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HOUSE OF REPRESENTATIVES

**FINANCIAL FRAMEWORK
LEGISLATION AMENDMENT BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated with the authority of the
Minister for Finance and Deregulation,
Senator the Hon Penny Wong)

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Table of Abbreviations and Common Terms

Abbreviation or common term	Full term or description
ACCC	Australian Competition and Consumer Commission
Acts Interpretation Act	<i>Acts Interpretation Act 1901</i>
AHRC	Australian Human Rights Commission
AHRC Act	<i>Australian Human Rights Commission Act 1986</i>
AIC	Australian Institute of Criminology
ALRC Act	<i>Australian Law Reform Commission Act 1996</i>
Australia Post	Australian Postal Corporation
Australia Post Act	<i>Australian Postal Corporation Act 1989</i>
AWBC	Australian Wine and Brandy Corporation
AWBC Act	<i>Australian Wine and Brandy Corporation Act 1980</i>
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAC Regulations	<i>Commonwealth Authorities and Companies Regulations 1997</i>
Commonwealth authority	Bodies corporate that are established by Commonwealth legislation for a public purpose, and which hold money on their own account.
Commonwealth company	Companies registered under the Corporations Act which the Commonwealth controls.
Corporations Act	<i>Corporations Act 2001</i>
CRC	Criminology Research Council
CR Act	<i>Criminology Research Act 1971</i>
CR Advisory Council	Criminology Research Advisory Council
CR Special Account	Criminology Research Special Account
CRF	Consolidated Revenue Fund
FFLA Bill	<i>Financial Framework Legislation Amendment Bill</i>
Finance	Department of Finance and Deregulation
Finance Minister	Minister for Finance and Deregulation
<i>Flipchart of Australian Government Bodies</i>	<i>Flipchart of FMA Act Agencies and CAC Act bodies</i> , Department of Finance and Deregulation, updated regularly on Finance website
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>
FMLA Act 1999	<i>Financial Management Legislation Amendment Act 1999</i>
FOI Act	<i>Freedom of Information Act 1982</i>
Governance Policy	<i>Governance Arrangements for Australian Government Bodies</i> , August 2005
Item	An item of a Schedule of the FFLA Bill
Law Reform Commission	Australian Law Reform Commission
LI Act	<i>Legislative Instruments Act 2003</i>
<i>List of Australian Government Bodies and Governance Relationships</i>	<i>List of Australian Government Bodies and Governance Relationships as at 1 October 2009</i> , Department of Finance and Deregulation
NTC	National Transport Commission
NTC Act	<i>National Transport Commission Act 2003</i>
OHS Act	<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>
Parliamentary Service Act	<i>Parliamentary Service Act 1999</i>
Public Service Act	<i>Public Service Act 1999</i>
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>

Financial Framework Legislation Amendment Bill 2010

I. GENERAL OUTLINE

Main features of the FFLA Bill 2010

1. The *Financial Framework Legislation Amendment Bill 2010* (FFLA Bill 2010) would, if passed, affect 31 Acts through amendments to 25 Acts and the repeal of 6 Acts.
2. There are three main purposes of the proposed amendments.
 - First, to repeal 20 redundant special appropriations, including 6 redundant Acts and a statutory Special Account, as well as other redundant legislation relating to the Commonwealth's financial framework. This is consistent with the Government's response in December 2008 to former Senator Andrew Murray's report, *Operation Sunlight – Overhauling Budgetary Transparency* (specifically recommendation 12), which committed to a regular review of special appropriations and maintaining effective legislative housekeeping is also consistent with the Government's Better Regulation Agenda;
 - Second, to establish improved governance arrangements for interjurisdictional agencies under the *Financial Management and Accountability Act 1997* (FMA Act) and interjurisdictional Commonwealth authorities under the *Commonwealth Authorities and Companies Act 1997* (CAC Act), while also clarifying some minor anomalies in those Acts; and
 - Third, to improve financial and governance arrangements for existing bodies, consistent with the *Governance Arrangements for Australian Government Bodies* policy (Governance Policy), as published by the then Department of Finance and Administration in August 2005. In particular, the Bill would integrate the Australian Institute of Criminology (AIC) and the Criminology Research Council (CRC), and transfer them from governance under the CAC Act to the FMA Act. Next, the Bill would transfer the governance of the Australian Law Reform Commission (Law Reform Commission) from the CAC Act to the FMA Act. The Bill would also bring the National Transport Commission (NTC) under the CAC Act. Changes for the 4 bodies, covered by these 3 changes, are proposed to commence from 1 July 2011, to align with the commencement of the financial years. Finally, the Bill would abolish the Office of Evaluation and Audit (Indigenous Programs), as that function has been successfully absorbed into the Australian National Audit Office.
3. This is the seventh FFLA Bill since 2004, as part of an ongoing approach to maintaining the Australian Government's financial framework. Four of those Bills became law, with the first and the sixth FFLA Bills lapsing upon the prorogation of the Australian Parliament for the 2004 and 2010 federal elections. The first FFLA Bill was re-introduced and passed after the 2004 election, and this Bill represents the re-introduction of the FFLA Bill originally introduced into the House of Representatives on 23 June 2010.
4. The first FFLA Bill focussed primarily on implementing text changes to reflect the creation of Special Accounts, from 1 July 1999, in deeming provisions that were in the *Financial Management Legislation Amendment Act 1999* (FMLA Act 1999). Later FFLA Bills, including this one, cover a range of issues dealing with appropriations (including Special Accounts), financial management provisions, governance structures and legislative anomalies.

Thematic overview

5. This FFLA Bill 2010 covers a wide range of governance and accountability issues, which can be summarised under the following 11 subthemes.

a) Repealing redundant special appropriations – provisions and Acts

6. Schedule 11 to the FFLA Bill 2010 would, if enacted, repeal 20 special appropriations, including 6 Acts and a statutory Special Account. As mentioned above, this is consistent with the Government's response, in December 2008, to former Senator Andrew Murray's report, *Operation Sunlight – Overhauling Budgetary Transparency* (specifically recommendation 12), which committed to a regular review of special appropriations.

b) Removing redundant appropriation-related provisions

7. Schedule 10 covers amendments to the *Parliamentary Service Act 1999* that clarify how the Presiding Officers may make payments in special circumstances. This change is consistent to changes made to similar provisions in the FMA Act and the *Public Service Act 1999* that were amended in the FFLA Act 2007. In short, the provisions need updating to take account of changes made to outcomes appropriations from 1 July 1999.

8. Schedule 8 covers amendments to the FMA Act, including removal of a note regarding the effect of the FMLA Act 1999 (covering the introduction of "Special Accounts", which replaced former "components" of two statutory "Funds"). The text in numerous Acts was corrected by the FFLA Act 2005 and the FFLA Act 2006, so there is no longer any need for a note to refer to a deeming provision on Special Accounts that appears in the FMLA Act 1999.

c) More expressly allowing for "interjurisdictional" agencies and authorities

9. Schedule 5 covers several amendments to the CAC Act, including allowing for regulations to establish better governance arrangements for interjurisdictional authorities under the CAC Act.

10. Schedule 8 covers amendments to the FMA Act, including allowing for regulations to establish better governance arrangements for interjurisdictional FMA Act agencies.

d) Moving governmental bodies from the CAC Act to the FMA Act

11. Schedule 7 covers amendments to the *Criminology Research Act 1971* to facilitate the Australian Institute of Criminology (AIC) and the Criminology Research Council (CRC) to be moved from the CAC Act to be regulated by the FMA Act (as well as consolidated into a single agency). Similarly, Schedule 2 covers amendments to the *Australian Law Reform Commission Act 1996*, to transfer the governance of the Law Reform Commission from the CAC Act to the FMA Act.

12. The transfer of the governance arrangements of these 3 CAC Act bodies is consistent with the transfer of governance arrangements of a number of other CAC Act bodies to the FMA Act in recent years. The *List of Australian Government Bodies and Governance Relationships as at 1 October 2009* lists 15 bodies that moved from the CAC Act to the FMA Act between 31 December 2004 and 1 October 2009 at p xii. Examples include:

- Medicare Australia (formerly under the CAC Act as the Health Insurance Commission), moved on 1 October 2005 to the FMA Act through the *Human Services Legislation Amendment Act 2005*;

- The Australian Securities and Investments Commission, the Australian Prudential Regulation Authority and the Corporations and Markets Advisory Committee, moved on 1 July 2007 to the FMA Act, through the *Governance Review Implementation (Treasury Portfolio Agencies) Act 2007*;
- The Great Barrier Marine Park Authority also moved from the CAC Act to the FMA Act on 1 July 2007, through the *Great Barrier Marine Park Amendment Act 2007*; and
- The Australian Fisheries Management Authority moved, on 1 July 2008, from the CAC Act to the FMA Act through the *Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008*.

e) Consolidating government bodies

13. As mentioned above, Schedule 7 covers amendments to the *Criminology Research Act 1971* to facilitate not only the move of the AIC and the CRC to the FMA Act, but also their consolidation into a single agency.

14. Similarly, Schedule 11 repeals Part 4B of the *Aboriginal and Torres Strait Islander Act 2005*, which would abolish the Office of Evaluation and Audit (Indigenous Programs). The function of the Office has been transferred from the Department of Finance and Deregulation to the Australian National Audit Office.

f) Clarifying the status of bodies corporate that are encompassed in FMA Act agencies

15. Schedule 1 covers amendments to the *Australian Human Rights Commission Act 1986*, which clarify the body corporate status of the Australian Human Rights Commission (AHRC) under the FMA Act. Similarly, Schedule 6 covers amendments to the *Competition and Consumer Act 2010*,¹ to clarify the body corporate status of the Australian Competition and Consumer Commission under the FMA Act. It has long-been recognised that some bodies corporate established through legislation for specific government purposes may legally separate from the body politic of the Commonwealth of Australia without being financially separate. Accordingly, the expenditure by those bodies would be directly governed by appropriations provided by the Parliament.

16. For example, in 1923 the High Court of Australia examined the status of a body corporate, called the Repatriation Commission, in relation to its status for the purposes of the immunities of the Crown. As stated in the joint judgment of Knox CJ and Starke J:

The provisions of the Act taken generally ... establish that the Commission is in the strictest sense a department of Government, or at all events so practically identified with it as to be indistinguishable. It is a statutory corporation charged with the administration of an Act designed to carry out two objects which are peculiarly within the province of the Government Adopting the words of O'Connor J. in *Sydney Harbour Trust Commissioners v. Wailes* ..., it is "a corporation ... to which is handed over the administration of what is really a Government department." If so, the Commission is entitled, in our opinion, in respect of the property vested in it pursuant to the Act, to the same privileges and immunities as the Crown itself would have had if the property had been vested in it: *Repatriation Commission v Kirkland* (1923) 32 CLR 1 at page 8.

¹ From 1 January 2011, the *Trade Practices Act 1974* is to be re-named the *Competition and Consumer Act 2010*. The FFLA Bill is not expected to enter into law prior to that date.

17. This FFLA Bill 2010 helps to clarify the status of two bodies corporate that are clearly, financially part of the Commonwealth, even though it has not necessarily been directly obvious from their primary legislation.

g) Partially applied CAC Act status moved to full status as a “Commonwealth authority”

18. Schedule 9 would amend the *National Transport Commission Act 2003* to ensure that the CAC Act applies to the National Transport Commission as a full Commonwealth authority.

19. Simplifying governance structures by placing government activities under recognised aspects of the financial framework accords with the Government’s Governance Policy and is also consistent with the amendment made under the *Financial Framework Legislation Amendment Act 2008* that transferred the Albury-Wodonga Development Corporation to governance under the CAC Act from 1 July 2009.

h) Updating references to provisions of the CAC Act

20. Schedule 3 covers amendments to the *Australian Postal Corporation Act 1989* (Australia Post Act), to update cross-references which that Act makes to the CAC Act. These updates are required following the passage of amendments made (through the *Commonwealth Authorities and Companies Amendment Act 2008*) to consultation over, and the notification of, general policies of the Government. The amendments would realign Australia Post’s obligations to comply with General Policy Orders under the CAC Act and to report on compliance with those requirements;

i) Updating the name of a CAC Act body

21. Schedule 4 covers amendments to the *Australian Wine and Brandy Corporation Act 1980* (AWBC Act), to rename a CAC Act body, the “Australian Wine and Brandy Corporation” as “Wine Australia Corporation”. This is consistent with international branding of the body as “Wine Australia”.

j) Providing for formal delegations under the CAC Act

22. Schedule 5 covers several amendments to the CAC Act, including simplifying the financial framework by allowing Ministers to formally delegate certain of their oversight functions and powers under the Act to Departmental Secretaries.

k) Improved emphasis on reports to Parliament about the use of companies

23. Schedule 5, amending the CAC Act, and Schedule 8, amending the FMA Act, are structured to commence amendments simultaneously to allow for the movement of section 45 of the CAC Act to proposed section 39A of the FMA Act in relation to improved processes for reporting on the Commonwealth’s involvement in the formation or otherwise of companies.

Financial Impact Statement

24. The proposed amendments have no financial impact. The amendments are aimed at repealing redundant special appropriations, establishing interjurisdictional governance arrangements under the CAC Act and FMA Act, and improving the financial and governance arrangements for existing bodies, ensuring that they are fit for purpose and consistent with the Government’s *Governance Arrangements for Australian Government Bodies* policy. The special appropriations that are included for the Law Reform Commission and the AIC reflect their existing financial arrangements as CAC Act bodies, without having a financial impact when they transfer to the FMA Act.

II. NOTES ON CLAUSES

25. The structure of the *Financial Framework Legislation Amendment Bill 2010* (FFLA Bill 2010) comprises 3 clauses that then refer to 11 Schedules containing the substantive amendments to other Acts. These notes describe the 3 clauses and their effect.

Part 1 – Preliminary

Clause 1: Short Title

26. This clause provides that, should the FFLA Bill 2010 be enacted, the FFLA Bill may then be cited as the *Financial Framework Legislation Amendment Act 2010*.

Clause 2: Commencement

27. This clause provides that:

- items in Schedules 1 (Australian Human Rights Commission), 3 (Australia Post), 4 (Australian Wine and Brandy Corporation), 6 (Australian Competition and Consumer Commission), 10 (Parliamentary Service Act), and 11 (Repeals) in the FFLA Bill 2010 will, if passed, commence on the day after the *Financial Framework Legislation Amendment Act 2010* receives the Royal Assent;
- items in Schedule 5 (the *Commonwealth Authorities and Companies Act 1997* (CAC Act)) will, if passed, commence on a single day fixed by Proclamation within 12 months from the date of Royal Assent, otherwise they will commence 12 months after the date of Royal Assent. This would allow for sufficient time for the development of subordinate laws under the CAC Act and the *Financial Management and Accountability Act 1997* (FMA Act), and for detailed consultations to occur with CAC Act bodies and FMA Act agencies;
- items in Schedule 8 (FMA Act) will, if passed, commence on the same day as changes made by Schedule 5, which allows in particular for the contemporaneous commencement of the proposed section 39A of the FMA Act and the repeal of section 45 of the CAC Act; and
- items in Schedules 2 (Australian Law Reform Commission), 7 (Australian Institute of Criminology and the Criminology Research Council) and 9 (National Transport Commission) in the FFLA Bill 2010 will, if passed, commence on 1 July 2011 to align with the start of the financial year of these bodies.

Clause 3: Schedules

28. This clause provides that the amendments and repeals of Acts are contained in 11 Schedules. Briefly, the Schedules, in consecutive order, cover the following issues:

- Schedule 1 amends the *Australian Human Rights Commission Act 1986*, to clarify the body corporate status of the Australian Human Rights Commission;
- Schedule 2 amends the *Australian Law Reform Commission Act 1996*, and transfers the governance of the Australian Law Reform Commission from the CAC Act to the FMA Act. The proposed amendments include the establishment of a single broad purpose Special Account, allowing the Commission to maintain flexible financial arrangements consistent with the FMA Act;

- Schedule 3 amends the *Australian Postal Corporation Act 1989* (Australia Post Act), to update cross-references in that Act following the passage of the *Commonwealth Authorities and Companies Amendment Act 2008*. These amendments would realign Australia Post's obligations to comply with General Policy Orders under the CAC Act and to report on compliance with those requirements;
- Schedule 4 makes amendments to the *Australian Wine and Brandy Corporation Act 1980*, and consequential amendments to other Acts, to rename the Australian Wine and Brandy Corporation to the Wine Australia Corporation;
- Schedule 5 makes several amendments to the CAC Act, including establishing governance arrangements for interjurisdictional authorities under the CAC Act and allowing the responsible Minister and Finance Minister to delegate certain functions and powers;
- Schedule 6 makes amendments to the *Competition and Consumer Act 2010*, which clarify the body corporate status of the Australian Competition and Consumer Commission;
- Schedule 7 amends the *Criminology Research Act 1971* to facilitate the merger of the Australian Institute of Criminology and the Criminology Research Council into a single agency under the FMA Act;
- Schedule 8 amends the FMA Act to establish governance arrangements for interjurisdictional FMA Act agencies and transfer provisions from the CAC Act about notifying Parliament about involvement in companies;
- Schedule 9 amends the *National Transport Commission Act 2003* to bring the governance of the National Transport Commission under the CAC Act;
- Schedule 10 amends the *Parliamentary Service Act 1999* to clarify how the Presiding Officers may make payments in special circumstances; and
- Schedule 11 repeals 20 special appropriations, including 6 Acts and a statutory Special Account. The Schedule would also abolish the Office of Evaluation and Audit (Indigenous Programs) as that function has been successfully absorbed into the Australian National Audit Office.

III. OVERVIEW OF AMENDMENTS IN SCHEDULES

29. The following overview of amendments proposed in Schedules 1 - 11 of the Bill is provided in general terms, rather than by item number. Parts IV - XIV of this Explanatory Memorandum contain a description of the Schedules of the Bill, organised by item number.

Schedule 1 – Amending the Australian Human Rights Commission Act 1986

30. Schedule 1 amends the *Australian Human Rights Commission Act 1986* to clarify the body corporate status of the Australian Human Rights Commission (AHRC) under the *Financial Management and Accountability Act 1997* (FMA Act). This is consistent with other bodies corporate that are now under the FMA Act, in particular where the body had previously been under the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and has been moved to the FMA Act, consistent with the Australian Government’s *Governance Arrangements for Australian Government Bodies* policy (Governance Policy). Provisions used as a precedent for clarifying the status of the AHRC under the FMA Act were those developed for the Australian Prudential Regulation Authority.

31. The AHRC is prescribed by regulations made under the FMA Act and does not hold any money on its own account. As such it is financially part of the Commonwealth and is an FMA Act agency.

Schedule 2 – Amending the Australian Law Reform Commission Act 1996

32. Schedule 2 proposes amendments to the *Australian Law Reform Commission Act 1996* (ALRC Act).

33. The Australian Law Reform Commission (the Law Reform Commission) is currently a Commonwealth authority under the CAC Act. The purpose of the proposed amendments is to enable the Law Reform Commission to become a prescribed agency under the FMA Act and a Statutory Agency for the purposes of the *Public Service Act 1999* (Public Service Act).

34. The Law Reform Commission’s transfer of governance arrangements is consistent with the transfer of governance arrangements of a number of other CAC Act bodies to the FMA Act in recent years, as explained in the Overview, above.

35. To effect this transition, the amendments propose to align the Law Reform Commission’s governance arrangements with an executive management model by replacing the existing Board of Management with a Chief Executive Officer.

36. It is also proposed to amend provisions relating to the composition of the Commission’s membership to introduce a more flexible membership structure for the Commission, so that the composition of the Commission can be adjusted based on the subject matter of the inquiries referred to it. The proposed amendments would facilitate the short-term appointment of members with expertise in particular areas of inquiry, rather than appointing exclusively legal experts or generalists. This will be achieved by enabling the Attorney-General, rather than the Governor-General, to make part-time appointments to the Commission. This will provide greater flexibility in the Commission’s membership, enhance the timeliness and workability of the appointment process and allow for better use of appointments for the length of specific references.

37. These amendments are consistent with the Australian Government’s Governance Policy. For certain bodies transferring their governance arrangements from the CAC Act to the FMA Act, a body corporate is retained. For this agency, however, there is no compelling need for retention of body corporate status. (The *Flipchart of FMA Act Agencies and CAC Act bodies*, published by the Department of Finance and Deregulation on its website regularly, lists the FMA Act agencies which encompass a body corporate. Reasons for retaining a body corporate status under the FMA Act are explained in the Governance Policy).

Schedule 3 – Amending the Australian Postal Corporation Act 1989

38. Schedule 3 updates provisions of the *Australian Postal Corporation Act 1989* (Australia Post Act) concerning the application of general policies of the Australian Government to the Australian Postal Corporation (Australia Post). The Bill updates the Australia Post Act to refer to “General Policy Orders”, introduced in the CAC Act following its amendment by the *Commonwealth Authorities and Companies Amendment Act 2008*.

39. General policies can apply to Commonwealth authorities through the making of a legislative instrument in the form of a General Policy Order under section 48A of the CAC Act. The previous process, whereby the responsible Minister gave written notice to Australia Post to comply with a general policy, which is reflected in the Australia Post Act, has been replaced by the new process.

Schedule 4 – Amending the Australian Wine and Brandy Corporation Act 1980

40. Schedule 4 facilitates the change of name of the Australian Wine and Brandy Corporation to Wine Australia Corporation. The corporation brands itself overseas as “Wine Australia” and these amendments updates the *Australian Wine and Brandy Corporation Act 1980* (AWBC Act), and also 4 other Acts, accordingly.

Schedule 5 – Amending the Commonwealth Authorities and Companies Act 1997

41. Schedule 5 amends the CAC Act, primarily to allow for regulations to be made to clarify governance arrangements for “interjurisdictional” Commonwealth authorities. These are Commonwealth authorities where a State or Territory is involved in the governance of the authority through the authority’s enabling legislation.

42. Schedule 5 also makes a number of other amendments to the CAC Act, in particular expressly allowing a Minister to delegate some of his or her powers and functions to a Departmental Secretary (refer item 16), which allows for a clearer basis for implementing arrangements that occur partly through Ministerial authorisation.

Schedule 6 – Amending the Competition and Consumer Act 2010

43. Schedule 6 amends the *Competition and Consumer Act 2010* to clarify the body corporate status of the Australian Competition and Consumer Competition (ACCC) under the FMA Act. This is consistent with other bodies corporate that are now under the FMA Act, in particular where the body had previously been under the CAC Act and has been moved to the FMA Act, consistent with the Australian Government’s *Governance Arrangements for Australian Government Bodies* policy (Governance Policy). Provisions used as a precedent for clarifying the status of the ACCC under the FMA Act were those developed for the Australian Prudential Regulation Authority.

44. The ACCC is prescribed by regulations made under the FMA Act and does not hold any money on its own account. As such, it is financially part of the Commonwealth and is an FMA Act agency.

Schedule 7 – Amending the Criminology Research Act 1971

45. Schedule 7 amends the *Criminology Research Act 1971* (CR Act) to merge two existing CAC Act Commonwealth authorities, the Australian Institute of Criminology (AIC) and the Criminology Research Council (CRC), into a single agency under the FMA Act.

46. The AIC was established as a statutory authority in 1972 and operates under the *Criminology Research Act 1971*. The AIC is Australia's national research and knowledge centre on crime and justice. It seeks to promote justice and reduce crime by undertaking and communicating evidence-based research to inform policy and practice.

47. The CRC is also established under the CR Act. Its principal objectives are to support research that is relevant to current and future public policy issues, foster the undertaking of quality criminological research and ensure that CRC-supported research is disseminated effectively. The CR Act also establishes the Criminology Research Fund, which is administered by the CRC.

48. A number of reviews have recommended changes to strengthen the governance and accountability arrangements for the AIC and CRC. In particular, the *Behm Review of the Criminology Research Act 1971* and *The Review of Homeland and Border Security* (the Smith Review) each recommended that consideration be given to bringing the AIC and CRC together under the *Financial Management and Accountability Act 1997* (FMA Act). This recommendation is also consistent with the *Governance Arrangements for Australian Government Bodies*, August 2005, policy (Governance Policy).

49. The purpose of this Schedule is to merge the AIC and CRC into a single agency regulated under the FMA Act. The transfer of governance arrangements of the AIC and CRC to the FMA Act is consistent with the transfer of governance arrangements of a number of other CAC Act bodies to the FMA Act in recent years.

50. As a CAC Act body, the AIC currently has a governing Board whose role is to set strategic research priorities within general policy and strategic directions. It also has an oversight role in corporate planning and financial management matters. To facilitate the transfer of the AIC as a prescribed agency under the FMA Act, without retaining its status as a body corporate, this Schedule would remove all references to the Board from within the CR Act and establish a new advisory council (the Criminology Research Advisory Council) to advise the Director on a number of issues and would include representatives from the Commonwealth, States and Territories.

51. This Schedule would also establish the AIC as a Statutory Agency for the purposes of the *Public Service Act 1999* and prescribe the Director of the AIC as Head of the Statutory Agency.

52. These amendments would facilitate the establishment of the AIC as a prescribed agency under the FMA Act and would make the Director, rather than the Board of Management, responsible to the Attorney-General for the effective management of the AIC. In doing so, the Director would be obliged to comply with the FMA Act and Regulations.

53. The amendments proposed by Schedule 7 would transfer authority for functions that are currently being exercised by AIC to the Director. This is consistent with the executive management template for FMA Act agencies, whereby the Chief Executive of an FMA Act agency has responsibility for managing the agency. The AIC's function would then be to assist the Director in performing his or her functions.

54. A new Special Account (the Criminology Research Special Account) would also be established under new section 46 to provide the AIC with a mechanism for debiting and crediting amounts for the specific purposes set out in that section, to be as consistent as feasible with the AIC's existing financial arrangements under the CAC Act.

Schedule 8 – Amending the Financial Management and Accountability Act 1997

55. Schedule 8 amends the FMA Act to allow regulations under the FMA Act to specify certain prescribed agencies as “interjurisdictional”. Provision is made for reporting by the agency to State or Territory Ministers and the inclusion of State or Territory public servants as part of the staff of an interjurisdictional agency. These provisions are based on changes proposed to the CAC Act with respect to interjurisdictional Commonwealth authorities (Schedule 5 refers).

56. Schedule 8 would also transfer, from the CAC Act to the FMA Act, the responsibility to inform Parliament when there are changes to the involvement of the Commonwealth (or a prescribed body named in the regulations), in a company. Item 12 of Schedule 5 would remove the existing requirements from the CAC Act.

57. Schedule 8 further amends several headings in the FMA Act to clarify the links to relevant content and to remove obsolete references (such as to the Criminal Code).

Schedule 9 – Amending the National Transport Commission Act 2003

58. Schedule 9 amends the NTC Act to ensure that the CAC Act applies to the NTC as a full Commonwealth authority. Simplifying governance structures by placing government activities under the financial framework accords with the Government's Governance Policy and is consistent with the amendment made by the *Financial Framework Legislation Amendment Act 2008* that transferred the Albury-Wodonga Development Corporation to governance under the CAC Act from 1 July 2009.

Schedule 10 – Amending the Parliamentary Service Act 1999

59. Schedule 10 amends section 66 of the *Parliamentary Service Act 1999* (Parliamentary Service Act). The amendments are intended to clarify that the appropriation authority for making certain payments under that section is contained in the relevant Appropriation Act. Section 66 of the Act provides the Presiding Officers with the power to authorise the making of a payment to a person because of special circumstances that relate to, or arise out of, the employment of a person (the payee or another person) by the Commonwealth.

Schedule 11 - Repeals

60. Schedule 11 repeals 20 redundant special appropriations, including 6 redundant Acts and a statutory Special Account, as well as other redundant legislation relating to the Commonwealth's financial framework.

61. Item 7 in Schedule 11 repeals Part 4B of the *Aboriginal and Torres Strait Islander Act 2005* which currently provides for the Office of Evaluation and Audit (Indigenous Programs). The repeal of Part 4B reflects the absorption of the office into the Australian National Audit Office.

IV. NOTES ON SCHEDULE 1 – Amending the *Australian Human Rights Commission Act 1986*

62. An explanation of the amendments proposed in Schedule 1 is provided in sequential order.

Part 1—Amendments

Clarifying body corporate status of the Australian Human Rights Commission

63. **Item 1** amends the AHRC Act to add new subsections 7(4), (5) and (6) to the provisions that describe the Australian Human Rights Commission (AHRC) as a body corporate.

64. The new subsection 7(4) would provide that any real or personal property held by the AHRC is held for and on behalf of the Commonwealth, thereby clarifying that such property is not held by the AHRC on its own account.

65. The new subsection 7(5) is intended to complement subsection 7(4) in relation to any money held by the AHRC.

66. The new subsection 7(6) would complement the current paragraph 7(2)(d), which provides that the AHRC may sue and be sued in its corporate name, and clarifies that a right to sue is not personal property for the purposes of the new subsection 7(4).

67. These amendments make it clear, on the face of the primary legislation, that any expenditure by the AHRC must be based on an appropriation from the Parliament, given that the AHRC is financially governed under the *Financial Management and Accountability Act 1997*.

Part 2 – Transitional provisions

Property held by the Commission

68. **Item 2** provides that any real or personal property held by the Commission immediately before the new subsections 7(4), (5) and (6) commence, is taken, after their commencement, to be real or personal property held by the AHRC for and on behalf of the Commonwealth.

69. **Item 3** confirms, to avoid doubt, that the AHRC's right to sue is not affected by these amendments. This provision ensures, to avoid doubt, that any of its ongoing legal proceedings are not affected by these amendments. The provision deals with a right to sue, only, given the clarification in subsection 7(6) that a right to sue is not to be treated as personal property. It is important to note, however, that no potential rights held by others to sue, litigate against, or otherwise engage in proceedings with the AHRC, are affected by this amendment.

V. NOTES ON SCHEDULE 2 – Amending the *Australian Law Reform Commission Act 1996*

70. An explanation of the amendments proposed in Schedule 2 is provided in sequential order.

Part 1—Amendments

Definitions

71. **Items 1 to 8** amend several definitions within section 3 of the *Australian Law Reform Commission Act 1996* (ALRC Act), which defines several terms for the purposes of the ALRC Act. These amendments are required due to the proposed transition of the management structure to an executive management model, and to broaden the definition of “judicial office”.

72. **Items 1 and 2** repeal the definitions of “Board” and “Board member”. These definitions will no longer be required as a consequence of the amendments proposed by item 34, which will repeal provisions of the ALRC Act dealing with the board of management (sections 27 to 32).

73. **Item 3** repeals the definition of “Deputy President”. This definition will no longer be required as a consequence of amendments proposed by item 11, which will remove the office of Deputy President from the Australian Law Reform Commission’s (Law Reform Commission’s) membership structure.

74. **Item 4** repeals the definition of “Division”. This definition will no longer be required as a consequence of amendments proposed by item 47, which repeals provisions of the ALRC Act allowing the Law Reform Commission to establish Divisions of the Law Reform Commission for the purposes of specific references (Division 3 of Part 4).

75. **Item 5** replaces the definition of “judicial office” with a new definition to improve consistency throughout the ALRC Act. Paragraph (a) is broadened to refer to the office of a judge, magistrate or justice of a Federal, State or Territory Court. Paragraph (b) is similarly expanded to include an office whose holder has, under an Act of the Commonwealth, a State or Territory, the same status as a judge, magistrate or justice of a Federal, State or Territory Court.

76. The new definition omits reference to “the office of President of the Defence Force Discipline Appeal Tribunal” in subsection (c) of the definition. As the President of the Defence Force Discipline Appeal Tribunal must be a “Justice or Judge of a federal court or of the Supreme Court of a State or Territory” (section 8 of the *Defence Force Discipline Appeals Act 1955*), this office will fall within the expanded definition of “judicial office” and hence specific reference to it in subsection (2) is no longer required.

77. **Items 6 and 7** insert the definitions of “management advisory committee” and “management advisory committee member”. These definitions are inserted as a consequence of item 35 which inserts a new section 27 to allow the Attorney-General to establish a management advisory committee.

78. **Item 8** amends the definition of “member” to remove the reference to Deputy President as a consequence of the amendments proposed by item 11, which will remove of the office of Deputy President from the ALRC’s membership structure.

Establishment and constitution of the Law Reform Commission

79. **Item 9** omits the characters “(1)” in subsection 5(1) as a consequence of the amendments made by item 10. **Item 10** repeals subsections 5(2), (3) and (4). These subsections are no longer required as the Law Reform Commission will become legally and financially part of the Commonwealth as a result of becoming a prescribed agency under the *Financial Management and Accountability Act 1997* (FMA Act).

80. **Item 11** replaces paragraphs 6(1)(b) and (c) with a new paragraph 6(1)(b). The effect of this amendment is to abolish the office of Deputy President and to provide that the Law Reform Commission consists of the President and not more than six other members to increase flexibility in the constitution of the Law Reform Commission. The office of Deputy President is being abolished as there is no specific role for the Deputy President beyond that of any other member apart from acting as President when the President is absent from time to time. The amendments proposed by items 21 and 22 will enable the Attorney-General to appoint a member (or a person who is qualified to be a member) to act as President.

81. **Item 12** inserts a new subsection 6(3) which will allow the Attorney-General to appoint part-time members as the Attorney-General considers necessary from time to time to enable the Law Reform Commission to perform its functions. This proposed amendment allows greater flexibility in the size and composition of the Law Reform Commission, enabling the Attorney-General to appoint such part-time members as necessary (subject to new paragraph 6(1)(b)) to ensure that the Law Reform Commission is able to perform its functions.

Appointment of members

82. Subsection 7(1) currently provides that all members must be appointed by the Governor-General. **Item 13** replaces this subsection with a new subsection that will allow part-time members to be appointed by the Attorney-General, by written instrument, with all full-time members being appointed by the Governor-General. The purpose of this amendment is to enhance the workability and timeliness of the appointment process and to better enable members who are subject-matter experts in particular fields of inquiry to be appointed to the Law Reform Commission quickly and flexibly for the purpose of contributing to a specific reference.

83. Subsection 7(2) currently lists the eligibility criteria for appointment as a member of the Law Reform Commission. **Item 14** replaces paragraph 7(2)(a) with a new paragraph 7(2)(a) to broaden the eligibility criteria to include “the holder of a judicial office”, consistent with the amendment of the definition of “judicial office” proposed by item 5. **Item 15** amends paragraph 7(2)(d) which currently allows a person to be appointed to the Law Reform Commission if they are, in the Governor-General’s opinion, suitable for the appointment. Specifically, item 15 replaces “Governor-General’s opinion” with “opinion of the Governor-General or the Attorney-General (as the case may be)” consistent with the amendments proposed by items 12 and 13, which will allow the Attorney-General to appoint part-time members to the Law Reform Commission.

84. Subsection 8(1) currently provides that the President and the Deputy President must be appointed as full-time members. **Item 16** replaces subsection 8(1) with a new subsection 8(1) which provides that the President must be appointed as a full-time member. It also removes the reference to the Deputy President as a consequence of the amendments proposed by item 11.

85. **Item 17** replaces the word “must” with “may” in subsection 8(2). The effect of this amendment is to enable members to be appointed as either full-time or part-time members having regard to the range and volume of work being undertaken by the Law Reform Commission.

86. **Item 18** repeals the definition of “judicial office” in subsection 8(4). This definition is no longer required as the amended definition of “judicial office” in section 3 will apply throughout the ALRC Act.

87. Subsection 9(1) currently provides that members may hold office for the term, not longer than 7 years, specified in his or her appointment and are eligible for re-appointment. **Item 19** amends subsection 9(1) to provide that a member can hold office for a term of at least 6 months but no longer than 5 years and are eligible for re-appointment. This proposed amendment is consistent with the Commonwealth’s guidelines for the merit-based selection of Australian Public Service agency heads and statutory office holders, which specify that appointments should be made for a period of 5 years unless other special circumstances arise justifying a short term.

88. **Item 20** amends subsections 11(1) and (2). The purpose of these amendments is to enable the Governor-General or the Attorney-General to enter into necessary arrangements with the Governor of a State or the Chief Minister of a Territory for the purpose of appointing a judicial officer as a member.

Acting appointments

89. **Item 21** removes section 12. This section will no longer be required as a consequence of amendments proposed by item 11.

90. Section 13(1) currently enables the Attorney-General to appoint a full-time member (other than the Deputy President) to act as President. **Item 22** amends section 13(1) to enable the Attorney-General to appoint, by written instrument, a member or a person who is qualified to be a member to act as President when there is a vacancy in the office of President or the President is absent from duty or from Australia. This amendment broadens the category of persons who may be appointed to act as President and removes the reference to the Deputy President, as a consequence of the amendment proposed by item 11.

91. Subsections 13(2) and (3) currently refer to the process of appointing an acting Deputy President. **Item 23** repeals subsections 13(2) and (3) as they are no longer required as a consequence of the amendment proposed by item 11. Item 23 also inserts new subsections 13(2) and (3). New subsection 13(2) will provide that the instrument appointing an acting President must specify the period in which the appointment has effect, or the circumstances, in which an appointment has effect. New subsection 13(3) clarifies that when a person who is not a member of the Law Reform Commission is acting as President, the person is deemed to be a member of the Law Reform Commission for the period of the appointment.

92. **Item 24** amends subsection 14(1) by removing the reference to the Deputy President as a consequence of the amendments proposed by item 11.

Remuneration and allowances

93. **Item 25** removes the words “or a judge of the Supreme Court of a State or Territory” in subsection 16(1) as they will no longer be necessary following the expansion of the definition of “judicial office” proposed by item 5.

Termination of appointments and resignation

94. Section 17 currently provides for circumstances in which a member’s appointment may be terminated. **Item 26** replaces sections 17 and 18 with new sections 17, 17A and 18. New section 17 provides for circumstances in which a full-time member’s appointment may be terminated by the Governor-General, effectively replicating current section 17 with the following exceptions:

- current paragraph 17(2)(a) is replaced with a provision which separates the circumstances in which a member’s appointment may be terminated;
- current paragraph 17(2)(b) and subsection 17(3A) are removed as they refer to breaches of the CAC Act and are no longer relevant once the Law Reform Commission becomes a prescribed agency under the FMA Act; and
- the words “or a judge of the Supreme Court of a State or Territory” in current subsection 17(5) are removed as they are no longer necessary following the expansion of the definition of “judicial office” proposed by item 5.

95. New section 17A provides for circumstances in which a part-time member’s appointment may be terminated by the Attorney-General. This amendment is consistent with the amendments made by item 13, which allow the Attorney-General to appoint part-time members and replicates new section 17 with the exception of subsection 17(3).

96. Section 18 currently provides for circumstances in which a member may resign from his or her office. **Item 26** replaces section 18 with a new section 18, which provides that full-time members may resign by signing a written resignation and delivering it to the Governor-General, and part-time members may resign by signing a written resignation and delivering it to the Attorney-General. This amendment is consistent with the amendments made by item 13, which allow the Attorney-General to appoint part-time members.

Leave of absence for full-time members

97. Section 19(3) provides the President with the power to grant the Deputy President or any other full-time member, leave of absence (except recreation leave) on such terms and conditions as to remuneration. **Item 27** amends subsection 19(3) by removing the reference to the Deputy President as a consequence of the amendments proposed by item 11. **Item 28** inserts new subsection 19(4) to provide that section 19 has effect subject to the *Remuneration Tribunal Act 1973*.

How the Law Reform Commission is to perform its functions

98. Current paragraph 24(1)(b) provides that the Law Reform Commission must ensure that the laws, proposals and recommendations it reviews, considers or makes are, as far as practicable, consistent with the International Covenant on Civil and Political Rights (ICCPR). **Item 29** removes the reference to the ICCPR and substitutes “Australia’s international obligations that are relevant to the matter”. This amendment will make subsection 24(2) redundant and is proposed for removal by item 30. The purpose of this amendment is to ensure that the Law Reform Commission considers all of Australia’s international obligations relevant to a reference.

99. **Item 30** replaces subsections 24(2) and 24(3) with a new subsection 24(2) which requires the Law Reform Commission to have regard to the effect that recommendations may have on the costs of getting access to, and dispensing, justice and also the effect on persons and businesses in general (including the economic effect). The purpose of this amendment is to ensure that the Law Reform Commission has regard to any broader implications its recommendations may have.

Law Reform Commission to comply with certain requirements and directions

100. Section 26 provides that the Law Reform Commission must comply with certain requirements and directions. **Item 31** inserts subsection 26(2A), which will provide that in administering the Law Reform Commission, the President must act in accordance with any policies determined by, and comply with any directions given, by the Attorney-General in writing. The

purpose of this amendment is to enable the Attorney-General to give written directions to the President with respect to the administration of the Law Reform Commission and to ensure that its administration is consistent with Government policy. This new subsection is consistent with the FMA Act and is limited to administrative matters only. It will not affect the independence of the Law Reform Commission in undertaking inquiries.

101. **Item 32** repeals subsection 26(4), which provides that section 26 does not affect the application of section 28 of the CAC Act in relation to policies affecting the Law Reform Commission. The CAC Act would not apply to the Law Reform Commission, following its transition to a prescribed agency under the FMA Act, therefore subsection 26(4) would no longer be relevant.

Management structure

102. Sections 27 to 32 currently allows for the Board of Management of the Law Reform Commission and set out the Board's functions, powers and constitution, as well as the arrangements for Board meetings and delegations. The Board is currently responsible for the management of the Law Reform Commission and ensuring it performs its functions effectively and economically. Under section 34, the President of the Law Reform Commission is the Chief Executive Officer and is, under the Board, responsible for the management of the Law Reform Commission.

103. **Item 33** repeals section 27 to 32 and inserts a new section 27 which allows the Attorney-General to establish a management advisory committee to advise the President of the Law Reform Commission on issues relevant to the proper discharge of the functions of the Law Reform Commission, such as the Law Reform Commission's strategic plan and implementation. The management advisory committee will not possess executive powers or decision-making authority and may not compromise the intellectual independence or impartiality of the Law Reform Commission. The intent of this provision is that the management advisory committee will provide support for the President on the management of the Law Reform Commission in a non-binding manner, within a relationship where the committee is subordinate to the President. The Law Reform Commission will continue to report to the Attorney-General on the results of any reviews and to include in those reports, any recommendations it may wish to make (as provided for in section 21). Additionally, the President of the Law Reform Commission may decide matters about the management advisory committee that are not provided for in the ALRC Act, such as the timing and conduct of meetings. The Attorney-General may appoint or remove members to the management advisory committee and may dissolve the management advisory committee at any time.

104. **Item 34** repeals sections 27 to 34 and inserts a new section 34 to replace the existing Board of Management structure with the President as Chief Executive Officer. This amendment aligns the Law Reform Commission's governance arrangements with an executive management structure and is consistent with the Government's *Governance Arrangements for Australian Government Bodies* policy.

Meetings of the Law Reform Commission

105. Section 36 provides for the manner in which meetings of the Law Reform Commission are to be convened and conducted. **Item 35** repeals subsection 36(1), which provides that the President must convene meetings of the Law Reform Commission as he or she thinks necessary for the efficient performance of its functions and substitutes it with a new subsection that requires the President to convene at least two meetings each financial year and any other meetings that the President thinks necessary for the efficient performance of the Law Reform Commission's functions. This amendment formalises what already occurs in practice.

106. **Items 36 and 39** amend subsections 36(2) and 36(6) respectively by removing the reference to three members and substituting a reference to the majority of members, so that the President must convene a meeting on receiving a written request that is signed by a majority of the members, and that a quorum constitutes a majority of the members of the Law Reform Commission. These amendments are necessary as the composition of the Law Reform Commission changes depending upon the number of members that are considered necessary for the Law Reform Commission to perform its functions.

107. **Item 37** repeals subsection 36(4) as it will no longer be required as a consequence of amendments proposed by item 11. Similarly, **item 38** removes the reference to Deputy President to provide that if the President is not present, the members who are present must elect one of their number to preside.

Members must disclose certain interests

108. Section 39 requires that members must disclose certain interests in matters being considered, or about to be considered, by the Law Reform Commission. **Items 40 and 42** amend subsections 39(1) and (4) respectively to replace the concept of “material personal interest” with “interest”, for consistency with the FMA Act.

109. **Item 41** inserts the words “of the Commission” after the word “meeting” in subsection 39(2) to make it clear that disclosures must be recorded in the minutes of the meeting of the Law Reform Commission where the disclosure is made.

110. **Item 43** repeals subsection 39(5) and inserts new subsections 39(5) and (6) which respectively require that determinations relating to interests be recorded in the minutes of the meeting where the disclosure is made, and define the types of interests that must be disclosed. The effect of this amendment is that any interest must be disclosed, whether that interest is direct or indirect (whether or not pecuniary) and whether it is acquired before or after the member’s appointment.

111. **Item 44** inserts a new section 40 at the end of Division 2 of Part 4, which provides that the President must give written notice to the Attorney-General of all interests he or she has or acquires and that conflict, or could conflict, with the proper performance of the President’s functions.

Divisions of the ALRC

112. Division 3 of Part 4 provides for Divisions of the Law Reform Commission to be created for the purpose of a specific reference. **Item 45** repeals Division 3 as it will no longer be necessary for there to be formal divisions of the Law Reform Commission as a consequence of the amendments to the composition of the Law Reform Commission proposed by item 10.

Staff and consultants

113. Section 43 currently provides that the President (with the Attorney-General’s approval) may appoint staff of the Law Reform Commission and on terms and conditions determined by the Board. **Item 46** substitutes new subsections 43(1) and (2) to provide that the staff of the Law Reform Commission are to be engaged under the Public Service Act, that the President and the staff together constitute a Statutory Agency and that the President is the Head of that Statutory Agency.

114. Section 44 currently provides that the Law Reform Commission may engage consultants and on terms and conditions determined by the Board. **Item 47** substitutes the reference to the “Commission” in subsection 44(1) with a reference to the President and removes the need to “determine” any “terms and conditions” given that consultants would simply be engaged under

contract law. **Item 48** repeals subsection 44(2). The effect of these amendments is that the President may engage consultants with suitable qualifications and experience.

Finance

115. **Item 49** repeals Part 5, which deals with matters relating to the Law Reform Commission's financial management, as matters relating to financial management of the Law Reform Commission will be dealt with under the FMA Act.

116. **Item 49** also substitutes a new section 45, which establishes the Law Reform Special Account for the purposes of the FMA Act. The purpose of this section is to enable amounts to be credited to or debited from the Law Reform Commission's Law Reform Special Account. This item also states the purposes of the account, what can be credited to the account and how the adjusted levy amounts that will be calculated and credited to the account. Importantly, money that was previously held by the Law Reform Commission will be credited to this Special Account through the transitional provision (subitem 54(2)).

Protection from civil actions

117. **Item 50** repeals section 50, which protects the Law Reform Commission from civil actions. This section will no longer be required as a consequence of item 10, which will remove the Law Reform Commission's body corporate status. The Law Reform Commission will be legally part of the Commonwealth and is thus afforded Crown immunity.

Part 2—Transitional Provisions

Application of subsection 9(1) amendment

118. **Item 19** of this Schedule amends subsection 9(1) which prescribes the duration of members' appointments. **Item 51** clarifies that this amendment applies to all appointments made when or after this Schedule commences.

Law Reform Commission and Board

119. **Item 52** provides for the continuation of appointments of members, engagements of consultants, arrangements and decisions once this Schedule commences, and on the terms and conditions held before this Schedule commenced (subitems 52(1), (2), (3), (4) and (6)). Subitem 52(7) defines the types of decisions relevant to subitem 52(6).

120. **Subitem 54(5)** ensures that references in an Act, statutory instrument or other document to the Board are references to the President of the Law Reform Commission, and any reference to a member of the Board is a reference to a member of the Law Reform Commission.

Employees

121. **Subitem 53(1)** provides that any employees engaged immediately before this Schedule commences, continue to be engaged as if the person was appointed under the Public Service Act. Subitem 53(2) provides that an employee transferred from the old to the new Law Reform Commission has their entitlements transferred in their entirety. Subitem 53(3) defines terms relevant to item 53 including *new Commission* and *old Commission*.

Vesting of property, money and financial liabilities

122. **Items 54 and 55** provide that the Law Reform Commission's assets and liabilities transfer across from the existing body corporate to the Commonwealth.

Instruments relating to transferred assets and liabilities

123. **Item 56** provides that where instruments, relating to assets or liabilities in items 56 and 57, are in force immediately before this Schedule commences, any reference to the Law Reform Commission is to be read as a reference to the Commonwealth.

Exemptions from stamp duty and other State or Territory taxes

124. **Item 57** provides that no stamp duty or tax is payable under a law of a State or Territory in respect of the transfer of assets or liabilities under this Part. As assets or liabilities must be transferred due to the change in body corporate structure, no stamp duty or tax should be paid.

Proceedings

125. **Item 58** provides that if the Law Reform Commission was a party to any proceedings pending in any court or tribunal immediately before this Schedule commences, the Commonwealth is substituted for the Law Reform Commission as the party to the proceedings, when this Schedule commences. The purpose of this item is to transfer the Law Reform Commission's responsibilities to the Commonwealth.

Contracts

126. **Item 59** provides that where contracts are entered into or are in force immediately before this Schedule commences, the contract has effect as if the Commonwealth had entered into the contract.

Appropriations

127. **Item 60** provides that if the Consolidated Revenue Fund is appropriated under an Act to the Department that administers the ALRC Act for payment to the Law Reform Commission, the appropriation Act continues to apply after this Schedule commences.

Reports

128. **Item 61** provides that the Law Reform Commission is required to provide a report (whether financial statements or otherwise) for periods ending before this Schedule commences. However, subitem 63(3) allows a single report to be produced where two reports are required for periods ending after this Schedule commences.

Regulations

129. **Item 62** provides that the Governor-General may make regulations prescribing matters of a transitional nature relating to the amendments made in this Schedule. Subitem 62(3) specifies some examples of what matters the regulations may prescribe and subitem 62(4) ensures that these regulations have effect despite the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the *Public Service Act*. Subitem 62(5) defines terms for the purposes of this item.

VI. NOTES ON SCHEDULE 3 – Amending the *Australian Postal Corporation Act 1989*

130. An explanation of the amendments proposed in Schedule 3 is provided in sequential order. These amendments relate to reforms made by the *Commonwealth Authorities and Companies Amendment Act 2008*, concerning how general policies of Government affect *Commonwealth Authorities and Companies Act 1997* (CAC Act) bodies.

Government obligations of Australia Post

131. **Item 1** updates paragraph 28(a) of the *Australian Postal Corporation Act 1989* (Australia Post Act) to require the Australian Postal Corporation (Australia Post) to perform its functions in a way consistent with any General Policy Order made under section 48A of the CAC Act that applies to Australia Post and its directors.

Corporate plans

132. **Item 2** updates paragraph 38(h) of the Australia Post Act to require the directors of Australia Post to have regard, when preparing a corporate plan, to the cost of performing Australia Post's functions in a manner consistent with any General Policy Orders that apply to Australia Post and its directors.

Annual reports

133. **Item 3** updates subparagraph 43(1)(g)(i) of the Australia Post Act to require Australia Post to include in its annual report particulars of any General Policy Order that applies to Australia Post and its directors.

Costs of complying with General Policy Orders

134. **Item 4** updates subparagraph 44(1)(g)(ii) to require Australia Post to include in its annual report an assessment of the cost of performing its functions in a manner consistent with any General Policy Order that applies to Australia Post and its directors.

Government directions

135. **Item 5** updates section 50 to replace “Commonwealth Government” with “Australian Government”, consistent with the other amendments in this Schedule, which also update references to the “Commonwealth Government”.

VII. NOTES ON SCHEDULE 4 – Amending the *Australian Wine and Brandy Corporation Act 1980*

136. An explanation of the amendments proposed in Schedule 4 is provided in sequential order.

Part 1 – Amending the *Australian Wine and Brandy Corporation Act 1980*

Amending the name of the Australian Wine and Brandy Corporation

137. **Part 1** of this Schedule amends the *Australian Wine and Brandy Corporation Act 1980* (AWBC Act) to reflect the change of name of the corporation and the resulting change to the corporation’s Selection Committee.

138. **Items 1-11** replace “Australian Wine and Brandy” with “Wine Australia” in the title, parts, sections and subsections of the AWBC Act wherever they appear. Specifically, the title of the Act would become the *Wine Australia Corporation Act 1980*.

Part 2 – Consequential Amendments

139. **Part 2** of this Schedule amends several Acts specifically to reflect the change to “Wine Australia” where “Australian Wine and Brandy” is referenced.

140. **Item 12** amends Part III of Schedule 2 to the *Freedom of Information Act 1982*, to reflect the change in the AWBC Act’s title in reference to legislation covered.

141. **Items 13 and 14** amend clauses 1 and 5(2) & (3) of Schedule 13 to the *Primary Industries (Customs) Charges Act 1999* to change the name of the corporation, in the definition of *Corporation* and in references to the title of the AWBC Act.

142. **Items 15, 16 and 17** amend clauses 1, 5(2), 9(2) and 9(3) of Schedule 26 to the *Primary Industries (Excise) Levies Act 1999* to change the name of the corporation, in the definition of *Corporation* and in the definition of *declared winemakers’ organisation*, and in subclauses 9(2) and 9(3).

143. **Item 18** amends paragraph 128A(4)(r) of the *Safety, Rehabilitation and Compensation Act 1988* to change the definition of *prescribed Commonwealth authority* to reflect the updating of the corporation’s name.

VIII. NOTES ON SCHEDULE 5 – Amending the *Commonwealth Authorities and Companies Act 1997*

144. An explanation of the amendments proposed in Schedule 5 is provided in sequential order.

Definition of “general law”

145. **Item 1** amends section 5 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) to insert a new definition of “general law” to mean the “principles and rules of the common law and equity.” This definition reflects the definition of “general law” in section 9 of the *Corporations Act 2001* (Corporations Act). Inserting this definition allows a number of other provisions to be simplified (refer items 7-11).

Annual reports of Commonwealth authorities

146. **Item 2** inserts an explanatory note after paragraph 9(2)(a) of the CAC Act, clarifying (for the reader) that the deadline for the directors of a Commonwealth authority to submit an authority’s annual report to its responsible Minister is 15 October when the financial year ends on 30 June (that is three months and 15 days after the relevant body’s financial year).

Commonwealth authority to notify the responsible Minister of significant events

147. **Item 3** repeals subsections 15(2) and (3) of the CAC Act and substitutes a new subsection 15(2). The new subsection allows a responsible Minister to give written guidelines to the directors of a Commonwealth authority to assist the directors in determining whether a proposal would be a “significant event” for the purposes of all of the matters in subsection 15(1).

148. Subsection 15(2) is repealed, as it suggests that a responsible Minister for a Commonwealth authority may not be interested in the formation of a company by an authority. Instead there is legitimate scope for clearer reporting on the use of company structures and/or subsidiaries in the Commonwealth’s context, consistent with the move of section 45 of the CAC Act to section 39A of the *Financial Management and Accountability Act 1997* (FMA Act). Guidelines may also explain the amount of notice that a Minister may require in relation to being able to respond to information about a specific proposed significant event.

Finance Minister’s delegation power

149. **Item 4** repeals subsection 18(4A) of the CAC Act, which allowed the Finance Minister to delegate his or her powers and functions under section 18 (relating to investments by Commonwealth authorities) to an official under the FMA Act. This provision can be repealed as section 48B brings together a range of delegation powers into a single consolidated provision (refer item 20). The power of delegation under section 48B will enable delegation of specified powers to Departmental Secretaries, and therefore supplements any reliance on authorisations of Departmental Secretaries to seek information on behalf of Ministers.

References to common law and equity

150. **Items 5 to 9** amend provisions to replace the phrase “common law and equity” with “under the general law.” The Bill amends the CAC Act to define “general law” in section 5 to refer “to the principles and rules of the common law and equity” (refer item 1 above). Item 5 amends

subsection 22(2), Item 6 amends the note after subsection 22(2), item 7 amends subsection 27A(1), item 8 amends the note after paragraph 27A(1)(b) and item 9 amends section 27B.

151. After item 9, a **note** alters the heading to section 27E of the CAC Act to clarify that that section applies to a delegate of a director, rather than to a delegate of a Minister under section 48B (refer item 16).

Interjurisdictional authorities

152. **Item 10** inserts a new Part 3A into the CAC Act to allow for regulations to apply to interjurisdictional Commonwealth authorities. Part 3A provides an enhanced ability for the Commonwealth and participating State and Territory jurisdictions to be jointly involved in the governance of interjurisdictional Commonwealth authorities. A similar provision is being made for interjurisdictional FMA Act agencies in the FMA Act (refer item 5 in Schedule 8).

153. This proposed amendment is also consistent with Recommendation 9.2 of the *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* Report, which recommends ensuring that there are clear governance arrangements for interjurisdictional entities.

154. Subsection 33A(1) would allow the regulations to prescribe a Commonwealth authority as an “interjurisdictional authority”, to prescribe the persons that comprise an interjurisdictional authority (including State or Territory officers or employees) and prescribe a Minister of a State, the Australian Capital Territory or Northern Territory to be a “State/Territory Minister”. The participating State/Territory Minister would ordinarily be the Minister of a State or Territory who is allocated with administrative oversight of the authority’s functions.

155. Subsection 33A(2) would provide that regulations may be made for:

- *Interim reports* – copies of interim reports to be provided to participating State/Territory Ministers under section 13;
- *Notification of significant events* – directors are to notify participating State/Territory Ministers of significant events under subsection 15(1);
- *Issuing guidelines* – participating State/Territory Ministers may issue guidelines about notifying them of significant events under proposed subsection 15(2);
- *Participating State/Territory Ministers to be kept informed* – directors must keep participating State/Territory Ministers informed of the authority’s operations, and provide reports, documents and information relating to authority’s operations under paragraphs 16(1)(a) and 16(1)(b), within the time limits set by the participating State/Territory Minister under subsection 16(2); and
- *Participating State/Territory Government officers and employees complying with statutory and other duties* – participating State/Territory officials who are directors or officers of an interjurisdictional authority do not contravene their general duties under sections 23 – 25 (or their equivalent duties under the general law), consistent with subsection 27A(1).

Wholly-owned Commonwealth company to notify the responsible Minister of significant events

156. **Item 11** repeals subsections 40(2) and (3) of the CAC Act and substitutes a new subsection 40(2). The new subsection allows a responsible Minister to give written guidelines to the directors of a wholly-owned Commonwealth company to assist the directors in determining

whether a proposal is a “significant event” for the purposes of subsection 40(1). Equivalent amendments applying to Commonwealth authorities are also being made (refer item 3).

157. Subsection 40(2) is repealed, as it suggests that a responsible Minister for a Commonwealth company may not be interested in the formation of a company by a wholly-owned Commonwealth company. Rather, there is scope for clearer reporting on the use of companies in the Commonwealth context, consistent with the move of section 45 of the CAC Act to section 39A of the FMA Act. Guidelines may also explain the amount of notice that a Minister may require in relation to being able to respond to information about a specific proposed significant event.

Minister to notify Parliament where the Commonwealth’s involvement with a company changes

158. **Item 12** repeals section 45 of the CAC Act regarding Ministerial notices to Parliament where the Commonwealth’s involvement with a company changes. This provision is being relocated as section 39A of the FMA Act (refer item 4 of Schedule 8). This move will more appropriately locate the provision in Part 5 of the FMA Act, which relates to investments and involvement in companies by the Commonwealth. This provision will continue to provide for Ministers to table a notice in each House of Parliament for events involving the Commonwealth, while allowing the regulations to broaden the scope of bodies corporate over which reporting may be needed, should that be deemed necessary in the future.

Compliance with government procurement requirements

159. **Item 13** inserts subsection (6A) into section 47A of the CAC Act to make the Finance Minister’s directions to CAC Act bodies on procurement a legislative instrument. Ministerial directions to CAC Act bodies are generally not legislative instruments under the *Legislative Instruments Act 2003* (LI Act) (refer to item 5 of section 7 of the LI Act). Accordingly, this amendment would bring these directions under the LI Act to enhance the transparency of procurement policies applying to relevant CAC Act bodies. These directions are equivalent to the *Commonwealth Procurement Guidelines* (CPGs), issued under regulation 7 of the FMA Regulations, made pursuant to section 64 of the FMA Act. The CPGs are a legislative instrument (pursuant to subsection 64(3) of the FMA Act) and are not subject to disallowance or sunseting (under item 21 of subsection 44(2), and item 19 of subsection 54(2) of the LI Act, respectively). This amendment will increase the consistency of the Finance Minister’s directions to CAC Act bodies on procurement with the CPGs. Similarly, directions under section 47A will not be subject to disallowance or sunseting under the LI Act, but the amendment will mean that such directions would be added to the Federal Register of Legislative Instruments and increase transparency by making it easier to identify when such directions have been issued to CAC Act bodies.

160. **Item 14** amends subsection 47A(7) to replace the reference to the “*Financial Management and Accountability Regulations 1997*” with “regulations made under the *Financial Management and Accountability Act 1997*”. This ensures that the CAC Act will not be out of date should the name of those regulations change.

General Policy Orders

161. **Item 15** amends subsection 48A(5) of the CAC Act to insert the word “(disallowance)” after the reference to section 42 of the LI Act and “(sunseting)” after the reference to Part 6 of the LI Act. This improves clarity by assisting the reader to understand which provisions of the LI Act are affected by subsection 48A(5).

Delegation by Ministers of specific functions to Departmental Secretaries

162. **Item 16** inserts section 48B into the CAC Act. This provision would allow a Minister (either the responsible Minister or Finance Minister) to delegate specified powers and functions, by written instrument, to a Secretary of a Department of State. The powers and functions that can be delegated are those under:

- section 14 – preparation of budget estimates by a Commonwealth authority;
- paragraph 16(1)(b) – requests for reports, documents and information from a Commonwealth authority by the responsible Minister;
- paragraph 16(1)(c) – requests for reports, documents and information from a Commonwealth authority by the Finance Minister;
- subsection 16(2) – timeframes for requests for reports, documents and information by the responsible Minister of a Commonwealth authority or Finance Minister;
- paragraph 18(3)(d) – approval of methods of investment of surplus money by Commonwealth authorities (and which appears currently, in subsection 18(4A));
- section 39 – preparation of budget estimates by a wholly-owned Commonwealth company;
- paragraph 41(1)(b) – requests for reports, documents and information from a wholly-owned Commonwealth company by the responsible Minister;
- paragraph 41(1)(c) – requests for reports, documents and information from a wholly-owned Commonwealth company by the Finance Minister; and
- subsection 41(2) – timeframes for requests for reports, documents and information by the responsible Minister of a wholly-owned Commonwealth company or Finance Minister.

163. Inserting a power of delegation into the CAC Act will assist with more efficient government operations, contribute to the Government's Better Regulation Agenda and reduce red tape. Introducing a specific delegation improves on existing practices, which need to rely on authorisations for seeking budget estimates and monthly financial statements, absent an express capacity for Ministers to delegate this power to their Secretaries to seek information on their behalf.

XIII. NOTES ON SCHEDULE 6 – Amending the Competition and Consumer Act 2010

164. An explanation of the amendments proposed in this Schedule is provided in sequential order.

Part 1 – Amendments

Clarifying the body corporate status of the Australian Competition and Consumer Commission

165. **Item 1** amends the *Competition and Consumer Act 2010* to add new subsections 6A(3), (4) and (5).

166. The new subsection 6A(3) would provide that any real or personal property held by the Australian Competition and Consumer Commission (ACCC) is held for and on behalf of the Commonwealth, thereby clarifying that such property is not held by the ACCC on its own account.

167. The new subsection 6A(4) is intended to complement subsection 6A(3) in relation to any money held by the ACCC.

168. The new subsection 6A(5) would complement the current paragraph 6A(2)(d), which provides that the ACCC may sue and be sued in its corporate name, and clarifies that a right to sue is not personal property for the purposes of the new subsection 6A(3).

169. These amendments make it clear, on the face of the primary legislation, that any expenditure by the ACCC must be based on an appropriation from the Parliament, given that the ACCC is financially governed under the *Financial Management and Accountability Act 1997*.

Part 2 – Transitional Provisions

170. **Item 2** provides that any real or personal property held by the ACCC immediately before the new subsections 6A(3), (4) and (5) commence, is taken, after their commencement, to be real or personal property held by the ACCC for and on behalf of the Commonwealth.

171. **Item 3** confirms, to avoid doubt, that the ACCC's right to sue is not affected by these amendments. This provision ensures, to avoid doubt, that any of its ongoing legal proceedings are not affected by these amendments. The provision deals with a right to sue, only, given the clarification in subsection 6A(5) that a right to sue is not to be treated as personal property. It is important to note, however, that no potential rights held by others to sue, litigate against, or otherwise engage in proceedings with the ACCC, are affected by this amendment.

IX. NOTES ON SCHEDULE 7 – Amending the Criminology Research Act 1971

172. An explanation of the amendments proposed in Schedule 7 is provided in sequential order.

Part 1 – Amendments

173. As stated in section III above, these amendments would integrate the Criminology Research Council (CRC) with the Australian Institute of Criminology (AIC) and move the AIC to the *Financial Management and Accountability Act 1997* (FMA Act).

Definitions

174. **Item 1** will insert into section 4 a definition of Advisory Council to mean the Criminology Research Advisory Council (CR Advisory Council) established under new section 33 of the *Criminology Research Act 1971* (CR Act). The CR Advisory Council will be responsible for advising the Director on a number of issues set out in new section 33 and will provide an important forum for representation of stakeholder views in relation to the work of the AIC. The CR Advisory Council will include representatives from the Commonwealth and all States and Territories.

175. **Items 2 to 4** provide for the repeal of the definitions of the Board, the Council and the Fund. As the AIC and CRC are being merged into a single statutory authority regulated under the FMA Act, these definitions are no longer required.

Status of Institute

176. **Item 5** repeals existing subsections 5(2) to (4) and replaces them with new subsection 5(2). Existing subsections 5(2) to (4) currently provide for the AIC to be a body corporate, in accordance with the *Commonwealth Authorities and Companies Act 1997* (CAC Act). For the AIC, there is no compelling need for retention of body corporate status, once it is moved to the FMA Act, and these subsections will become redundant. (In contrast, transferring from the CAC Act to the FMA Act for certain bodies does justify retaining separate body corporate status, in particular for bodies with a regulatory function.)

177. Consistent with requirements under the FMA Act, new subsection 5(2) provides that the AIC will consist of a Director and Staff of the Institute.

Functions of Institute

178. **Item 6** repeals existing section 6 and inserts a new section 6 to specify the functions of the AIC. Existing section 6 provides an extensive list of functions which will no longer be appropriate for the AIC as an FMA Act agency, but will be transferred to the Director as the person responsible for managing the affairs of the AIC (see item 9). The AIC will continue to be responsible for its core role of conducting and communicating criminological research.

179. New subsection 6(c) will enable the AIC to establish and administer awards programs and engage specialists for the purposes of criminological research and related activities. This will be similar to the work previously undertaken by the CRC. Payments of these grants will be approved by the Director, taking into account the advice of the CR Advisory Council, to ensure that stakeholder views are represented (see item 9).

180. Consistent with executive management governance arrangements under the FMA Act, this item also provides that the AIC will be responsible for assisting the Director in performing his or her functions.

181. **Item 7** replaces the word “Board” in subsection 6A(2) with the word “Director”. This is a consequence of the transfer of the functions of the Board to the Director of the AIC. This is consistent with FMA Act requirements that the Chief Executive of a FMA Act agency is responsible for the financial management of the agency.

182. **Item 8** repeals section 7, which currently provides that the AIC is able to hold money on its own account, is responsible for the expenditure of that money and is also able to invest its assets. As an FMA Act agency, the AIC will hold “public” money and will not require the powers provided for under existing section 7.

183. **Item 9** repeals Division 2 of Part II which provides for the establishment and operation of the AIC Board. As the AIC will no longer have a Board, Division 2 of Part II is no longer required.

184. Existing subsections 15(1) and (2) provide for the appointment of a Director of the AIC by the Governor-General. **Item 10** replaces all references to the “Governor-General” in subsections 15(1) and (2) with references to the “Attorney-General”.

185. This amendment will ensure that the Director of the AIC will be appointed by the Attorney-General and the appointment of the Director will be subject to any terms and conditions determined by the Attorney-General.

Functions of Director

186. **Item 11** - Section 16 of the CR Act currently provides that the function of the Director is to manage the affairs of the AIC. This item repeals existing section 16 and replaces it with a new section 16 to transfer to the Director the more extensive list of functions that were previously exercised by the AIC.

187. Under the amendments proposed by this Schedule, the Director of the AIC will become the head of the agency, and his or her functions will be linked to the functions of the AIC, and to the responsibilities of the head of an FMA Act agency.

188. Consistent with the enabling Acts of many other FMA Act agencies, new section 16 will transfer a number of the current functions of the AIC to the Director. The amendments are based on current section 6 (which provides the functions of the AIC under the CAC Act) and will also set out the circumstances under which the Director must take into account the views of the new CR Advisory Council before providing certain approvals, including payments of grants and engaging specialists relating to criminological research and related activities. Consideration of the advice of the CR Advisory Council is important to ensure representation of all stakeholders, including the States and Territories who have previously, and will continue to, play an important role in the general direction of criminological research.

189. **Item 12** - Subsection 17(1) currently provides that the tenure of the Director will not exceed 7 years. This item amends subsection 17(1) to shorten the tenure of appointment of the Director from “up to seven years” to “up to five years” which is consistent with the tenure of other Chief Executives of statutory authorities within the Attorney-General’s portfolio.

190. **Item 13** - Subsection 17(4) currently provides that the Director may resign from office by writing to the Governor-General. Consistent with amendments made by items 8 and 12, item 11 replaces the reference to the “Governor-General” in subsection 17(4) with the “Attorney-General”.

191. **Item 14** - Section 20 currently provides that the Governor-General may terminate the appointment of the Director for misbehaviour or physical or mental incapacity. Section 21 provides that the Governor-General may remove the Director from office following vacation of office of the Director. Consistent with amendments made by items 10 and 13, item 14 replaces all references to the “Governor-General” in sections 20 and 21 with the “Attorney-General”.

Staff of the Institute

192. **Item 15** - Existing section 23 provides for the appointment of staff of the AIC. **Item 15** repeals current section 23 and replaces it with a new section 23. New subsection 23(1) provides that staff of the AIC are to be employed under either the *Public Service Act 1999* (Public Service Act) or the CR Act. The employment of AIC staff is expected to be predominantly under the Public Service Act. However, the ability to employ staff under the CR Act will provide the AIC with the flexibility of continuing to employ academics and researchers with specialised knowledge to undertake specific research projects, without the requirement of employing them under the Public Service Act.

193. New subsection 23(2) provides a specific power for the Director to determine the terms and conditions of those employed under the CR Act. New subsection 23(3) provides that the Director and APS employees assisting the Director, constitute a Statutory Agency for the purposes of the Public Service Act and that the Director is the Head of that Statutory Agency.

194. Under the CR Act, the AIC currently employs consultants with expertise in a particular area. Item 15 also inserts an explicit power in section 24 for the AIC to employ consultants.

Repeal of Division 4 of Part II

195. **Item 16** repeals Division 4 of Part II. The provisions of Division 4 of Part II relate to the finances of the AIC as a CAC Act body. As the Chief Executive of an FMA Act agency, the Director of the AIC will be accountable for the expenditure and handling of money under the FMA Act, and subject to the reporting and accountability requirements of the FMA Act. Consequently, Division 4 of Part II is no longer required and is repealed by item 16.

Repeal of Parts III and IV

196. **Item 17** repeals existing Parts III and IV and inserts new Part III. Existing Part III provides for the establishment and operation of the CRC and existing Part IV provides for the establishment and operation of the Criminology Research Fund. To facilitate the AIC becoming an FMA Act agency and integrating the CRC, this Schedule removes all references to the CRC and Criminology Research Fund from the CR Act.

Criminology Research Advisory Council

197. **Item 17** inserts new Part III to provide for the establishment and operation of the CR Advisory Council.

198. Replacing the AIC Board and the CRC with the new CR Advisory Council will provide an important forum for representation of stakeholder views in relation to the work of the AIC. The new CR Advisory Council will be established under new section 33 in Part III to advise the Director in relation to the general policy and the strategic direction of the AIC, strategic research and information dissemination priorities in criminology, and applications for research grants. The Advisory Council will include representatives from the Commonwealth, States and Territories who will be nominated by the relevant Attorney-General for that jurisdiction. This is consistent with the current membership of the CRC. New section 33 also enables members of the CR Advisory

Council to resign by giving written notice to their Attorney-General and provides Attorneys-General with the ability to revoke appointments by written notice.

199. New section 34 sets out the role of the Director in conducting meetings of the CR Advisory Council. It will be the Director's responsibility to ensure that the CR Advisory Council meets at least three times per year. The Director is not entitled to vote at the meetings but must attend and keep minutes. New subsection 34(4) allows the CR Advisory Council flexibility in setting, outside of legislation, the manner in which meetings are conducted.

Repeal of section 50

200. **Item 18** repeals section 50 and inserts new sections 46, 47, 48 and 49. Existing section 50 provides that transactions of the AIC and CRC and income and transactions of the Criminology Research Fund are exempt from taxation. Following the integration of the AIC and CRC into a single statutory authority, matters relating to the AIC's financial management will be dealt with under the FMA Act and section 50 will become redundant.

Criminology Research Special Account

201. New section 46 provides for the establishment of the Criminology Research Special Account (CR Special Account), a special account for the purposes of section 21 of the FMA Act. All money that is paid to the AIC will be credited to this Special Account. This will include amongst other things, State and Territory contributions (including towards the Australian Crime and Violence Prevention Awards), money received for services performed, royalties, gifts or bequests made to the AIC, and other receipts.

202. The debiting clauses provided for in new subsection 46(4) will enable the AIC to expend money in relation to:

- its functions as set out in new section 6, including the payment of grants (see item 4);
- remuneration and allowances;
- administering the Special Account;
- any amount that is required or permitted to be repaid; and
- reducing the balance of the account.

Institute may charge for services

203. The AIC currently generates revenue through the provision of research and related services to other Commonwealth Government agencies, State and Territory Governments, not-for-profit organisations and private sector organisations. The AIC's contracted research and related services are integral to, and enhance, its core research activities funded by the Australian Government. New section 47 will provide for the AIC to maintain this ability to charge fees for its services. However, new subsection 47(2) provides that the amount charged must be reasonably related to the cost of providing the services. The purpose of this provision is to ensure that the amount charged will not amount to a tax.

Delegation by Director

204. New section 48 will allow the Director to delegate all or any of his or her functions or powers to an SES employee, or an acting SES employee, of the AIC. The delegations must be in writing and, in performing a delegated function or exercising a delegated power, a delegate must

comply with any written directions of the Director. This section is consistent with delegation arrangements of Chief Executives of other FMA Act agencies.

Annual Report

205. New section 49 will require the AIC to, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year. Subsection 49(2) provides that the annual report must contain the names of grant recipients, the amount of the grant that has been awarded and the purpose of the grant. Paragraph 49(2)(b) also allows for regulations to prescribe any other matters that must be included in the report.

Part 2 – Transitional Provisions

Institute and Board

206. **Item 19** provides for the continuation of the appointment of the Director of the AIC and for current members of the CRC to become members of the CR Advisory Council upon commencement of this Schedule. Item 17 will also ensure that decisions made by the Board of Management will continue as if decisions made by the Director after commencement of this Schedule.

Employees

207. **Item 20** will ensure that following commencement of this Schedule, staff of the AIC who are employed under current section 23 will continue to be staff of the AIC as if appointed under the Public Service Act if a determination made under section 72 of the Public Service Act applies to that particular staff member. In this situation, the duration of employment under current section 23 will be taken into consideration when transferring employee entitlements.

208. If the Public Service Act determination does not apply to an employee of the AIC, then they will be taken to be employed under the CR Act in accordance with new paragraph 23(1)(b) and their terms and conditions will not change.

Vesting of property and money

209. **Item 21** will ensure that any real or personal property or money held by the AIC as a body corporate under the CAC Act will transfer to the Commonwealth under the FMA Act, upon commencement of this Schedule.

210. The purpose of subitem 19(2) is to ensure the transfer of all money held by the AIC, including money from the Criminology Research Fund, to the AIC, with an equivalent credit to the CR Special Account, upon commencement of this Schedule. In short, there will be a consistent appropriation authority to allow the AIC to retain all of its existing funds.

Vesting of financial liabilities

211. **Item 22** will ensure that any financial liabilities of the AIC as a body corporate will be transferred to the Commonwealth, upon the commencement of this Schedule.

Instruments relating to the transferred assets and liabilities

212. **Item 23** provides that where instruments relating to assets or liabilities in items 19 and 20, are in force before this Schedule commences, any reference to the AIC is to be read as a reference to the Commonwealth. This amendment is consequential to the amendments made by items 19 and 20.

Exemption from stamp duty and other State and Territory taxes

213. **Item 24** provides that no stamp duty or tax is payable under a law of a State or Territory in respect of the transfer of assets or liabilities outlined in the transitional provisions in Part 2 of this Schedule.

Proceedings

214. **Item 25** provides that if the AIC were a party to any legal proceedings pending before the commencement of this Schedule, then upon commencement of this Schedule, the Commonwealth will be substituted for the AIC as a party to the proceedings.

Contracts

215. **Item 26** ensures that any contracts entered into by the AIC before the commencement of this Schedule will continue to have effect as if entered into by the Commonwealth.

Appropriations

216. **Item 27** provides that if the Consolidated Revenue Fund is appropriated under an Act to the Department that administers the CR Act, for payment to the AIC or the CRC, then the appropriation Act continues to apply after this Schedule commences as if there was an appropriation to the AIC directly.

Reports

217. **Item 28** specifies when the AIC and the CRC are required to provide a report (whether financial statements or otherwise) for periods ending before and after the Schedule commences. The purpose of subitem 28(3) is to enable a single report to be prepared where reports from the AIC and CRC would otherwise be required.

Regulations

218. **Item 29** provides that the Governor-General may make regulations prescribing matters of a transitional nature relating to the amendments in Schedule 7, including the transfer of staff under the new structure. Subitem 29(3) specifies some examples of what matters the regulations may prescribe and subitem 29(4) ensures that these regulations have effect despite the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the Public Service Act. Subitem 29(5) defines terms for the purposes of this item.

X. NOTES ON SCHEDULE 8 – Amending the *Financial Management and Accountability Act 1997*

219. An explanation of the amendments proposed in Schedule 8 is provided in sequential order.

Updating section headings and notes

220. **Item 1** amends the title of Part 2 of the *Financial Management and Accountability Act 1997* (FMA Act) to read “Part 2 – General provisions about definitions” removing the reference to “offences”, as offences are no longer specifically addressed in the FMA Act.

221. **Item 2** removes the note under the definition of “Special Account” in section 5. The reference in the note to the *Financial Management Legislation Amendment Act 1999* is redundant due to changes to the text of all relevant Special Accounts having been completed through the *Financial Framework Legislation Amendment Act 2005* and the *Financial Framework Legislation Amendment Act (No. 1) 2006*.

222. Following item 2, the **heading** to section 31 which reads “Relevant Agency receipts” is altered to read “Retaining prescribed receipts” in order to better describe the content of the section.

223. **Item 3** amends the heading “Part 5 – Borrowing and investment” to read “Part 5 – Borrowing, investment and involvement in companies”. This reflects the addition of section 39A to Part 5, dealing with the responsibility to inform Parliament about the involvement in a company, as transferred from section 45 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

Movement to the FMA Act of requirement for Ministers to inform Parliament about involvement with companies by their Departments, agencies and certain bodies corporate

224. **Item 4** inserts new section 39A, which requires the responsible Minister to inform Parliament of involvement in a company by the Commonwealth, or by a prescribed body for which the Minister is responsible. Subsection 39A(4) defines “prescribed body” as a body corporate that is, or is included in, an Agency. This covers FMA Act agencies that encompass bodies corporate, which are legally but not financially separate from the Commonwealth (such as the Australian Communications and Media Authority or the Great Barrier Reef Marine Park Authority).

225. Events that could trigger the requirement for a notice to be tabled in Parliament include formation (or participation in the formation) of a company, membership in a company, and transactions involving shares in a company. Variations in rights attaching to shares or membership, disposal of shares and cessation of membership, also require Ministerial notice to Parliament.

226. The word “company” is used in its general meaning, and hence covers involvement in companies that are registered under foreign laws. Moreover, subsection 39A(4) defines “company” to include a body of a kind prescribed by the regulations made under the FMA Act. This could cover bodies corporate that are established for either for-profit or not-for-profit purposes, whether in Australia or in a foreign jurisdiction.

227. In terms of actions relating to the registration of a company, the provision extends to requiring notification about actions that result in the formation of a company, including broader participation in the formation of a company.

228. The provision has a broad coverage, given the breadth of the Commonwealth's involvement in companies.² The Commonwealth's participation in a company may fall short of direct membership. It may, for example, include circumstances where the Commonwealth is not a member, but a Minister has the ability to appoint a director (or other officer). In certain circumstances, participation in the formation of such a company may also require notification under the provision.

229. Responsibility to notify Parliament of the Commonwealth's involvement in companies is currently contained in section 45 of the CAC Act. Section 45 of the CAC Act is repealed by item 12 of Schedule 5. This provision is more appropriately located in the FMA Act, given that Departments of State (which usually handle tabling of these notices on behalf of the Minister responsible) are governed under the FMA Act.

230. Subsection 39A(3) provides exceptions to the notification requirements when authorised investments are made by the Finance Minister or the Treasurer under section 39 of the FMA Act or investments are made under the *Future Fund Act 2006* (on the basis that the reporting to Parliament is aimed at transparency on the use of companies in a governance-related form, rather than as a statutorily authorised investment vehicle).

231. Subsection 39A(3) also exempts giving notice about involvements with companies by the Commonwealth resulting from the transfer of unclaimed property under Part 9.7 of the *Corporations Act 2001* (consistent with section 45 of the CAC Act currently) and companies conducted for the purposes of an intelligence or security agency (as defined by section 85ZL of the *Crimes Act 1914*). The latter exemption continues the effect of regulation 8 of the CAC Regulations, which has exempted the application of section 45 of the CAC Act to any such companies since 1 January 1998.

Regulations to improve transparency of “interjurisdictional agencies”

232. **Item 5** inserts a new Part 6A – Interjurisdictional agencies. Part 6A provides an enhanced ability for the Commonwealth and participating State and Territory jurisdictions to be jointly involved in the governance of FMA Act agencies that are interjurisdictional in nature. A similar provision is proposed for interjurisdictional Commonwealth authorities (refer item 10 in Schedule 5). This is consistent with the Governance Policy and with Recommendation 9.2 of the *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* Report, which recommended ensuring that there are clear governance arrangements for interjurisdictional entities.

233. The new Part 6A comprises a new section 43A. Subsection 43A(1) permits regulations, under the FMA Act, to prescribe an agency as an “interjurisdictional agency”, to prescribe the persons who comprise an interjurisdictional agency to include State officers or employees, and to prescribe a participating State/Territory Minister. The State/Territory Minister would ordinarily be the Minister of a State or Territory who is allocated administrative oversight of the agency's functions by that State and Territory.

234. Subsection 43A(2) authorises the making of regulations determining the types of reports, documents and information, relating to the operations of an agency, that the Chief Executive of an

² The *List of Australian Government Bodies and Governance Relationships as at 1 October 2009* contains 214 companies in which the Australian Government, or a government body, is involved. This covers companies that the Commonwealth does not control for the purposes of the CAC Act: refer pages xxiv to xxv.

interjurisdictional agency may be required to provide to a participating State/Territory Minister. Section 44A of the FMA Act requires the Chief Executive of an FMA Act agency to provide information in relation to the operations of the Agency to the responsible Commonwealth Minister or the Finance Minister. New subsection 43A(2) extends these existing requirements to a participating State/Territory Minister. The regulations may also define the time limits for delivering the requested information and the circumstances in which the information can be requested by the State/Territory Minister.

Delegations not extending to requirement to report involvement in companies to Parliament

235. **Item 6** amends subsection 62(1) to take account of the new section 39A inserted by item 4. Subsection 62(1) currently provides that the Finance Minister may delegate to an official any of the Finance Minister's powers or functions under the FMA Act, except the power to make Finance Minister's Orders. Item 6 extends this exception to the situation where the Finance Minister is obliged by the new section 39A to inform Parliament of involvement in a company by the Commonwealth or by a body corporate that is financially part of an Agency (including a Department of State).

236. **Item 7** amends subsection 62A(1) to take account of the new section 39A inserted by item 4. Subsection 62A(1) currently provides that the Treasurer may delegate to an SES employee or equivalent, or an Executive Level 2 employee or equivalent, any of the Treasurer's powers or functions under the FMA Act. Item 7 exempts the situation where the Treasurer is obliged by the new section 39A to inform Parliament of involvement in a company by the Commonwealth or a prescribed agency that encompasses a body corporate, equivalent to the exception applying to the Finance Minister under item 6.

XI. NOTES ON SCHEDULE 9 – Amending the *National Transport Commission Act 2003*

237. An explanation of the amendments to the *National Transport Commission Act 2003* in this Schedule is provided in sequential order, regarding the proposed full transfer of the National Transport Commission (NTC) into the *Commonwealth Authorities and Companies Act 1997* (CAC Act) fully (rather than being subject to only the annual reporting requirements of the CAC Act, as applies, currently).

238. **Item 1** inserts a note at the end of subsection 5(2) to indicate that the CAC Act applies to the NTC. An equivalent note is in the enabling legislation of other Commonwealth authorities.

239. **Item 2** repeals the existing paragraph 19(2)(b), concerning conflicts of interests of members of the NTC, and substitutes a new paragraph. This is a consequential amendment required by the repeal of section 31 of the NTC Act at Item 3. Instead of referring to section 31 of the NTC Act, the new paragraph refers to sections 27F and 27J of the CAC Act.

240. **Item 3** repeals section 31 of the NTC Act which deals with disclosure of interests by members of the NTC. This is sufficiently covered by the comprehensive regime for disclosure of interests in Subdivision B of Division 4 of Part 3 of the CAC Act.

241. **Item 4** replaces section 38 of the NTC Act, which deals with the application of the CAC Act to the NTC. The current subsection 38(1) provides that the NTC is not a Commonwealth authority for the purposes of the CAC Act, but subsection 38(2) provides that certain provisions of the CAC Act nevertheless apply to the NTC, subject to the qualifications mentioned in subsection 38(3). In order for the CAC Act to apply to the NTC it is necessary to repeal the current subsection 38(1), which in turn precludes the application of the current subsections 38(2) and 38(3).

242. The current subsections 38(4) and 38(5) are retained and renumbered in an updated section 38 which deals solely with the annual report of the NTC. The current subsection 38(4) provides that the annual report of the NTC must contain any information required by the agreement between the Commonwealth, States, the Australian Capital Territory and the Northern Territory entered into in relation to the NTC Act. This provision is renumbered as subsection 38(1). The current subsection 38(5) provides that a copy of the annual report must be given to each member of the Australian Transport Council. This provision is renumbered as subsection 38(2).

XII. NOTES ON SCHEDULE 10 – Amending the *Parliamentary Service Act 1999*

243. An explanation of the amendments proposed in this Schedule is provided in sequential order.

244. **Item 1** repeals subsection 66(6) of the *Parliamentary Service Act 1999* (Parliamentary Service Act). **Item 2** replaces subsection 66(6) with a note which provides:

Note: Payments under this section are to be made out of money appropriated by the Parliament.

245. The intention of the amendment is to clarify that subsection 66(6) of the Parliamentary Service Act is not a special appropriation. Instead the appropriation authority for making the payment is provided in an appropriation item that relates to an agency's outcomes, such as in an Appropriation Act.

246. This amendment is consistent with similar clarifications made to the FMA Act and the Public Service Act through the *Financial Framework Legislation Amendment Act (No. 1) 2006*.

XIV. NOTES ON SCHEDULE 11 – Repeals

Part 1 – Acts Repealed

247. An explanation of the amendments proposed in Part 1 of Schedule 11 is provided below.

Appropriation (Dr Carmen Lawrence’s Legal Costs) Act 1999-2000

248. **Item 1** repeals the *Appropriation (Dr Carmen Lawrence’s Legal Costs) Act 1999-2000*. The Act authorised an appropriation from the Consolidated Revenue Fund (CRF) for the purpose of the Commonwealth meeting certain legal expenses of the former member of the Australian Parliament. The appropriation has been expended. Accordingly, the Act is redundant and can be repealed.

Appropriation (HIH Assistance) Act 2001

249. **Item 2** repeals the *Appropriation (HIH Assistance) Act 2001*. The Act authorised an appropriation from the CRF for the purpose of funding financial assistance to certain persons with a claim upon a policy of insurance issued by the HIH Insurance Group. The appropriation has been expended. Accordingly, the Act is redundant and can be repealed.

Appropriation (Supplementary Measures) Act (No. 1) 1999

250. **Item 3** repeals the *Appropriation (Supplementary Measures) Act (No. 1) 1999*. The Act authorised an appropriation from the CRF for the Book Industry Assistance Plan, and additional funding for the Supported Accommodation Assistance Program. The appropriation has been expended. Accordingly, the Act is redundant and can be repealed.

Appropriation (Supplementary Measures) Act (No. 2) 1999

251. **Item 4** repeals the *Appropriation (Supplementary Measures) Act (No. 2) 1999*. The Act authorised an appropriation from the CRF for certain environmental initiatives. The appropriation has been expended. Accordingly, the Act is redundant and can be repealed.

Growth Centres (Financial Assistance) Act 1973

252. **Item 5** repeals the *Growth Centres (Financial Assistance) Act 1973*. The Act authorised an appropriation from the CRF to provide financial assistance to the States in respect to expenditure for purposes connected with urban and regional development in certain areas during the year ending on 30 June 1974. The appropriation has been expended. Accordingly, the Act is redundant and can be repealed.

Land Commissions (Financial Assistance) Act 1973

253. **Item 6** repeals the *Land Commissions (Financial Assistance) Act 1973*. The Act authorised an appropriation from the CRF in addition to that of the *Growth Centres (Financial Assistance) Act 1973* to the States in respect to expenditure for purposes connected with urban and regional development in certain areas during the year ending on 30 June 1974. The appropriation has been expended. Accordingly, the Act is redundant and can be repealed.

Part 2 – Provisions repealed

254. An explanation of the amendments proposed in Part 2 of Schedule 11 is provided below.

Aboriginal and Torres Strait Islander Act 2005 (Part 4B)

255. **Item 7** repeals Part 4B of the *Aboriginal and Torres Strait Islander Act 2005* which currently provides for the Office of Evaluation and Audit (Indigenous Programs). The repeal of Part 4B reflects the integration of the office into the Australian National Audit Office.

Aged Care or Disabled Persons Act 1954 (section 10KA)

256. **Item 8** repeals section 10KA of the *Aged Care or Disabled Persons Act 1954*. This section authorised an appropriation from the CRF for financial assistance payments to organisations in respect to approved hostels and community care services for the purposes of Division 4 of Part III or Part IIIA. Subsection 10D(16) of Division 4 of Part III and subsection 10GH(5) of Part IIIA provide that such financial assistance is not payable on or following the commencement of the *Aged Care Act 1997*. The *Aged Care Act 1997* commenced on 1 October 1997. Accordingly, the section is redundant and can be repealed.

Appropriation (Development Bank) Act 1975 (subsection 3(2))

257. **Item 9** repeals subsection 3(2) of the *Appropriation (Development Bank) Act 1975*. This subsection authorised appropriation from the CRF an amount not exceeding, or amounts in total not exceeding, \$20,000,000 for the purposes of section 85 of the *Commonwealth Banks Act 1959*. With the repeal of section 85 of the *Commonwealth Banks Act 1959* by Item 29 of the Schedule to the *Commonwealth Bank Sale Act 1995*, this subsection is redundant and can be repealed.

CFM Sale Act 1996 (subsection 56(2))

258. **Item 10** repeals subsection 56(2) of the *CFM Sale Act 1996*. This subsection authorised an appropriation for the refund of a contribution to the cost of the administration of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS Act) paid by Commonwealth Funds Management Limited. The refund has been paid and the appropriation has been expended. Accordingly, the subsection is redundant and can be repealed.

Commonwealth Funds Management Limited Act 1990 (subsections 7(2) and 8(2))

259. **Item 11** repeals subsections 7(2) and 8(2) of the *Commonwealth Funds Management Limited Act 1990*. These subsections authorised an appropriation for an amount equal to the minimum share capital payable to Commonwealth Funds Management Limited in return for the receipt of shares. The appropriation has been expended. Accordingly, the redundant subsections can be repealed.

CSL Sale Act 1993 (subsections 29(2) and 50(2))

260. **Item 12** repeals subsections 29(2) and 50(2) of the *CSL Sale Act 1993*. Subsection 29(2) authorised an appropriation from the CRF for the refund of a license fee under the *Safety, Rehabilitation and Compensation Act 1988* paid by Commonwealth Serum Laboratories. Subsection 50(2) authorised an appropriation for the refund of a contribution to the cost of the administration of the OHS Act paid by Commonwealth Serum Laboratories. The refunds have been paid and both appropriations have been expended. Accordingly, the subsections are redundant and can be repealed.

Hearing Services and AGHS Reform Act 1997 (Division 3 of Part 2)

261. **Item 13** repeals Division 3 of Part 2 of the *Hearing Service and AGHS Reform Act 1997*. Division 3 of Part 2 authorised the payment “to the nominated company, out of the Consolidated Revenue Fund, [of] an amount equal to the balance of the Australian Government Health Service Trust Account” and “an amount equal to the balance of the Australian Government Health Service

Reserve” at the “transfer time.” The “transfer time” occurred at the time of the corporatisation of the Australian Government Health Service into Health Services Australia Limited in 1997. Accordingly, the Division is redundant and can be repealed.

Qantas Sale Act 1992 (section 18 and subsections 45(2), 46(1) and 46(2))

262. **Item 14** repeals section 18 of the *Qantas Sale Act 1992*. Section 18 authorised an appropriation from the CRF for the payment to Qantas Airways Limited of all or part of the money payable for shares in Qantas Airways Limited that are to be issued to the Commonwealth, or its nominee. Section 18 authorised an appropriation from the CRF for the discharge of certain Commonwealth-guaranteed obligations in connection with Qantas Airways Limited and certain obligations in connection with Qantas other than those guaranteed by the Commonwealth under a Qantas Loan Guarantee Act as defined in paragraphs 16(4)(a) to (h). The sale of Qantas Airways Limited has been completed. Accordingly, the section is redundant and can be repealed.

263. **Items 15 and 17** repeal subsections 45(2) and 46(2) of the *Qantas Sale Act 1992*. Subsection 45(2) authorised an appropriation from the CRF for the refund of a license fee under the *Safety, Rehabilitation and Compensation Act 1988* paid by Australian Airlines. Subsection 46(2) authorises appropriation from the CRF for the refund of a contribution to the cost of the administration of the OHS Act paid by Qantas or a Qantas subsidiary. The refunds have been paid and both appropriations have been expended. Accordingly, the subsections are redundant and can be repealed. **Item 16** makes a consequential amendment to subsection 46(1).

Snowy Mountains Engineering Corporation Limited Sale Act 1993 (section 41)

264. **Item 18** repeals section 41 of the *Snowy Mountains Engineering Corporation Limited Sale Act 1993*. Section 41 authorised an appropriation for the refund of a contribution to the cost of the administration of the OHS Act paid by Snowy Mountains Engineering Corporation. The refund has been paid and the appropriation has been expended. Accordingly, the section can be repealed.

Student Assistance Act 1973 (subsection 3(1), sections 12M and 12N, and paragraphs 56(1)(d) and 56(1)(f))

265. **Items 19 to 22** repeal references to the Students (Financial Supplement) Account, which is a Special Account under section 21 of the *Financial Management and Accountability Act 1997* from the *Student Assistance Act 1973*. The Special Account provided a mechanism for participating corporations to make payments to students who were eligible under the Student Financial Supplement Scheme (SFSS). In 2003, the SFSS was closed and the Act was subsequently amended to remove the eligibility of students under the scheme from 22 May 2006. As the SFSS has ceased, the Special Account and associated provisions can be repealed.

Telstra Corporation Act 1991 (sections 8AL and 8AS)

266. **Item 23** repeals sections 8AL and 8AS of the *Telstra Corporation Act 1991*. Section 8AL authorised an appropriation for the purposes of the payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in connection with the Telstra sale scheme. Section 8AS authorised an appropriation for the reimbursement of expenses incurred by Telstra or its directors in giving assistance in connection with a Telstra sale scheme. As the Commonwealth has no further equity in Telstra, the sections are redundant and can be repealed.