



# **Banking Regulations 1966**

**Statutory Rules No. 157, 1966**

made under the

*Banking Act 1959*

## **Compilation No. 17**

**Compilation date:** 31 December 2015

**Includes amendments up to:** SLI No. 176, 2015

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Banking Regulations 1966* that shows the text of the law as amended and in force on 31 December 2015 (the **compilation date**).

This compilation was prepared on 12 January 2016.

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name of Regulations

These Regulations are the *Banking Regulations 1966*.

### 2 Interpretation

(1) In these Regulations:

***Act*** means the *Banking Act 1959*.

***CPI*** means the Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Bureau of Statistics.

***farm management deposit*** has the meaning given by section 393-20 of the *Income Tax Assessment Act 1997*.

***holder of the stored value***, in relation to a purchased payment facility, has the meaning given by the Payment Systems Act.

***Payment Systems Act*** means the *Payment Systems (Regulation) Act 1998*.

***purchased payment facility*** has the meaning given by the Payment Systems Act.

***retirement savings account*** means an account:

- (a) within the meaning of subsection 8(1) of the *Retirement Savings Accounts Act 1997*; and
- (b) that is provided by an ADI.

***total category 1 deposits*** means the amount worked out under subregulation 5(2).

***total category 2 deposits*** means the amount worked out under subregulation 5(3).

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- (3) Use the table to work out whether an amount held by an account-holder with a declared ADI is a *category 1 deposit* or a *category 2 deposit*.

Item	This amount ...	is ...
<i>Before 1 February 2012</i>		
1	any amount in any account	a category 1 deposit
<i>On and after 1 February 2012</i>		
2	an amount in a term deposit that: (a) came into existence before 11 September 2011; and (b) has not matured or rolled over	a category 1 deposit
3	an amount in a term deposit that: (a) came into existence before 11 September 2011; and (b) has matured or rolled over on or after 11 September 2011	a category 2 deposit
4	an amount in a term deposit that came into existence on or after 11 September 2011	a category 2 deposit
5	an amount in any other account	a category 2 deposit

### 3 Banking business: purchased payment facilities

For the purposes of subparagraph (b)(ii) of the definition of ***banking business*** in subsection 5(1) of the Act, the provision of a purchased payment facility is banking business if APRA determines that the facility:

- (a) is of a type for which the purchaser of the facility is able to demand payment, in Australian currency, of all, or any part, of the balance of the amount held in the facility that is held by the holder of the stored value; and
- (b) is available, on a wide basis, as a means of payment, having regard to:
  - (i) any restrictions that limit the number or types of people who may purchase the facility; and

- (ii) any restrictions that limit the number or types of people to whom payments may be made using the facility.

## Part 2—Financial claims scheme

### 4AAA *Protected accounts*

For paragraph 5(4)(a) of the Act, the following kinds of accounts are prescribed:

- (a) savings accounts;
- (b) call accounts;
- (c) cash management accounts;
- (d) cheque accounts;
- (e) current accounts;
- (f) debit card accounts;
- (g) farm management deposit accounts;
- (i) mortgage offset accounts (whether a full or partial offset) that are separate deposit accounts;
- (j) pensioner deeming accounts;
- (k) personal basic accounts;
- (l) retirement savings accounts;
- (m) term deposit accounts;
- (n) transactions accounts;
- (o) trustee accounts.

### 4AAB *Accounts that are not protected accounts*

For subsection 5(7) of the Act, the following are prescribed:

- (a) accounts kept at a foreign branch of an ADI;
- (c) credit balances on credit card facilities or other loans;
- (d) purchased payment facilities;
- (e) pre-paid card facilities or similar products;
- (f) nostro accounts and vostro accounts of foreign corporations that carry on banking business or otherwise provide financial services in a foreign country.

**4AA Support that is not external support**

- (1) For subsection 11CA(1C) of the Act, a form of support that is entered into in the normal course of business is not to be considered external support for the purposes of subsection 11CA(1B) of the Act.
- (2) For subsection 13A(1A) of the Act, a form of support that is entered into in the normal course of business is not to be considered external support for the purposes of paragraph 13A(1)(b) of the Act.
- (3) For subsection 13E(3) of the Act, a form of support that is entered into in the normal course of business is not to be considered external support for the purposes of paragraph 13E(1)(b) of the Act.

**4A Clearance period**

For subsection 16AF(1) of the Act, 5 business days is the prescribed period of clearance.

**5 Financial claims scheme—limit on payments**

- (1) For subsection 16AG(1) of the Act, before 1 January 2013, the limit in relation to a protected account, or protected accounts, that an account-holder has with a particular declared ADI at a particular time, is worked out as follows:

- Step 1     Add together the total category 1 deposits and total category 2 deposits.
- Step 2     If the result worked out under Step 1 is not greater than \$1 000 000, the result is the limit.
- Step 3     If *the* result worked out in Step 1 is greater than \$1 000 000, work out the limit by subtracting the difference between the result worked out in Step 1 and \$1 000 000.

Note:        The limit is a single amount that applies to all of the protected accounts that the account-holder has with the declared ADI.

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- (2) Work out the total category 1 deposits by adding together the amounts held by the account-holder in category 1 deposits.
- (3) Work out the total category 2 deposits as follows:
  - Step 1 Add together the amounts held by the account-holder in category 2 deposits.
  - Step 2 If the amount worked out in Step 1 is not greater than \$250 000, this is the total category 2 deposits.
  - Step 3 If the amount worked out in Step 1 is greater than \$250 000, work out the total category 2 deposits by subtracting the difference between the result worked out in Step 1 and \$250 000.
- (4) On or after 1 January 2013, the limit in relation to a protected account, or protected accounts, that an account-holder has with a particular declared ADI at a particular time is \$250 000.

**6 Payment of entitlements to certain kinds of accounts by APRA**

For subsection 16AH(5) of the Act, the following kinds of protected account are prescribed:

- (a) retirement savings accounts;
- (b) farm management deposits.

**7 Recovery of overpayments**

- (1) This regulation is made for section 16AM of the Act.
- (2) If an amount is paid to, or applied for the benefit of, an account-holder purportedly to meet an entitlement of the account-holder under Subdivision C of Division 2AA of Part II of the Act and the amount is in excess of the account-holder's entitlement (if any) under that Subdivision, the excess amount is a debt due to APRA.
- (3) APRA may recover the amount of the debt:
  - (a) by bringing proceedings for recovery of the debt in a court of competent jurisdiction; or

- (b) by withholding the amount of the debt from another payment that would otherwise be paid to the account-holder under Subdivision C of Division 2AA of Part II of the Act; or
  - (c) from any distribution payable to the account-holder under Subdivision E of Division 2AA of Part II of the Act.
- (4) Nothing in this regulation is intended to limit the way in which APRA may recover the debt.
- (5) APRA may, if it considers it appropriate to do so in the particular circumstances of the case, waive the whole or a part of the debt.

## **8 Liquidator must admit debt or claim**

For subsection 16AQ(2) of the Act, the liquidator must admit as a debt or claim the amount of the debt or claim, in relation to 1 or more protected accounts held by an account-holder with a declared ADI, that is in excess of the limit on payments prescribed by, or worked out under, regulations made for subsection 16AG(1) of the Act.

## **9 Payment of distributions to certain kinds of accounts by liquidator**

For subsection 16AR(1) of the Act, the following kinds of protected account are prescribed:

- (a) retirement savings accounts;
- (b) farm management deposits.

## **10 Disclosure of information by APRA or liquidator to ADI regarding establishment of account**

The following information is prescribed for paragraph 16AT(2)(b) of the Act in the circumstances where APRA or a liquidator establishes an account with an ADI under section 16AH or 16AR of the Act:

- (a) the name, address and, if the account holder is an individual, date of birth of the account holder;
- (b) the tax file number of the account holder;

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- (c) any information available to APRA or the liquidator that would assist the ADI, as a reporting entity under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, to carry out its obligations under that Act in relation to the new account;
- (d) if the account is a retirement savings account—information required in relation to a retirement savings account by or under section 390-10 of Schedule 1 to the *Taxation Administration Act 1953*;
- (e) if the account is a farm management deposit—information required by or under Schedule 1 to the *Income Tax (Farm Management Deposits) Regulations 1998*;
- (g) information relating to the status of the account:
  - (i) obtained by APRA under subsection 16AK(1) of the Act for the purpose of establishing an account under section 16AH of the Act on behalf of the account-holder; or
  - (ii) used by the liquidator for the purpose of paying distributions to an account of the same kind held by an account-holder, or established by the liquidator on behalf of an account-holder, under section 16AR of the Act.

## Part 7—Miscellaneous

### 20 Unclaimed moneys—specified accounts and conditions

- (1) For subsection 69(1B) of the Act, this regulation specifies accounts and conditions relating to those accounts.

Note: Under subsection 69(1B) of the Act, moneys to the credit of an account specified in the regulations are unclaimed moneys if, and only if, the conditions specified in the regulations are satisfied. However:

- (a) regulation 20A (made for subsection 69(1D) of the Act) specifies accounts to which subsection 69(1) of the Act does not apply; and
- (b) regulation 21 (made for subsection 69(1E) of the Act) specifies deposits to which subsections 69(1) and (1A) of the Act do not apply.

#### *Linked accounts*

- (2) A specified account is an account (a ***linked account***) to which the following apply:
- (a) the account is opened or maintained as a condition of holding another account in the same ADI;
  - (b) the account and the other account are linked in accordance with the terms and conditions of either or both of the accounts.
- (3) A specified account is the account (a ***linked account***) described in subregulation (2) as the other account.
- (4) The conditions relating to a linked account are that, for at least 7 years:
- (a) no deposits have been made into the linked account and any of the accounts to which it is linked; and
  - (b) no withdrawals have been made from the linked account and any of the accounts to which it is linked.

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*Sub accounts*

- (5) A specified account is an account (a ***sub account***) to which the following apply:
- (a) the account is operated or maintained as part of another account (a ***parent account***);
  - (b) the account is part of the parent account.
- (6) The conditions relating to a sub account are that:
- (a) no deposits have been made into the sub account for at least 7 years; and
  - (b) no withdrawals have been made from the sub account for at least 7 years; and
  - (c) no deposits have been made into the parent account for at least 7 years; and
  - (d) no withdrawals have been made from the parent account for at least 7 years; and
  - (e) for each other sub account of the parent account:
    - (i) no deposits have been made into that sub account for at least 7 years; and
    - (ii) no withdrawals have been made from that sub account for at least 7 years.

*Frozen accounts*

- (7) A specified account is an account (a ***frozen account***) to which the following apply:
- (a) deposits into the account and withdrawals from the account have not been allowed by order of a court;
  - (b) the order no longer prohibits deposits into the account and withdrawals from the account.
- (8) A specified account is an account (a ***frozen account***) to which the following apply:
- (a) deposits into the account and withdrawals from the account have not been allowed by the operation of a law;
  - (b) the law no longer prohibits deposits into the account and withdrawals from the account.
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- (9) The conditions relating to a frozen account are that:
- (a) no deposits have been made into the frozen account for at least 7 years after the day:
    - (i) the order mentioned in paragraph (7)(a) ceased to prohibit deposits into the account and withdrawals from the account; or
    - (ii) the law mentioned in paragraph (8)(a) ceased to prohibit deposits into the account and withdrawals from the account; and
  - (b) no withdrawals have been made from the frozen account for at least 7 years after the day:
    - (i) the order mentioned in paragraph (7)(a) ceased to prohibit deposits into the account and withdrawals from the account; or
    - (ii) the law mentioned in paragraph (8)(a) ceased to prohibit deposits into the account and withdrawals from the account.

*Security, set-off or escrow accounts*

- (12) A specified account is an account (a ***security, set-off or escrow account***) to which the following apply:
- (a) the account is held:
    - (i) as security for a loan or another financial obligation; or
    - (ii) for set-off or account combination purposes for a loan or another financial obligation; or
    - (iii) in escrow for a contract;
  - (b) on that basis, the ability of the holder or holders of the account to make deposits and withdrawals is restricted by:
    - (i) the ADI; or
    - (ii) the terms and conditions of the establishment of the account;
  - (c) the account holder has notified the ADI of:
    - (i) the purpose of the account, mentioned in subparagraph (a)(i), (ii) or (iii), and the period of the

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- loan, financial obligation or contract covered by the applicable subparagraph; or
- (ii) only the purpose of the account, mentioned in subparagraph (a)(i), (ii) or (iii).
- (13) The conditions relating to a security, set-off or escrow account to which subparagraph (12)(c)(i) relates are that:
- (a) no deposits have been made into the account for at least 7 years after the loan, financial obligation or contract covered by subparagraph (12)(a)(i), (ii) or (iii) has been discharged; and
- (b) no withdrawals have been made from the account for at least 7 years after the loan, financial obligation or contract covered by subparagraph (12)(a)(i), (ii) or (iii) has been discharged.
- (14) The conditions relating to a security, set-off or escrow account to which subparagraph (12)(c)(ii) relates are that:
- (a) no deposits have been made into the account for at least 7 years; and
- (b) no withdrawals have been made from the account for at least 7 years.
- (15) A specified account is an account (a ***controlled account***) to which the following apply:
- (a) the account is opened and held as a requirement of a law of the Commonwealth, a State or a Territory or a contract;
- (b) the ability of a holder of the account to make deposits into the account or withdrawals from the account is restricted by the law of the Commonwealth, a State or a Territory or the contract;
- (c) the account holder has notified the ADI of:
- (i) for an account opened and held as a requirement of a contract—the purpose of the account and the period of the requirement; or
- (ii) for an account opened and held as a requirement of a contract—only the purpose of the account; or
- (iii) for an account opened and held as a requirement of a law of the Commonwealth, a State or a Territory—the
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purpose of the account and the period (if any) of the requirement; or

- (iv) for an account opened and held as a requirement of a law of the Commonwealth, a State or a Territory—only the purpose of the account.

- (16) The conditions relating to a controlled account to which subparagraph (15)(c)(i) or (iii) relates are that:

- (a) no withdrawals have been made from the account for at least 7 years after the requirement mentioned in paragraph (15)(a) ceases; and
- (b) no deposits have been made into the account for at least 7 years after the requirement mentioned in paragraph (15)(a) ceases.

- (17) The conditions relating to a controlled account to which subparagraph (15)(c)(ii) or (iv) relates are that:

- (a) no deposits have been made into the account for at least 7 years; and
- (b) no withdrawals have been made from the account for at least 7 years.

## **20A Unclaimed moneys—accounts to which subsection 69(1) of the Act does not apply**

For subsection 69(1D) of the Act, if the holder of an account, or an agent of the holder, has notified the ADI, within the previous 7 years, that the holder wishes to treat the account as active, the account is specified.

Note: Subsection 69(1) of the Act does not apply to an account specified for subsection 69(1D) of the Act.

## **21 Unclaimed moneys—deposits to which subsections 69(1) and (1A) of the Act do not apply**

For subsection 69(1E) of the Act, a term deposit is specified.

Note: Subsections 69(1) and (1A) of the Act do not apply to a deposit specified for subsection 69(1E) of the Act.

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**22 Unclaimed money—interest payable**

- (1) This regulation sets out how to work out the interest for paragraph 69(7AA)(a) of the Act.
- (2) If the unclaimed money is paid to the Commonwealth in more than one payment, the interest is to be worked out separately for each payment.
- (3) The interest is to be worked out for the period (the *interest period*) that:
  - (a) starts on the later of:
    - (i) 1 July 2013; and
    - (ii) the day when the unclaimed money was paid to the Commonwealth; and
  - (b) ends on the 14th day after the Commonwealth last authorised the unclaimed money to be paid under subsection 69(7) of the Act.
- (4) The interest is to be worked out by adding together the interest for each financial year during the interest period.
- (5) The interest for each financial year is worked out using the following formula, and rounding the result to the nearest cent:

$$\frac{\text{Amount} \times \text{Days interest payable} \times \text{Interest rate}}{\text{Days in the financial year}}$$

where:

**amount** means the amount of unclaimed money plus the interest (if any) worked out for each earlier financial year for which interest is payable.

**days interest payable** means the number of days in the financial year for which interest is payable.

**days in the financial year** means the number of days in the financial year.

***interest rate***, for a financial year, means:

- (a) the percentage change in the All Groups CPI between the 2 March quarters most recently published before the first day of the financial year (rounded up to 4 decimal places); or
- (b) if that percentage change is less than 0%—0%.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

A = Act	o = order(s)
ad = added or inserted	Ord = Ordinance
am = amended	orig = original
amdt = amendment	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
c = clause(s)	pres = present
C[x] = Compilation No. x	prev = previous
Ch = Chapter(s)	(prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	Reg = Regulation/Regulations
Div = Division(s)	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislative Instruments	rep = repealed
gaz = gazette	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
1966 No. 157	18 Nov 1966	18 Nov 1966	
2000 No. 114	15 June 2000	15 June 2000	—
2003 No. 185	23 July 2003	23 July 2003	—
2008 No. 222	3 Nov 2008 (F2008L04286)	28 Nov 2008	—
2008 No. 280	18 Dec 2008 (F2008L04660)	19 Dec 2008	—
2010 No. 53	25 Mar 2010 (F2010L00739)	26 Mar 2010	—
2010 No. 233	22 July 2010 (F2010L02123)	27 July 2010 (r 2)	—
2011 No. 224	24 Nov 2011 (F2011L02422)	25 Nov 2011	—
2012 No. 319	11 Dec 2012 (F2012L02397)	12 Dec 2012	—
8, 2013	18 Feb 2013 (F2013L00206)	19 Feb 2013	—
100, 2013	30 May 2013 (F2013L00873)	31 May 2013	—
117, 2013	17 June 2013 (F2013L01010)	Schedule 1 (items 1, 2): 18 June 2013	—
157, 2013	28 June 2013 (F2013L01223)	1 July 2013	—
138, 2014	22 Sept 2014 (F2014L01257)	23 Sept 2014 (s 2)	—
207, 2014	15 Dec 2014 (F2014L01710)	1 Jan 2015 (s 2)	—

## Endnote 3—Legislation history

<b>Number and year</b>	<b>FRLI registration or gazettal</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
91, 2015	18 June 2015 (F2015L00840)	Sch 1 (items 5–10, 40–45): 1 July 2015 (s 2(1) item 2)	Sch 1 (items 40–45)
176, 2015	30 Oct 2015 (F2015L01729)	31 Dec 2015 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
Part 1 heading.....	ad. 2008 No. 280
r. 1 .....	rs. 2000 No. 114
r. 2 .....	rs. 2000 No. 114; 2003 No. 185
	am. 2008 No. 280; 2011 No. 224; No. 117, 2013; No 138, 2014; No 207, 2014; No 91, 2015
r. 3 .....	ad. 2000 No. 114
r. 4 .....	ad. 2003 No. 185
	rep No 207, 2014
<b>Part 2</b>	
Part 2 heading.....	ad. 2008 No. 280
r 4AAA.....	ad No 138, 2014
	am No 91, 2015
r 4AAB.....	ad No 138, 2014
	am No 207, 2014
r. 4AA.....	ad. 2010 No. 53
	am. 2010 No. 233
r. 4A .....	ad. 2008 No. 280
r. 5 .....	ad. 2008 No. 222
	rs. 2011 No. 224
r. 6 .....	ad. 2008 No. 280
	am No 91, 2015
r. 7 .....	ad. 2008 No. 280
r. 8 .....	ad. 2008 No. 280
r. 9 .....	ad. 2008 No. 280
	am No 91, 2015
r. 10 .....	ad. 2008 No. 280
	am No 91, 2015

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 7</b>	
Part 7 .....	ad. 2012 No. 319
r. 20 .....	ad. 2012 No. 319
	am. No 8, 2013; No 100, 2013; No 157, 2013; No 176, 2015
r. 20A .....	ad No 157, 2013
	am No 176, 2015
r. 21 .....	ad. 2012 No. 319; No 157, 2013
r. 22 .....	ad. No. 117, 2013