

Financial Management and Accountability Regulations 1997 No. 328

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 328

Issued by the authority of the Minister for Finance and Administration

Financial Management and Accountability Act 1997

Financial Management and Accountability Regulations

The attached Statutory Rules make regulations under subsection 65(1) of the *Financial Management and Accountability Act 1997* (the Act).

The Act is one of a package of four Acts which will replace the *Audit Act 1901*. It will commence on 1 January 1998, the day fixed by Proclamation.

The attached regulations cover matters required or permitted to be made under the Act and other matters concerning accountability and internal control judged necessary for carrying out or giving effect to the Act. They will come into operation on the same day as the Act commences.

Details of the regulations are shown in the Attachment.

ATTACHMENT

DETAILS OF PROPOSED FINANCIAL MANAGEMENT AND ACCOUNTABILITY REGULATIONS

PART 1 - PRELIMINARY

Regulations 1, 2 and 3

These regulations cover the citation and commencement of, and define certain terms used in, the regulations. Commencement is to be the same day same as the Act commences.

PART 2 - AGENCIES

Regulation 4

Section 5 of the Act defines the term "Agency". It includes Departments of State and the Parliamentary Departments including persons allocated to those Departments by the regulations. Regulation 4 prescribes the various classes of persons who should be part of certain Departments for the purposes of the Act, but who otherwise would not. For example, members of the Defence Force are allocated to the Department of Defence.

Regulation 5

In addition to Departments of State and the Parliamentary Departments, section 5 of the Act includes in the definition of "Agency", "a prescribed Agency", being an organisational unit which is to be regarded, for the purposes of the Act, as a separate Agency from the Department of State within the portfolio. Regulation 5 prescribes all such Agencies by reference to the Schedule to the regulations. The Schedule names those Agencies, defines the persons which they comprise and specifies the Agency Chief Executive. For example, the Australian Taxation Office comprises the Commissioner and Second Commissioners of Taxation and the staff appointed or employed under the Public Service Act 1922 to assist the Commissioner. The Commissioner is the Chief Executive.

PART 3 - POWERS OF CHIEF EXECUTIVES

Regulation 6

Subsection 52(1) of the Act provides that the regulations may authorise Chief Executives to give instructions to officials in their agencies on any matter on which the regulations may be made. Regulation 6 gives effect to subsection 52(1) and specifies the scope of those instructions.

PART 4 - COMMITMENTS TO SPEND PUBLIC MONEY

Regulation 7

Subsection 64(1) of the Act provides that the regulations may authorise a Minister to issue guidelines to officials on matters within the Minister's responsibility.

Subregulation 7(1) authorises the Finance Minister, reflecting the responsibilities allocated in the Administrative Arrangements Orders made in October 1997, to issue guidelines about matters relating to the procurement of property and services. Subregulation 7(3) provides that the guidelines may require certain matters to be published in the *Gazette*. The guidelines will provide

officials performing procurement functions with guidance on relevant Government policy and best practice.

Regulation 8

This regulation requires officials performing procurement functions to have regard to the guidelines issued under regulation 7. Because the guidelines will reflect Government policy in relation to procurement and promote best practice, officials, who take action which is inconsistent with the Guidelines, are required to make a written record of their reasons for doing so.

Regulation 9

Regulation 9 places conditions on the giving of approval to proposals to spend public money. "Approvers", to whom the regulation applies, are defined in regulation 3 as Ministers, Parliamentary Secretaries, Chief Executives, or persons having authority from either a Minister or a Chief Executive, or otherwise under an Act to approve spending proposals. The conditions are that the spending proposal is in accordance with Commonwealth policies and that it will make efficient and effective use of public money. In the case of money which the Commonwealth holds in trust, the proposal must be consistent with any terms of that trust.

Regulation 10

Where a proposal to spend public money is not authorised by an existing appropriation, or a proposed law appropriating money for the spending purpose is not before the Parliament, regulation 10 requires an approver to obtain written authority for the approval from the Finance Minister. The intention of the regulation is to enable the Government to manage the extent to which current decisions "lock in" future budget options.

Regulation 11

As a measure of sound internal control, regulation 11 declares that Parliamentary Secretaries and officials may only approve proposals to spend public money if authorised to do so by a Minister or Chief Executive or otherwise under an Act.

Regulation 12

For the purposes of accountability and internal control, where an approval of a proposal to spend public money is not given in writing, this regulation requires approvers to record the terms of each such approval they give in a document as soon as practicable.

Regulation 13

Reflecting prudent management practice and sound internal control, regulation 13 requires that approval of a proposal to spend public money in accordance with regulation 9 or 10 must have been given before any contract, agreement or arrangement is entered into.

Regulation 14

Before a person enters into a guarantee on behalf of the Commonwealth of the payment of the whole or part of either or both principal and interest on a loan, this regulation requires that a proposal to spend public money, in the event that the guarantee is called up, has been approved in accordance with regulations 9 or 10. Recognising the responsibilities of the Finance Minister in

these matters, that Minister or a person authorised by the Minister must also approve the giving of the guarantee.

PART 5 - OFFICIAL ADVANCES

Regulations 15, 16 and 17

"Official advances" are defined in regulation 3 as being money under of the control of an official to cash cheques drawn on official account, to give change in connection with the receipt of public money and to pay amounts in the nature of operating expenses for an Agency. It also includes payments for other purposes approved by the Finance Chief Executive under regulation 15. Regulations 15, 16 and 17 deal with the scope of such advances, including provisions for the lapsing of approvals, conditions for the operations of such advances and the repayment of the advances when approvals lapse.

Regulation 18

Regulation 18 gives effect to paragraph 29(1)(c) of the Act, which provides that the regulations may except certain drawn moneys from the requirement to repay those moneys after the lapsing of the appropriation against which they were drawn. By virtue of regulation 18, money held in official advances is treated as final expenditure from the appropriation against which they were drawn.

PART 6 - PROTECTION OF PUBLIC MONEY AND PUBLIC PROPERTY

Regulations 19 and 20

Subsection 64(1) of the Act provides that the regulations may authorise a Minister to issue guidelines to officials on matters within the Minister's responsibility.

Regulation 19 authorises the Minister for Justice to issue guidelines about fraud control, fraud risk assessments, fraud control plans and the reporting of fraud. The guidelines will be the vehicle for promulgating the Fraud Control Policy of the Commonwealth and best practice guidance.

Regulation 20 requires officials performing duties in relation to the control and reporting of fraud to have regard to the guidelines.

PART 7 - BORROWING AND INVESTMENT

Regulation 21

Transactions using credit cards or vouchers (eg, Cabcharge) which enable the Commonwealth to obtain goods or services involve "third party" financing of those transactions to the supplier. Legally, such transactions constitute borrowings. Subsection 38(2) of the Act authorises the Finance Minister to enter into agreements with banks or other persons for short term borrowings which will be repaid within 60 days. Regulation 21 prescribes credit cards or credit vouchers as eligible borrowings for the purposes of subsection 38(2) of the Act.

Regulation 22

Subsection 39(1) of the Act permits the Finance Minister to invest Fund balances or Drawn Moneys (money which has been debited to a Fund, but which is still under the control of the

Commonwealth) in "any authorised investment". Subsection 39(8) specifies what are authorised investments - securities of the Commonwealth, a State or a Territory or securities guaranteed by any of them, deposits with a bank and any other form prescribed by the regulations. Regulation 22 prescribes for this purpose bills of exchange accepted or endorsed only by a bank and investments in money market trusts where the underlying securities are only those specified in subsection 39(8). These represent a sufficiently flexible range of investment options balanced with the prudential obligations which attach to the handling of public money.

PART 8 - MISCELLANEOUS

Regulation 23

This regulation sets out arrangements for dealing with property found on Commonwealth property. It reflects common law principles but importantly, subregulation 23(5) protects the Commonwealth's interests by extinguishing any rights in respect of property vested in a person before the property was dealt with accordance with the regulation. The regulation is in the same terms as Finance Regulation 127B made under the Audit Act 1901.

Regulations 24, 25 and 26

These regulations provide for the delegation of the powers and functions of the three key holders of authority under the regulations - the Finance Minister, the Finance Chief Executive and Agency Chief Executives. Consistent with the intention of paragraph 53(1)(a) of the Act, an Agency Chief Executive is permitted to sub-delegate any powers conferred by the Finance Minister or the Finance Chief Executive.

SCHEDULE

The Schedule sets out, in accordance with regulation 5, prescribed Agencies for the purposes of section 5 of the Act. It names the prescribed Agency, defines the persons who comprise the Agency and specifies the Agency Chief Executive