Minister to authorise a person to act on behalf of the Finance Minister; or
  - (b) any other power of an official to authorise a person to act on behalf of the official.

**26 Chief Executive may delegate powers**

- (1) The Chief Executive of an Agency may delegate to an official, by written instrument:
  - (a) any of the Chief Executive's powers or functions under these Regulations (including this power of delegation); or
  - (b) a power or function that has been delegated to the Chief Executive by the Finance Minister or the Finance Chief Executive.
- (2) In exercising powers and functions under a delegation, the official must comply with any directions of the Chief Executive.

- (3) This regulation does not, by implication, limit:
- (a) any other power of a Chief Executive to authorise a person to act on behalf of the Chief Executive; or
  - (b) any other power of an official to authorise a person to act on behalf of the official.

**26A Operation of instruments under the Regulations**

- (1) An instrument made under these Regulations must not be inconsistent with:
- (a) the Act; or
  - (b) these Regulations; or
  - (c) the FMA Orders.
- (2) The instruments to which subregulation (1) applies include the instruments mentioned in the following table.

Item	Instrument
1	Chief Executive's Instructions
2	Commonwealth Procurement Guidelines
3	Commonwealth Grant Guidelines
4	Fraud Control Guidelines
5	A direction to a delegate

**[34] Regulation 27, heading**

*substitute*

**27 Modification of Act for intelligence or security agency (Act s 58)**

**[35] Subregulation 28 (3), note**

*omit*

Those Orders allow for special arrangements to be made for the agency.

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- [36] Regulation 28A, heading**  
*substitute*
- 28A Non-application of relevant regulations to operational money (Act s 58)**
- [37] Subregulation 28A (1)**  
*omit*  
Subregulations 7 (4), 7A (4) and 16A (3)  
*insert*  
Subregulations 7 (2), 7A (2) and 16A (2)
- [38] Regulation 29, heading**  
*substitute*
- 29 Act of grace payments and waiver of debts (Act s 33, s 34)**
- [39] Schedule 1, item 179, column 2, paragraph (c)**  
*omit*  
employed under other arrangements  
*insert*  
engaged
- [40] Schedule 1, item 201, column 2, paragraph (c)**  
*omit*  
employed under other arrangements  
*insert*  
engaged

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.