EXPLANATORY STATEMENT

Financial Management and Accountability Act 1997, Section 31 Agreements for "Net Appropriations" Variation

The instrument to which this explanatory statement relates

This explanatory statement relates to an instrument, made under section 31 of the *Financial Management and Accountability Act 1997* (FMA Act), entitled, "Financial Management and Accountability Net Appropriation Agreement Variation 2005" (the instrument).

The legislative authority under which the instrument is made

Section 31 of the FMA Act enables the Minister for Finance and Administration (the Finance Minister) to enter into agreements for the purposes of items in Appropriation Acts that are marked "net appropriation" (net appropriation agreement).

Section 31 of the FMA Act, together with certain standard provisions of the annual Appropriation Acts, for example section 10 of *Appropriation Act (No.1) 2005-2006*, allows appropriation items to be increased by amounts received by an agency for items specified in the agreement.

Subsection 31(3) of the FMA Act provides that an agreement may be for any period, including a period longer than a financial year. An agreement need not relate to a particular Appropriation Act or Acts. Generally agreements continue until circumstances require their renewal.

Subsection 31(4) of the FMA Act enables the Finance Minister to cancel or vary an agreement at any time without the consent of the other party.

Purpose and operation of the instrument

The instrument varies the operation of current net appropriation agreements. The variation effected by the instrument allows current net appropriation agreements to capture previous receipts, where these were received by agencies that were relying on net appropriation agreements later found to be legally ineffective because of an administrative defect.

The instrument commences on 30 June 2005 and will cover receipts up to the end of that day. It does not authorise past spending by agencies in reliance on defective agreements, and does not correct administrative defects that rendered relevant net appropriation agreements legally ineffective.

The effect of the instrument will be to provide agencies with an appropriation authority to spend amounts equivalent to receipts received in purported reliance on an ineffective net appropriation agreement. The instrument authorises only future spending of past receipts. The instrument will ensure that agencies are placed in the position they would have been in, had all amounts been credited to the agency pursuant to a valid net appropriation agreement, during the period concerned.

The instrument does not apply to the Australian National Audit Office (ANAO). Instead, the ANAO has in place a revised net appropriation agreement, incorporating provisions identical to those inserted by the instrument into other net appropriation agreements. The ANAO's net appropriation agreement was made on 29 June 2005.

Consultation

The instrument affects all FMA Act agencies having a current net appropriation agreement, other than the Australian National Audit Office. The Department of Finance and Administration (Finance) has consulted with all agencies regarding the effect of this instrument.

The Australian Government Solicitor was consulted for technical advice on the instrument.

As the instrument is for internal machinery of government purposes only, no consultation, beyond that identified above, was considered necessary (see sections 17 and 18 of the *Legislative Instruments Act 2003*).

Additional Information

Agreements made under section 31 of the FMA Act are not subject to the parliamentary disallowance and sunsetting provisions of the *Legislative Instruments Act 2003*: see item 19 in subsection 44(2) and item 17 in subsection 54(2) of the *Legislative Instruments Act 2003*.