

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 69

Issued by the Authority of the Minister for Finance and Deregulation

Commonwealth Authorities and Companies Act 1997

Commonwealth Authorities and Companies Amendment Regulations 2008 (No. 1)

The *Commonwealth Authorities and Companies Act 1997* (the CAC Act) contains reporting, accountability and other rules for Commonwealth authorities and Commonwealth companies.

Subsection 49(1) of the CAC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the CAC Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the CAC Act.

The Regulations make two minor amendments to the *Commonwealth Authorities and Companies Regulations 1997* (the Principal Regulations) to introduce the title 'Finance Minister' and update a list consequential to a body corporate ceasing to be a wholly-owned Commonwealth company for the purposes of the CAC Act. The Regulations also prescribe the composition of audit committees for Commonwealth authorities and wholly-owned Commonwealth companies (CAC Act bodies).

An overview of the Regulations is included at Attachment A and further details of the Regulations are at Attachment B.

Legislative Instruments Act 2003

The 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*, the Department of Finance and Deregulation has consulted with the Department of Health and Ageing on the amendment contained in item 2 of Schedule 1 of the Regulations.

Departments of State, Commonwealth authorities and wholly-owned Commonwealth companies were consulted in the development of the amendments contained in Schedule 2 of the Regulations.

Best Practice Regulation Preliminary Assessment

A Best Practice Regulation Preliminary Assessment was undertaken in accordance with the guidance issued by the Office of Best Practice Regulation. This assessment indicated that a regulation impact statement was not required, as the Regulations only affect Commonwealth authorities and wholly-owned Commonwealth companies under the CAC Act, and do not affect the private sector.

Commencement

Regulations 1 to 3 and Schedule 1 commence on the day after the Regulations are registered on the Federal Register of Legislative Instruments and the amendments in Regulation 4 and Schedule 2 (which include the changes relating to audit committees) commence on 1 January 2009. The latter commencement date is intended to provide sufficient time for CAC Act bodies to prepare for the commencement of the audit committee requirements, and if necessary, apply for an exemption, in full or in part, prior to regulation 4 and Schedule 2 commencing.

ATTACHMENT A

Overview of the *Commonwealth Authorities and Companies Amendment Regulations 2008 (No. 1)*

Changes to the Minister's title

On 3 December 2007, the office of 'Minister for Finance and Administration' ceased to exist and the office of 'Minister for Finance and Deregulation' was created.

The pre-existing subregulation 4A(1) of the *Commonwealth Authorities and Companies Regulations 1997* (the Principal Regulations) refers to the Minister for Finance and Administration as the Minister responsible for Commonwealth companies listed in the table in subregulation 4A(1).

The Regulations replace this reference in subregulation 4A(1) with the term 'Finance Minister'. 'Finance Minister' is defined in section 5 of the CAC Act as "the Minister who administers this Act". This term is used to avoid the need for future amendments if the title of the Minister changes again.

The Regulations clarify the Principal Regulations, but were not technically required. This is because recent amendments to the *Acts Interpretation (Substituted References — Section 19B) Order 1997* (the Order) have the effect of substituting all references to the 'Minister for Finance and Administration' with a reference to the 'Minister for Finance and Deregulation' in all Acts and instruments made under Acts. However, this amendment directly amends the Principal Regulations, thereby removing the need for readers to refer to the Order.

Removing a wholly-owned Commonwealth company

Section 47A of the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) provides that the Finance Minister may, in writing, give directions to the directors of a wholly-owned Commonwealth company specified in the Principal Regulations on matters related to the procurement of property or services.

Subregulation 9(1) of the Principal Regulations provides that the wholly-owned Commonwealth companies listed in Part 2 of Schedule 1 to the Principal Regulations are specified for the purposes of section 47A of the CAC Act.

However, the National Institute of Clinical Studies Ltd (NICSL) ceased to be a wholly-owned Commonwealth company upon its deregistration on 28 November 2007. Accordingly, the Regulations in Schedule 2 amend the Principal Regulations to remove NICSL from Part 2 of Schedule 1.

Prescribing the Composition of Audit Committees

Subsections 32(2) and 44(2) of the CAC Act provide that if regulations state how an audit committee for a Commonwealth authority or a wholly-owned Commonwealth company, it must be constituted in accordance with the regulations.

The new regulations in Schedule 2 prescribe base requirements for the composition of audit committees for Commonwealth authorities and wholly-owned Commonwealth companies.

It is intended that if a Commonwealth authority or wholly-owned Commonwealth company has difficulty in meeting the audit committee requirements contained in Schedule 2 of the Regulations, the body may apply to the Finance Minister for an exemption from the requirements.

If the Finance Minister supports an exemption in full or part, the Finance Minister will request that the Governor-General add a Schedule to the Principal Regulations, which would reflect the level of exemption for the Commonwealth authority or wholly-owned Commonwealth company from the audit committee requirements.

ATTACHMENT B

Details of the Commonwealth Authorities and Companies Amendment Regulations 2008 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Commonwealth Authorities and Companies Amendment Regulations 2008 (No. 1)* (the Regulations).

Regulation 2 – Commencement

This regulation provides for the commencement of the Regulations as follows:

- regulations 1 to 3 and Schedule 1 commence on the day after the Regulations are registered on the Federal Register of Legislative Instruments; and
- regulation 4 and Schedule 2 commence on 1 January 2009.

Regulation 3 – Amendment of *Commonwealth Authorities and Companies Regulations 1997*

This regulation provides that Schedule 1 amends the *Commonwealth Authorities and Companies Regulations 1997* (the Principal Regulations).

Regulation 4 – Amendment of *Commonwealth Authorities and Companies Regulations 1997*

This regulation provides that Schedule 2 amends the Principal Regulations.

Schedule 1

Item [1] – Schedule 1

This amendment reflects that the office of ‘Minister for Finance and Administration’ ceased to exist on 3 December 2008 and that the office of ‘Minister for Finance and Deregulation’ has been created.

The Regulations amend subregulation 4A(1) of the Principal Regulations, omitting the ‘Minister for Finance and Administration’ and instead making reference to the ‘Finance Minister’, which is defined in section 5 of the *Commonwealth Authorities and Companies Act 1997* (the CAC Act).

Item [2] – Schedule 1

This amendment updates the table in Part 2 of Schedule 1 of the Principal Regulations, which is a table of wholly-owned Commonwealth companies subject to government procurement requirements.

The National Institute of Clinical Studies Ltd (NICSL) ceased to be a wholly-owned Commonwealth company on 28 November 2007. Accordingly, the Regulations remove NICSL.

Schedule 2

Item [1] – Schedule 2

This amendment inserts new regulations 6A and 6B to prescribe how audit committees for Commonwealth authorities and wholly-owned Commonwealth companies are to be constituted.

Sections 32 and 44 of the CAC Act provide that all Commonwealth authorities and wholly-owned Commonwealth companies must establish and maintain an audit committee.

Subsections 32(2) and 44(2) provide that if regulations state how the audit committee is to be constituted, the committee must be constituted in accordance with the regulations.

Under the Regulations:

- the chair of the committee must not be the chair or an executive director of the body;
- the committee must have at least three members;
- the committee may include only one member who can be an executive director of the body;
- no senior managers or other employees of the body, other than a single executive director, may be members of the committee;
- the committee can have members who are not directors of the authority; and
- the quorum for meetings of the committee is the greater of two persons or a majority of the committee.