

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 50

Subject - *Financial Management and Accountability Act 1997*
Financial Management and Accountability Amendment Regulation 2013 (No. 2)

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 that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The Regulation amends the *Financial Management and Accountability Regulations 1997* (the Principal Regulations) to:

- rename Fair Work Australia in Schedule 1 to the Principal Regulations as the Fair Work Commission; and
- amend a program description and add a new program to Schedule 1AA to ensure there is legislative authority for spending under those programs.

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

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The amendments commence 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 the relevant parts of the Department of Education, Employment and Workplace Relations and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). The Australian Government Solicitor also provided advice on the amendments to Schedule 1AA to the Principal Regulations.

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* (Human Rights Act).

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 2013 (No. 2)*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Financial Management and Accountability Amendment Regulation 2013 (No. 2)*.

Section 2 – Commencement

This section provides that the amendments commence on the day after the Regulation is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the Regulation is made under section 65 of the *Financial Management and Accountability Act 1997* (the FMA Act).

Section 4 – Schedule(s)

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

Schedule 1 – Amendments commencing on day after registration

Item [1] – Table Item 141 of Schedule 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. The FMA Act applies to Commonwealth Departments of State and their staff, parliamentary departments and their staff, and prescribed agencies.

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 Principal Regulations.

This item amends item 141 of Schedule 1 to the Principal Regulations to rename Fair Work Australia as the Fair Work Commission to reflect reforms made by the *Fair Work Amendment Act 2012* to the *Fair Work Act 2009*.

The change of name to the Fair Work Commission arose from the recommendations in relation to the review of the *Fair Work Act 2009* published in June 2012, *Towards more productive and equitable workplaces: An evaluation of the fair work legislation*.

Items [2] and [3] – Schedule 1AA (Table Item 410.016)

These items make minor amendments to a spending activity by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), “Economic Development and Participation”, in item 410.016 of Part 4 of Schedule 1AA to the Principal Regulations to clarify the scope of that spending activity.

The amendments would clarify that the objective of this spending activity is to make payments through the Community Development Fund to provide benefits to Indigenous people and support the creation of jobs and employment related participation opportunities for Indigenous and non-Indigenous job seekers.

Further information about the Economic Development and Participation program is at pages 213 to 214 of the *2012-13 Mid-Year Economic and Fiscal Outlook*.

Item [4] – After Table Item 410.025 of Schedule 1AA

This item would add a new program to Part 4 of Schedule 1AA to establish legislative authority for FaHCSIA to make payments from the Community Development Fund (new item 410.026) that has been established under the existing Remote Jobs and Communities Program managed jointly by FaHCSIA and the Department of Education, Employment and Workplace Relations.

The Community Development Fund would provide funding of \$237.5 million over five years to support social and economic participation across the 59 remote regions of the Remote Jobs and Communities Program. The Community Development Fund would fund activities or services that provide benefits to Indigenous people and support the creation of jobs and employment related participation opportunities for Indigenous and non-Indigenous job seekers participating in Remote Jobs and Communities Program. To do this, the Community Development Fund will fund activities or services that provide benefits to job seekers in the remote regions by creating employment opportunities and innovative approaches to recruiting, employing and retaining jobseekers, particularly for Indigenous people and Indigenous communities.

Allocations of funding would be decided according to an open selection process and would be open to a broad range of entities including community organisations, local Indigenous and non-Indigenous organisations, local government entities, social enterprises, and large and small private sector and commercial enterprises.

The Community Development Guidelines will establish the following selection criteria for payments from the Community Development Fund:

- acceptance of the proposal by the Indigenous communities and alignment with the Community Action Plan for the Remote Region;
- demonstrated experience and capacity of organisations, including any sub-contractors or related entities involved in the service/activity, to work with Indigenous communities;
- deliverability, value for money and any whole-of-life considerations, such as the continuing impact of the proposal on the region after the funding period has ended and how the successful results of the project and any assets and tangible outcomes will be managed for the duration of their life; and
- evaluation of the success of the service or activity.

The decision-maker for the Community Development Fund would be the Minister for Families, Community Services and Indigenous Affairs. Where the value of the grant is less than \$100,000 this decision-making power may be delegated to the officers of FaHCSIA.

Applications to the Community Development Fund would be assessed on the merits of their proposal against each selection criteria. This assessment of applications would be conducted in accordance with the Commonwealth Grants Guidelines and consideration will be given to the availability of funding and the spread of funding across the 59 remote regions of the Remote Jobs and Communities Program.

Applicants to the Community Development Fund would be able to make a complaint about the assessment process. If an applicant is dissatisfied with the Department's handling of a complaint, they would also be able to contact the Commonwealth Ombudsman.

In addition, government decisions to spend public money are subject to rules in the FMA Act and the Principal Regulations. This includes, where applicable, the requirements in the Commonwealth Procurement Rules or Commonwealth Grants Guidelines. The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review Government spending decisions and report any concerns to Parliament. These requirements and mechanisms not only help to ensure the proper use of Commonwealth resources, but also ensure that there is appropriate transparency around decisions relating to making, varying or administering arrangements to spend public money.

Decisions under this program would not be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act). The Explanatory Memorandum to the *Financial Framework Legislation Amendment Act (No. 3) 2012* sets out the policy reasons for excluding ADJR Act review of decisions made in relation to activities which are listed in Schedule 1AA of the Principal Regulations.

Further information about the Community Development Fund and the Remote Jobs and Communities Program is at pages 1 to 38 of *Budget Paper No. 1 – Budget Strategy* and also page 18 of the statement by the Minister for Families, Community Services and Indigenous Affairs for the 2012-13 Budget, *Continuing our Efforts to Close the Gap*.