

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 28

Subject - *Financial Management and Accountability Act 1997*

Financial Management and Accountability Amendment Regulation 2012 (No. 1)

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.

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.

The Regulation updates the *Financial Management and Accountability Regulations 1997* (the Principal Regulations) to improve their operation.

The Regulation amends regulation 7 of the Principal Regulations to enable the Finance Minister to name any guidelines she makes in relation to procurement (e.g. the *Commonwealth Procurement Rules*) and amend Schedule 1 of the Principal Regulations to reflect changes to several FMA Act Agencies.

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

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

The Regulation will be 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 senior procurement officials and Chief Financial Officer areas of FMA Act Agencies regarding amendments to regulation 7 to enable the Finance Minister to name any guidelines she makes on procurement.

A Best Practice Regulation Preliminary Assessment was undertaken in accordance with the guidance issued by the Office of Best Practice 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 Regulation makes beneficial changes to financial and related legislation by amending the Principal Regulations. 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. 1)*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Financial Management and Accountability Amendment Regulation 2012 (No. 1)*, as made under section 65 of the *Financial Management and Accountability Act 1997* (the 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* (the Principal Regulations) are amended as set out in Schedule 1.

Section 4 – Transitional

This section clarifies that any guidelines made by the Finance Minister under regulation 7 of the Principal Regulations prior to the substitution of that regulation by item [1] of Schedule 1 continue in force after the commencement of item [1] of Schedule 1. The purpose of this transitional section is to confirm that the amendment to regulation 7 of the Principal Regulations will not affect the existing *Commonwealth Procurement Guidelines* (CPGs), and that the CPGs will continue in force until the Finance Minister varies, revokes or issues replacement guidelines on procurement under regulation 7 of the Principal Regulations as amended by item [1] of Schedule 1.

Schedule 1 – Amendments

Item [1] – Regulation 7

This item substitutes regulation 7 of the Principal Regulations with a new regulation. The new regulation 7 will differ from former regulation 7 in the following ways:

- the heading to regulation 7 is changed from “*Commonwealth Procurement Guidelines (Act s 64)*” to “*Commonwealth procurement (Act s 64)*”;
- the requirement in existing subregulation 7(1) that any guidelines made in accordance with section 64 of the FMA Act and this regulation are to be called the “*Commonwealth Procurement Guidelines*” is removed;

- a new subregulation 7(2) is added to enable the Finance Minister to approve the title of any guidelines issued under the regulation (e.g. new guidelines on procurement could be called the *Commonwealth Procurement Rules*); and
- former subregulation 7(2) is renumbered subregulation 7(3) and amended to clarify that officials are still required to act in accordance with any guidelines made under subregulation 7(1).

Section 64 of the FMA Act enables a Minister to issue guidelines to officials on matters set out in the Regulations within the Minister's responsibility. Any guidelines made are legislative instruments that must be tabled in Parliament, but are not subject to disallowance or sunseting: subsection 64(3). Regulation 7 of the Principal Regulations currently enables the Finance Minister to make guidelines on procurement to be called the *Commonwealth Procurement Guidelines* (CPGs).

The current CPGs were made in December 2008 by the former Finance Minister, the Hon Lindsay Tanner MP, under regulation 7 of the Principal Regulations to set out the procurement policy framework and articulate the Australian Government's expectations in terms of procurement.

On 1 July 2009, the *Financial Management and Accountability Amendment Regulations 2009* (No. 4) made a small but significant amendment to regulation 7 to clarify that aspects of the CPGs are mandatory for officials performing duties in relation to procurement. Subregulation 7(2) was added to regulation 7 to require officials engaged in procurement activities to act in accordance with the CPGs. Prior to that change, former regulation 8 (repealed by the 2009 amendments) required officials to "have regard to" any CPGs. The new subregulation recognised that the CPGs themselves describe which procurement activities are mandatory and which are matters of sound practice.

To reflect the fact that guidelines on procurement made in accordance with regulation 7 contain mandatory requirements for officials undertaking procurement, the Finance Minister may give the guidelines any such name as she considers suitable (e.g. the *Commonwealth Procurement Rules*). The changes outlined above are necessary to enable the Finance Minister to give guidelines on procurement a title other than CPGs.

Item [2] – Schedule 1, item 127

This item amends item 127 (Australian Taxation Office) of Schedule 1 to the Principal Regulations to clarify that, for the purposes of the FMA Act, the Tax Practitioners Board is part of the Australian Taxation Office. It does this by adding the Tax Practitioners Board to column 2 of item 127.

The Tax Practitioners Board was established by section 60-5 of the *Tax Agent Services Act 2009* (the TAS Act), commencing 26 March 2009. The Tax Practitioners Board is a statutory body that is given the general administration of the TAS Act under section 1-15 of that Act. The Tax Practitioners Board engages Australian Public Service employees whose services are made available to the Board by the Commissioner of Taxation under section 60-80 of the TAS Act.

Item [3] – Schedule 1, item 161

This item replaces item 161 of Schedule 1 to the Principal Regulations, by making three changes to the item:

- the title of the Agency in item 161, the “National Offshore Petroleum Safety Authority (NOPSA)”, is changed to “National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)” to reflect the change of title for this agency in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* that was made by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011*;
- the reference to “NOPSA” is changed to “NOPSEMA” in the description of the Chief Executive Officer in paragraph (a) of column 2 of item 161; and
- the “National Offshore Petroleum Titles Administrator”, is added as a new statutory officer established under section 695A of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, in column 2 of item 161.

On 1 January 2012, NOPSEMA became an expanded version of the NOPSA with an extended range of functions in relation to petroleum and greenhouse gas operations. Like NOPSA, NOPSEMA is fully funded by cost-recovery levies and fees, managed by means of a Special Account under the FMA Act.