

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 14**

Issued by the Authority of the Attorney-General

Subject - *Legislative Instruments Act 2003*

*Legislative Instruments Amendment Regulations 2005 (No. 1)*

Section 62 of the *Legislative Instruments Act 2003* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 57(2) of the Act provides, in respect of provisions providing for the disallowance of a legislative instrument that were in effect before 1 January 2005, that the disallowance provisions of the Act are taken to apply to the exclusion of those other provisions. However, subsection 57(5) provides that regulations may be made to preserve the operation of special disallowance provisions referred to in subsection 57(2), despite provisions to different effect in sections 42 to 48 of the Act. Sections 42 to 48 of the Act are the provisions setting out the disallowance regime applying to legislative instruments to which the Act applies. Thus, regulations made under subsection 57(5) will preserve special disallowance regimes rather than allow the disallowance regime under the Act to apply.

These regulations amend the *Legislative Instruments Regulations 2004* to preserve the operation of the special statutory disallowance regime in section 22 of the *Financial Management and Accountability Act 1997* (the FMA Act).

Under subsection 20(1) of the FMA Act, the Finance Minister may make a written determination to establish a Special Account. Under subsection 22(1) of the FMA Act, the Minister must cause a copy of the determination to be tabled in each House of the Parliament. Either House may, following a motion upon notice, pass a resolution disallowing the determination. However, subsection 22(3) provides that, to be effective, the resolution must be passed within 5 sitting days of the House after the copy of the determination was tabled. If no motion of disallowance is passed, subsection 22(4) provides that the determination takes effect on the day immediately after the last day upon which such a resolution could have been passed.

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

The Amendment Regulations would be legislative instruments for the purposes of the Act. In accordance with subsection 18(1) of the Act, consultation on the Amendment

Regulations is unnecessary or inappropriate as the Amendment Regulations do not have a direct, or substantial indirect, effect on business or restrict competition, and are of a minor or machinery nature and do not substantially alter existing arrangements.

Details of the Legislative Instruments Amendment Regulations are in the attached Schedule.

Authority: Section 62 of the  
*Legislative Instruments Act 2003*

## Schedule

### Details of the Legislative Instruments Amendment Regulations

**Regulation 1** provides that the name of Regulations is the *Legislative Instruments Amendment Regulations 2005 (No. 1)*.

**Regulation 2** provides that the Regulations commence on the day after they are registered. Because the Regulations are a legislative instrument, the Act requires that they must be registered on the Federal Register of Legislative Instruments in order to be effective.

**Regulation 3** provides that Schedule 1 of the Regulations amends the *Legislative Instruments Regulations 2004* (the Principal Regulations).

#### Schedule 1            Amendments

**Item 1**            This item inserts into Schedule 4 to the Principal Regulations, before the current reference in Schedule 4 to the *Remuneration Tribunal Act 1973*, a reference to section 22 of the *Financial Management and Accountability Act 1997* (the FMA Act).

Section 20 of the FMA Act allows the Minister to establish Special Accounts by written determination. Subsection 22(4) of the FMA Act provides that a determination to create a Special Account is not effective until the day after the end of the five sitting day disallowance period provided for in section 22.

The amendment made by this item would preserve the operation of the special disallowance period in section 22 of the FMA Act. This would mean that determinations made under section 20 of the FMA Act would be subject to the disallowance regime set out in section 22 of the FMA Act and not the disallowance regime set out in Part 5 of the Act (sections 42 to 48).