

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 164

Subject - *Financial Management and Accountability Act 1997*

Financial Management and Accountability Amendment Regulation 2012 (No. 4)

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 that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The Regulation amends the *Financial Management and Accountability Regulations 1997* (Principal Regulations) to prescribe or amend some government programs in Schedule 1AA.

On 20 June 2012, in the case of *Williams v Commonwealth* [2012] HCA 23, a majority of the High Court held that legislative authority is necessary for certain classes of public expenditure, in addition to an appropriation Act. Many such arrangements or grants made or administered by the Commonwealth are already authorised by legislation. In relation to other arrangements or grants which may require legislative authority, the *Financial Framework Legislation Amendment Act (No.3) 2012* (FFLA Act No.3), which came into force on 28 June 2012, provided legislative authority in section 32B of the FMA Act for the Commonwealth to make, vary or administer the arrangements or grants specified in, or for the purpose of programs specified in, Schedule 1AA of the Principal Regulations.

Further details on the Regulation are set out in the Attachment.

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

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulation commences on the day after the Regulation is registered on the Federal Register of Legislative Instruments.

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003*, consultation has taken place with the Chief Financial Officer areas of all Departments. The Australian Government Solicitor also provided advice on each of the amendments in the Regulation.

A regulation impact statement is not required as the Regulation only applies to FMA Act Agencies, and does not affect the private sector.

Statement of Compatibility with Human Rights

The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Human Rights Act).

The amendments do not engage any of the rights or freedoms outlined in the Human Rights Act, such as encompassed in the *International Covenant on Civil and Political Rights* (ICCPR). The amendments do not limit any human rights, nor establish any new offences or penalties.

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

ATTACHMENT**Details of the *Financial Management and Accountability Amendment Regulation 2012 (No. 4)*****Section 1 – Name of Regulation**

This section provides that the title of the Regulation will be the *Financial Management and Accountability Amendment Regulation 2012 (No. 4)*, as made under section 65 of the *Financial Management and Accountability Act 1997* (FMA Act).

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Amendment of the *Financial Management and Accountability Regulations 1997*

This section provides that the *Financial Management and Accountability Regulations 1997* (Principal Regulations) is amended as set out in Schedule 1.

Schedule 1– Amendments

Schedule 1 amends Schedule 1AA of the Principal Regulations to clarify some items and address some omissions from this Schedule when it was made on 28 June 2012. Schedule 1 also makes some technical amendments to Schedule 1AA of the Principal Regulations.

Item [1] – Schedule 1AA, Part 3

This item makes a minor technical amendment to the numbering of an item in Part 3 of Schedule 1AA so that the numbering in Part 3 reflects the numbering of items for Agencies in Part 4 of Schedule 1AA.

Item [2] – Schedule 1AA, Part 4, item 407.002

This item amends the program description for a Department of Education, Employment and Workplace Relations (DEEWR) program, Child Care Services Support in item 407.002 of Schedule 1AA, to remove a sentence that has been duplicated in that item. The amended objective provides that this program is to assist child care services to provide support, promote and improve access to quality child care and early learning for children, families and communities; promote and maintain high quality care and inclusion for all children; and to support the development, maintenance and dissemination of information to assist families to make informed decisions about child care.

For further information about Child Care Services Support see pages 34 to 37 of *Portfolio Budget Statements 2012-13, Budget Related Paper No.1.6, Education, Employment and Workplace Relations Portfolio*.

Item [3] – Schedule 1AA, Part 4, after item 407.067

This item adds three programs for DEEWR that were not included when Part 4 of Schedule 1AA was made on 28 June 2012. The programs need to be listed in Schedule 1AA to ensure that section 32B of the FMA Act provides legislative authority to make, vary and administer arrangements for:

- Aboriginal and Torres Strait Islander Study Assistance Scheme (ABSTUDY) – to provide support to Aboriginal and Torres Strait Islander students and Australian apprentices to improve access to and participation in secondary and tertiary education and training (new item 407.068). For further information about this program see pages 72 to 74 of *Portfolio Budget Statements 2012-13, Budget Related Paper No.1.6, Education, Employment and Workplace Relations Portfolio*;
- Assistance for Isolated Children Scheme – to provide financial allowances to help families of primary, secondary, and certain tertiary students with the educational costs incurred due to being geographically isolated (new item 407.069). For further information about this program see pages 72 to 73 of *Portfolio Budget Statements 2012-13, Budget Related Paper No.1.6, Education, Employment and Workplace Relations Portfolio*; and
- Wage Assistance for Cyclone Yasi – to provide wage assistance to employers to assist with the viability of businesses in the local communities affected by Cyclone Yasi (new item 407.070). For further information about this program see pages 169 to 170 of *Budget Paper No. 2, Budget Measures 2011-12*.

Item [4] – Schedule 1AA, Part 4, after item 419.020

This item adds two aviation security program descriptions for the Department of Infrastructure and Transport that were not included when Part 4 of Schedule 1AA was made on 28 June 2012. The programs need to be listed in Schedule 1AA to ensure that section 32B of the FMA Act provides legislative authority to make, vary and administer arrangements for aviation security measures in relation to:

- Regional passenger screening – to provide financial assistance to build capability at certain Australian airports through the provision of security training of airport staff (new item 419.021); and
- Improving international aviation security – to provide financial assistance to enable persons from foreign countries to be trained to the International Civil Aviation Organisation's (ICAO) aviation security standards (new item 419.022).

For further information about these aviation security measures see pages 22 and 41 to 42 of *Portfolio Budget Statements 2012-13, Budget Related Paper No.1.14, Infrastructure and Transport Portfolio*.

Item [5] – Schedule 1AA, Part 4, item 426.001

This item amends item 426.001 in Part 4 of Schedule 1AA to add a scheme that was omitted when Schedule 1AA was made on 28 June 2012. The HIH Claims Support Scheme is a program in relation to which arrangements can be made, varied and administered. Given that there is no legislative basis for the scheme, the scheme

needs to be included in Schedule 1AA to ensure that section 32B of the FMA Act provides legislative authority to make, vary and administer any arrangements under the scheme.

This item adds the HII Claims Support Scheme to item 426.001, as the scheme is not a program in its own right but is an objective of the Treasury program 'Support for Markets and Business'. The amended program in item 426.001 covers three funding activities: grant funding to the Centre for International Finance and Regulation; the HII Claims Support Scheme; and payments in respect to insurance claims arising from the residual Housing Loans Insurance Company Limited portfolio.

For further information about HII Claims Support Scheme see pages 32 to 33 of *Portfolio Budget Statements 2012-13, Budget Related Paper No.1.19, Treasury Portfolio*.