**EXPLANATORY STATEMENT**

**Select Legislative Instrument 2013 No. 141**

**Issued by the Authority of the Minister for Finance and Deregulation**

 *Financial Management and Accountability Act 1997*

*Financial Management and Accountability Amendment*

*Regulation 2013 (No. 4)*

The *Financial Management and Accountability Act 1997* (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 FMA Act applies to Commonwealth Departments of State and their staff, parliamentary departments and their staff, and prescribed 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.

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).

Schedule 1 to the Principal Regulations lists the Australian Customs and Border Protection Service (Customs) as a prescribed agency for the purposes of the FMA Act. Amendments to the *Customs Act 1901,* which come into effect on 1 July 2013, establish the Anti-Dumping Commission within Customs. The Regulation prescribes the Anti‑Dumping Commission in Schedule 1 as part of Customs so that this new body is also subject to the requirements of the FMA Act.

Schedule 1 to the Principal Regulations also lists the Family Court of Australia and the Federal Magistrates Court of Australia as two separate prescribed agencies for the purposes of the FMA Act. The *Federal Circuit Court of Australia Legislation Amendment Act 2012*, which came into effect on 12 April 2013, changed the name of the Federal Magistrates Court of Australia to the Federal Circuit Court of Australia.

From 1 July 2013, a single agency will be responsible for the administration of the Family Court of Australia and the Federal Circuit Court of Australia. This agency will be called the Family Court and Federal Circuit Court and will have a single Chief Executive Officer. The Regulation prescribes the new single agency in Schedule 1 so that it is subject to the requirements of the FMA Act.

Details of the Regulation are set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.* The Regulation commences on 1 July 2013.

**Consultation**

In accordance with section 17 of the *Legislative Instruments Act 2003*, consultation has taken place with the Attorney-General’s Department and Customs.

A regulation impact statement is not required as the Regulation only applies to FMA Act agencies, and does not adversely 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*.

Schedule 1 to the Principal Regulations prescribes agencies for the purposes of the FMA Act. For the purposes of the FMA Act, the Regulation adds the Anti-Dumping Commission to the Australian Customs and Border Protection Service which is a prescribed agency in Schedule 1 to the Principal Regulations. The Regulation also adds the new single agency, the Family Court and Federal Circuit Court as a prescribed agency in Schedule 1 to the Principal Regulations.

Both agencies will be subject to the requirements of the FMA Act relating to the proper management of public money and public property.

The amendments do not engage any of the rights or freedoms outlined in the Human Rights (Parliamentary Scrutiny) Act. The Regulation does not limit any human rights, nor establish any new offences or penalties.

**ATTACHMENT**

# Details of the *Financial Management and Accountability Amendment Regulation 2013 (No. 4)*

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Financial Management and Accountability Amendment Regulation 2013 (No. 4)*.

**Section 2 – Commencement**

The amendments in Schedule 1 to the Regulation commence on 1 July 2013.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Financial Management and Accountability Act 1997* (FMA Act).

**Section 4 – Schedule(s)**

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

**Schedule 1 – Amendments**

**Item 1** – **Item 109 of Schedule 1**

Item 109 of Schedule 1 to the Principal Regulations prescribes the Australian Customs and Border Protection Service (Customs) as an agency under section 5 of the FMA Act. The *Customs Amendment (Anti‑Dumping Commission) Act 2013* (Customs Amendment Act) amended the *Customs Act 1901* (Customs Act) to establish the Anti-Dumping Commission within Customs. The Customs Amendment Act received the Royal Assent on 30 March 2013. The Anti‑Dumping Commission will commence on 1 July 2013.

The Customs Amendment Act provides that the Anti‑Dumping Commission shall consist of the Commissioner and the staff assisting the Commissioner who will be made available by the Chief Executive Officer of Customs. The Commissioner will have the powers and functions contained in Part XVB of the Customs Act regarding anti-dumping.

Item 1 amends item 109 of Schedule 1 to the Principal Regulations to prescribe the Anti‑Dumping Commission as part of Customs so that it will be subject to the requirements of the FMA Act.

**Items 2 and 3 – Items 142 and 144 of Schedule 1**

Schedule 1 to the Principal Regulations lists the Family Court of Australia and the Federal Magistrates Court of Australia as two separate prescribed agencies for the purposes of the FMA Act. The *Federal Circuit Court of Australia Legislation Amendment Act 2012*, which came into effect on 12 April 2013, changed the name of the Federal Magistrates Court of Australia to the Federal Circuit Court of Australia.

From 1 July 2013, a single agency will be responsible for the administration of the Family Court of Australia and the Federal Circuit Court of Australia. This agency will be called the Family Court and Federal Circuit Court and will have a single Chief Executive Officer. Amendments to the *Family Law Act 1975* and the *Federal Circuit Court of Australia Act 1999*, made by the *Courts and Tribunals Legislation Amendment (Administration) Act 2013*, give effect to this change. The merger of the administration of the two Courts will not affect the jurisdiction or structure of either Court.

Items 2 and 3 remove the Family Court of Australia (item 142) and the Federal Magistrates Court of Australia (item 144) from the list of prescribed agencies in Schedule 1 to the Principal Regulations. In place of these two agencies, item 2 substitutes a new single FMA Act agency, called the Family Court and Federal Circuit Court, at item 142 of Schedule 1 to the Principal Regulations.

Substituted item 142 specifies that, for the purposes of the FMA Act, the single agency Family Court and Federal Circuit Court comprises the Chief Executive Officer appointed under the *Family Law Act 1975*, the officers and staff of the Registries of the Courts, and the staff of the Courts engaged under the *Public Service Act 1999*.

Item 3 repeals item 144 of Schedule 1 to the Principal Regulations.