

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 233

Issued by the authority of the Treasurer

Banking Act 1959

Banking Amendment Regulations 2010 (No. 2)

Subsection 71(1) of the *Banking Act 1959* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Banking Amendment Regulations 2010 (No. 1)* clarified the meaning of ‘external support’ for the purposes of paragraph 13A(1)(b) of the Act. In particular, it clarified the term does not include support provided in the normal course of business.

At the time the *Banking Amendment Regulations 2010 (No. 1)* were made section 13A was the only section in the Act that used the term ‘external support’. However, the enactment of the *Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010* (the FSLA Act) inserts the term into two additional sections.

First, the FSLA Act amends section 11CA of the Act to clarify that the Australian Prudential Regulation Authority (APRA) may disregard any external support for an ADI in deciding whether to give a direction under that section. Second, the FSLA Act inserts new section 13E that enables APRA to disregard any external support for an ADI in determining whether certain grounds for issuing a recapitalisation direction under that section are met.

In both cases, the amendments provide that the regulations may specify that a particular form of support is not external support for their purposes.

The Regulations amend the *Banking Regulations 1966* to ensure that a form of support that is entered into in the normal course of business is not considered to be external support for the purposes of the amendments. By doing so the Regulations ensure that the term ‘external support’ has consistent meaning throughout the Act.

Examples of external support entered into in the normal course of business could include parent and shareholder support. Examples of support not entered into in the normal course of business could include arrangements such as industry support contracts certified under section 11CB of the Act, or support from the Government, such as the provision of a guarantee over an ADI’s obligations, an indemnity over risks on an ADI’s balance sheet, or an undertaking to provide capital support.

The Australian Bankers Association was consulted in the preparation of the Regulations.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the commencement of items 1 to 25 of Schedule 1 of the FSLA Act on 27 July 2010.