

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 259

Subject - *Financial Management and Accountability Act 1997*

*Financial Management and Accountability Amendment
Regulations 2011 (No. 6)*

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

The Regulations amend Schedule 1 to the Principal Regulations to prescribe the National Mental Health Commission (NMHC), the Independent Hospital Pricing Authority (IHPA) and the National Health Performance Authority (NHPA) as FMA Act Agencies under section 5 of the FMA Act. Regulation 22CA is removed as it made transitional arrangements, no longer relevant, for audit committees in former FMA Act Agencies, Centrelink and Medicare, now part of the Department of Human Services.

The Governor-General has made an Executive Order to establish NMHC, as an Executive Agency under the *Public Service Act 1999* (PS Act), on 1 January 2012.

The date of commencement of Schedule 1 to the *National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011*, in which IHPA was established as a Statutory Agency under the PS Act, was proclaimed by the Governor-General as 15 December 2011.

Section 102 of the *National Health Reform Act 2011* established NHPA as a Statutory Agency under the PS Act, commencing by proclamation on 21 October 2011.

The Regulations reflect that NMHC is an Executive Agency under the PS Act, whereas IHPA and NHPA are Statutory Agencies under the PS Act, as indicated in Notes A and B to Schedule 1 of the FMA Regulations respectively.

Consistent with section 17 of the *Legislative Instruments Act 2003*, consultation has taken place with the Department of the Prime Minister and Cabinet (PM&C), because it is responsible for advising on the creation of Executive Agencies and because the NMHC is within the PM&C portfolio. Consultation has also taken place with the Department of Health

and Ageing with respect to IHPA and NHPA. Also, the primary legislation establishing IHPA and NHPA was developed in consultation with State and Territory governments as part of the National Health Reform Agreement agreed by the Council of Australian Governments in August 2011.

The Office of Best Practice Regulation 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.

The FMA Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

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

The Regulations commence, with respect to NHPA and Regulation 22CA, on the day after they are registered on the Federal Register of Legislative Instruments. With respect to IHPA, commencement is concurrent with the commencement of the *National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011* on 15 December 2011. With respect to NMHC, commencement is 1 January 2012.

Authority: Subsection 65(1) of the *Financial Management and Accountability Act 1997*.