

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 135**

Issued by the authority of the Minister for Finance and Deregulation

*Financial Management and Accountability Act 1997*

*Financial Management and Accountability Amendment Regulations 2009  
(No. 5)*

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 prescribed in Schedule 1 to the *Financial Management and Accountability Regulations 1997* (the Principal Regulations).

A number of legislative changes and ministerial decisions required the insertion, deletion and renaming of several agencies for the purposes of the FMA Act. The Amendment Regulations amended the Principal Regulations to reflect the establishment, abolition or renaming of certain prescribed agencies in the Principal Regulations.

Further details on the Amendment Regulations are set out in the [Attachment](#).

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

Regulations 1 to 3 and Schedule 1 commenced on 1 July 2009, and regulation 4 and Schedule 2 commenced on 31 July 2009.

**ATTACHMENT**

**Details on the *Financial Management and Accountability Amendment Regulations 2009 (No. 5)***

Regulation 1 sets out the name of the Regulations.

Regulation 2 states that regulations 1 to 3 and Schedule 1 commences on 1 July 2009, and that regulation 4 and Schedule 2 commences on 31 July 2009.

Regulations 3 and 4 state that Schedules 1 and 2 amend the *Financial Management and Accountability Regulations 1997* (the Principal Regulations).

A number of legislative changes and ministerial decisions require the insertion and deletion of a number of agencies from the Principal Regulations for the purposes of the FMA Act.

The *Customs Legislation Amendment (Name Change) Act 2009* amended the *Customs Administration Act 1985* to rename the Australian Customs and Border Protection Service (Customs). **Item [1]** of Schedule 1 of the Amendment Regulations amends the Principal Regulations to give effect to the updated name in regulation 29. The description of Customs as a prescribed agency has already been updated in Schedule 1, for Budget purposes.

**Items [2], [4] and [5]** of Schedule 1 of the Amendment Regulations amend the Principal Regulations to prescribe as agencies under the FMA Act:

- the Australian Transport Safety Bureau;
- Fair Work Australia; and
- the Office of the Fair Work Ombudsman.

These amendments commenced on 1 July 2009.

The Australian Transport Safety Bureau was established as a statutory authority by the *Transport Safety Investigation Amendment Act 2009*, which inserted a new Part 2, Division 1 into the *Transport Safety Investigation Act 2003*.

Fair Work Australia was established by section 575 of the *Fair Work Act 2009*.

The Office of the Fair Work Ombudsman was established by section 696 of the *Fair Work Act 2009*.

**Items [3] and [6]** of Schedule 1 and **Item [1]** of Schedule 2 of the Amendment Regulations also amended the Principal Regulations to remove as agencies under the FMA Act:

- Biosecurity Australia;

- the Dairy Adjustment Authority;
- the Office of the Workplace Ombudsman; and
- the Australian Fair Pay Commission Secretariat.

The removal of Biosecurity Australia (BA), the Dairy Adjustment Authority (DAA), and the Office of the Workplace Ombudsman (OWO) took effect from 1 July 2009. The removal of the Australian Fair Pay Commission (AFPC) Secretariat took effect from 31 July 2009.

BA was prescribed in Schedule 1 to the Principal Regulations in 2004. The functions performed by BA are now performed by the Department of Agriculture, Fisheries and Forestry, following the removal of BA from the Principal Regulations.

The DAA was prescribed in Schedule 1 to the Principal Regulations in July 2000. It was created to make eligibility determinations and administer assistance payments to farmers as part of the general deregulation of the dairy industry. The *Dairy Adjustment Levy Termination Act 2008* amended the *Dairy Produce Act 1986* to provide for closing down the DAA. On 19 December 2008, by an instrument titled *Dairy Produce (Closure of Dairy Adjustment Authority) Declaration 2008*, the Minister for Agriculture, Fisheries and Forestry declared that the DAA would cease to exist after 31 December 2008.

The OWO was established by section 166A of the *Workplace Relations Act 1996*. That section is to be repealed on the commencement of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

The AFPC Secretariat was established by section 46 of the *Workplace Relations Act 1996*. That section was repealed on the commencement of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

**Item [7]** of the Amendment Regulations also inserted the Australian Crime Commission into Schedule 3 of the Principal Regulations, with effect from 1 July 2009. This prescribed the Australian Crime Commission for the purposes of section 58 of the FMA Act, thereby modifying the application of the FMA Act to it, as a prescribed law enforcement agency for operational money.