

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 14

Subject - *Financial Management and Accountability Act 1997*
Commonwealth Authorities and Companies Act 1997

Financial Framework Legislation Amendment
Regulations 2011 (No. 1)

The *Financial Framework Legislation Amendment Act 2010* (FFLA Act) amended the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act) for governance and related purposes.

The 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. The CAC Act contains reporting, accountability and other rules for Commonwealth authorities and Commonwealth companies.

Subsection 65(1) of the FMA Act and subsection 49(1) of the CAC Act provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The Regulations amend the *Financial Management and Accountability Regulations 1997* (FMA Regulations) and the *Commonwealth Authorities and Companies Regulations 1997* (CAC Regulations) to support the changes made to the FMA Act and the CAC Act by the FFLA Act.

The Regulations amend the FMA Regulations to:

- (a) amend items in Schedule 1 to the FMA Regulations to account for changes in referenced legislation and to provide consistent style;
- (b) detail requirements for reports to Parliament on the Commonwealth's involvement in the formation or otherwise of companies, consequent on new section 39A of the FMA Act, previously contained in section 45 of the CAC Act; and
- (c) prescribe the Australian Law Reform Commission and the Australian Institute of Criminology in Schedule 1 to the FMA Regulations.

The Regulations also amend the CAC Regulations to:

- (a) amend regulation 5 to reflect the name change of the Wine Australia Corporation in its designation as a prescribed statutory marketing agency;
- (b) remove requirements for reports to Parliament on the Commonwealth's involvement in the formation or otherwise of companies, consequent on repealed section 45 of the CAC Act; and
- (c) remove the Australian Law Reform Commission (ALRC) and the Australian Institute of Criminology (AIC) from Schedule 1 to the CAC Regulations.

Further details of the amendments are set out in the Attachment.

Consistent with section 17 of the *Legislative Instruments Act 2003*, consultation was undertaken with the relevant Ministers, Departments of State, FMA Act Agencies and Commonwealth authorities on the FFLA Act, which then resulted in these

changes to the FMA Regulations and the CAC Regulations. Specifically, Departments were consulted on the use of a template to describe involvement in companies and the Attorney-General's Department, with ALRC and AIC, were consulted on the description of their prescribed agency status.

The Office of Best Practice Regulation also advised that a Regulatory Impact Statement is not necessary as the amendments are likely to have no or low regulatory impacts on business and individuals or the economy.

Neither the FMA Act nor the CAC Act specify conditions that need to be met before the power to make the Regulations may be exercised.

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

The Regulations commence on the day after they are registered, with respect to listed items (a) above; on 1 March 2011, with respect to listed items (b) above; and on 1 July 2011, with respect to listed items (c) above.

The Minute recommended that Regulations be made in the form proposed.

<u>Authority:</u>	Subsection 65(1) of the <i>Financial Management and Accountability Act 1997</i>
	Subsection 49(1) of the <i>Commonwealth Authorities and Companies Act 1997</i>

**DETAILS ON THE *FINANCIAL FRAMEWORK LEGISLATION*
*AMENDMENT REGULATIONS 2011 (NO. 1)***

Regulation 1 sets out the name of the Regulations, as made under section 65 of the *Financial Management and Accountability Act 1997* (FMA Act) and under section 49 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

Regulation 2 states that:

- (a) regulations 1 to 4, with Schedules 1 and 2, commence on the day after registration of the Regulations;
- (b) regulations 5 and 6, with Schedules 3 and 4, commence on the date of proclamation of Schedule 5 to the *Financial Framework Legislation Amendment Act 2010* (FFLA Act), which was proclaimed, by the Governor-General-in-Council on 9 February 2011, to be 1 March 2011; and
- (c) regulations 7 and 8, with Schedules 5 and 6, commence 1 July 2011.

Regulation 3 states that Schedule 1 amends the *Financial Management and Accountability Regulations 1997* (FMA Regulations).

Regulation 4 states that Schedule 2 amends the *Commonwealth Authorities and Companies Regulations 1997* (CAC Regulations).

Regulation 5 states that Schedule 3 amends the FMA Regulations.

Regulation 6 states that Schedule 4 amends the CAC Regulations.

Regulation 7 states that Schedule 5 amends the FMA Regulations.

Regulation 8 states that Schedule 6 amends the CAC Regulations.

Schedule 1

Item [1] – This item inserts the acronym “(ASIC)”, after the words “Australian Investment and Insurance Commission, in item 124 of Schedule 1 to the FMA Regulations to conform with the presentation style of the Schedule.

Item [2] – This item updates the legislation, mentioned in item 161 of Schedule 1 to the FMA Regulations, to reflect that it is the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* that continues in existence the National Offshore Petroleum Safety Authority.

Item [3] – This item makes further amendments to several items in Schedule 1 to the FMA Regulations to reflect consistency of presentation style and the renaming of the *Trade Practices Act 1974* to the *Competition and Consumer Act 2010*.

Schedule 2

Item [1] – This item changes the name of the body prescribed by regulation 5 of the CAC Regulations, as a Statutory Marketing Authority, from the Australian Wine and Brandy Corporation to the Wine Australia Corporation, reflecting amendments

to the *Australian Wine and Brandy Corporation Act 1980* changing the name of the corporation.

Schedule 3

Item [1] – This item inserts a new regulation 22AA, consequent on new section 39A of the FMA Act, as amended by the FFLA Act, requiring Ministers to notify Parliament of the involvement of the Commonwealth, or prescribed bodies, in companies. “Prescribed body” is defined, in the FMA Act, as a “body corporate that is, or is included in, an Agency.” Section 39A of the FMA Act replaces repealed section 45 of the CAC Act, which previously contained these reporting requirements.

The regulation sets out requirements for the notice of an event mentioned in section 39A of the FMA Act. Particulars to be included are the name and portfolio of the Minister responsible for the event, the nature of the event and the name of the company involved in the event. Company details that would be required relate to the company’s location, incorporation domestically or overseas and its legal structure. Also, if there are ultimate holding companies, either before or after the event, their names and their incorporation identifiers for the relevant jurisdiction are required.

The notice also requires a short statement about the event, describing the reasons for the event and whether the Commonwealth will be under an obligation or will have a liability due to the event. The statement further requires information as to whether the Commonwealth has or will control, or will relinquish control, of the company. Additionally the dollar value of any consideration paid or received by the Commonwealth in relation to the event is required, along with notification of any other areas where the Commonwealth’s interests have been affected by the event.

The regulation also incorporates the meaning of certain terms described in section 9 of the *Corporations Act 2001*.

Item [2] – This item inserts a new Schedule 1A to the FMA Regulations, which provides the template form for the notice required under new section 39A of the FMA Act. This was not provided previously, when the reporting requirements were contained in the repealed section 45 of the CAC Act and consequent CAC Regulations.

Schedule 4

Item [1] – This item repeals regulation 7 of the CAC Regulations which was consequent on section 45 of the CAC, that has been repealed by Schedule 5 to the FFLA Act.

Item [2] – This item repeals regulation 8 of the CAC Regulations which was consequent on section 45 of the CAC, that has been repealed by Schedule 5 to the FFLA Act.

Schedule 5

Item [1] – This item inserts new item 114AA, in Schedule 1 to the FMA Regulations, to make the Australian Institute of Criminology (AIC) a prescribed Agency under section 5 of the FMA Act. Schedule 7 to the FFLA Act

amended the *Criminology Research Act 1971* to transfer AIC from governance under the CAC Act to the FMA Act, effective 1 July 2011.

Item [2] – This item inserts new item 115A, in Schedule 1 to the FMA Regulations, to make the Australian Law Reform Commission (ALRC) a prescribed Agency under section 5 of the FMA Act. Schedule 2 to the FFLA Act amended the *Australian Law Reform Commission Act 1996* to transfer AIC from governance under the CAC Act to the FMA Act, effective 1 July 2011.

Schedule 6

Item [1] – This item omits item 101 from Schedule 1 to the CAC Regulations, removing AIC from the list of Commonwealth authorities required to comply with government procurement requirements, as of 1 July 2011.

Item [2] – This item omits item 104 from Schedule 1 to the CAC Regulations, removing ALRC from the list of Commonwealth authorities required to comply with government procurement requirements, as of 1 July 2011.