



# Banking Amendment Regulations 2008 (No. 2)<sup>1</sup>

**Select Legislative Instrument 2008 No. 280**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Banking Act 1959*.

Dated 12 December 2008

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

WAYNE SWAN  
Treasurer

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**1 Name of Regulations**

These Regulations are the *Banking Amendment Regulations 2008 (No. 2)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Banking Regulations 1966***

Schedule 1 amends the *Banking Regulations 1966*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Before regulation 1**

*insert*

**Part 1 Preliminary**

**[2] Subregulation 2 (1), after definition of *credit card transaction***

*insert*

*farm management deposit* has the meaning given by section 393-25 of Schedule 2G to the *Income Tax Assessment Act 1936*.

*first home saver account* means an account:

- (a) within the meaning of section 8 of the *First Home Saver Accounts Act 2008*; and
- (b) that is provided by an ADI.

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**[3] Subregulation 2 (1), after definition of *purchased payment facility***

*insert*

***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.

**[4] After regulation 4**

*insert*

## **Part 2 Financial claims scheme**

**[5] Before regulation 5**

*insert*

**4A Clearance period**

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

**[6] After regulation 5**

*insert*

**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;
- (c) first home saver accounts.

## **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.

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**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;
- (c) first home saver accounts.

**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;
- (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*;
- (f) if the account is a first home saver account — information required by or under section 391-10 of Schedule 1 to the *Taxation Administration Act 1953*;
- (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.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.