

EXPLANATORY STATEMENT

Revocation of the Commonwealth Procurement Guidelines – December 2008

The legislative authority under which the instrument is made

Subsection 65(1) of the *Financial Management and Accountability Act 1997* (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.

Subsection 64(1) of the FMA Act provides that the regulations may authorise the Minister to issue guidelines to officials on matters within the Minister's responsibility. Subregulation 7(1) of the *Financial Management and Accountability Regulations 1997* (FMA Regulations) provides in general terms, for the Finance Minister to issue guidelines in relation to procurement. Subregulation 7(2) of the FMA Regulations provides that the guidelines are to have a title approved by the Finance Minister.

Subsection 33(3) of the *Acts Interpretation Act 1901* in general terms provides that where an Act confers a power to make, grant or issue any legislative instrument of a legislative or administrative character the power is construed to include a power to repeal, rescind, revoke, amend or vary the instrument.

Purpose of the instrument

The Minister for Finance and Deregulation issued the Commonwealth Procurement Rules – July 2012 (CPRs) under regulation 7 of the FMA Regulations to commence on 1 July 2012.

The CPRs will replace the *Commonwealth Procurement Guidelines* (CPGs). The CPRs represent the Government Policy Framework under which agencies govern and undertake their own procurement and combine both Australia's international obligations and good practice. Together, these enable agencies to design processes that are robust, transparent and instill confidence in the Australian Government's procurement.

The CPRs do not alter existing procurement policy, but clarify the CPRs as a rule set, ensure consistent and well understood use of terminology, redefine the procurement methods, and address the recommendation of the Australian National Audit Office (ANAO) raised in performance audit No.11 2010-11 on Direct Source Procurement.

From 1 July 2012 all departments and agencies subject to the FMA Act and relevant *Commonwealth Authorities and Companies Act 1997* (CAC Act) bodies will be required to comply with the CPRs.

The CPGs remain applicable to 30 June 2012. This instrument revokes the CPGs upon the commencement of the new CPRs.

Consultation

During the development of the CPRs, all FMA Act agencies and those CAC Act bodies subject to the instrument were consulted on the development of the instrument. Throughout the consultation process, agencies were made aware that the CPRs would replace the CPGs.

Consultation was unnecessary for this legislative instrument as this instrument is of a machinery/technical nature.

Human Rights Statement

This legislative instrument is exempt from disallowance under subsection 64(3) of the FMA Act. As such, a statement of compatibility prepared under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required in this Explanatory Statement.