

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Banking Act 1959

Banking Regulation 2016

Section 71 of the *Banking Act 1959* (the ‘Act’) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Banking Regulation 2016* (the ‘Regulation’) is to remake and improve the *Banking Regulations 1966* prior to their ‘sunsetting’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments made in the 1960s that were registered on the Federal Register of Legislation on 1 January 2005, such as the *Banking Regulations 1966*, will be automatically repealed on 1 April 2017. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

The Regulation remakes and improves the *Banking Regulations 1966*, by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation. The key changes are:

- Consolidating the *Banking Regulations 1966* and the *Banking (Unclaimed Moneys) Regulations 1993* into a single Regulation;
- Repealing redundant provisions, such as those that relate to dates which have passed and now have no effect;
- Repealing spent or redundant associated regulations, including those due to sunset in the next two years;
- Using more consistent language throughout the Regulation, for example referring to ‘accounts’ throughout the Regulation rather than using various similar terms; and
- Making language and formatting changes to reflect contextual changes and align with current drafting practices, such as referring to ‘sections’ rather than ‘regulations’.

These changes do not change the substantive meaning or operation of the provisions.

Further details of the Regulation are set out in [Attachment A](#).

The Act does not specify any conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

An exposure draft of the proposed Regulation and accompanying Explanatory Statement were released for public consultation from 30 September 2016 to 28 October 2016. No submissions were received during the consultation process.

Prior to the making of the Regulation and in accordance with the Office of Best Practice Regulation's Guidance Note on sunseting instruments, the Department of the Treasury self-assessed that the *Banking Regulations 1966* were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation process conducted during the sunseting review.

The Regulation commences on the day after it is registered on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Banking Regulation 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Banking Regulation 2016* (the 'Regulation') remakes and improves the Banking Regulations by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation.

The key changes are:

- Consolidating the *Banking Regulations 1966* and the *Banking (Unclaimed Moneys) Regulations 1993* into a single Regulation;
- Repealing redundant provisions;
- Repealing spent or redundant associated regulations, including those due to sunset in the next two years;
- Using more consistent language throughout the Regulation; and
- Making language and formatting changes to reflect contextual changes and align with current drafting practices.

These changes are not intended to change the current operation of the equivalent provisions.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the *Banking Regulation 2016*

This Attachment sets out further details of the *Banking Regulation 2016* (the ‘Regulation’). All references are to the Regulation unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Banking Regulations 1966*, as identified by the finding table at Attachment B.

Changes of a minor or machinery nature, such as the increased use of headings and references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulation makes changes that require further explanation, these are identified and explained in this Attachment.

Part 1 – Preliminary

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Banking Regulation 2016*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after the Regulation is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Banking Act 1959*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

Section 5 – Definitions

This section contains defined terms used in the Regulation. A note is added to the section to provide that certain expressions used in the Regulation are defined in the *Banking Act 1959*. Several definitions are removed from this section, including definitions which are incorporated into the text of other sections of this Regulation or otherwise no longer required.

Section 6 – Banking business – purchased payment facilities

This section replicates the corresponding provision in the *Banking Regulations 1966*, with some minor changes to simplify the section without changing its operation.

The definitions of *purchased payment facility* and *holder of the stored value*, as contained in the *Payment Systems (Regulation) Act 1998*, are incorporated into the text of this section and therefore are not defined in section 5 of the Regulation.

Part 2 – Financial claims scheme

Sections 7 to 10 (inclusive)

These sections replicate the corresponding provisions in the *Banking Regulations 1966*. All references to ‘farm management deposit’ have been changed to ‘farm management deposit account’ to ensure consistent language throughout the Regulation. These changes do not impact the operation of the relevant sections.

Section 11 – Financial claims scheme – limit on payments

This section prescribes a limit of \$250,000 in relation to a protected account, or protected accounts, that an account-holder has with a particular declared ADI at a particular time, for subsection 16AG(1) of the *Banking Act 1959*.

This section has been greatly simplified and provides a single limit of \$250,000 for all entitlements under the scheme, rather than prescribing a method for working out the limit as in the *Banking Regulations 1966*. The section also no longer distinguishes between ‘category 1 deposits’ and ‘category 2 deposits’, as those categories relate to entitlements prior to 1 January 2013 and are now spent and redundant. Therefore, the section no longer provides methods for working out the total of each category of deposit.

Sections 12 to 16 (inclusive)

These sections replicate the corresponding provisions in the *Banking Regulations 1966*, with the following minor changes which do not change the operation of the relevant sections:

- In section 14, the words ‘over the limit’ have been added to the section heading, to better indicate the subject matter of the section; and
- All references to ‘farm management deposit’ have been changed to ‘farm management deposit account’ to ensure consistent language throughout the Regulation.

Part 3 – Unclaimed moneys

This Part has been renamed from ‘Miscellaneous’ to ‘Unclaimed moneys’ to better indicate the subject matter and its structure has been improved by splitting the sections into two Divisions. Part 3 has been made easier to navigate by placing the provisions into sections and subsections based on subject matter, rather than lengthy sections with many subsections, such as Section 20 of the *Banking Regulations 1966*.

Division 1 – Specified accounts and conditions

Section 17 – Scope of Division

This section replicates the corresponding provision in the *Banking Regulations 1966*, with a minor change to update the section references in the Note which does not change the operation of the section.

Section 18 – Linked accounts

This section replicates the corresponding provision in the *Banking Regulations 1966*, but changes the structure of the provision by grouping the subsections on linked accounts into a single section. This section also makes minor changes to simplify the wording of the provision, including removing the need to define **linked account** by incorporating the concepts into the text. These changes do not change the operation of the section.

Section 19 – Sub accounts

This section replicates the corresponding provision in the *Banking Regulations 1966*, but changes the structure of the provision by grouping the subsections on sub accounts into a single section.

The wording of this section is changed slightly, as a consequence of the change in structure, without changing the operation of the section.

Section 20 – Frozen accounts

This section replicates the corresponding provisions in the *Banking Regulations 1966*, but changes the structure of the provision by grouping the subsections on sub accounts into a single section. The structure of the provision is also improved by splitting the single subsection on the conditions relating to a frozen account into two subsections, based on whether the account was frozen by a court order or by operation of law. The conditions applicable to each type of frozen account remain the same.

The wording of this section is changed slightly, as a consequence of the change in structure, without changing the operation of the section.

Section 21 – Security, set-off or escrow accounts

This section replicates the corresponding provisions in the *Banking Regulations 1966*, but changes the structure of the provision by grouping the subsections on security, set-off or escrow accounts into a single section. The wording of this section is changed slightly, as a consequence of the change in structure, without changing the operation of the section.

Section 22 – Controlled accounts

This section replicates the corresponding provisions in the *Banking Regulations 1966*, but changes the structure of the provision by grouping the subsections on controlled accounts into a single section.

This section also makes minor changes to simplify the wording of the provision, including removing the need to define **controlled account** by incorporating the concepts into the text.

Division 2 – Unclaimed moneys: other matters

Sections 23 to 24 (inclusive)

These sections replicate the corresponding provisions in the *Banking Regulations 1966*, with the following minor changes which do not change the operation of the relevant sections:

- The wording of section headings has been simplified and improved to better indicate the subject matter of each section; and
- In sections 23 and 24, redundant Notes have been removed.

Section 25 – Annual statement of unclaimed moneys

This section replaces the *Banking (Unclaimed Moneys) Regulations 1993*, which is to be repealed by Schedule 1 to the Regulation, by prescribing the amount of \$500 for subsection 69(3) of the *Banking Act 1959*.

Section 26 – Interest payable

This section replicates the corresponding provision in the *Banking Regulations 1966*, with minor changes to simplify the wording without changing the operation of the provision. The reference to 1 July 2013 is now redundant and has been removed, and this section now provides that the relevant **interest period** is the day when the unclaimed money was paid to the Commonwealth. This section also removes the need to define **CPI** in section 5, by incorporating the concept into the text.

Schedule 1 – Repeals

Section 1 – Repeal of Regulations

This section provides for the repeal of a number of spent and redundant Regulations and Regulations that are due to sunset in the near future. Further explanation is provided at [Attachment C](#).

Under section 7 of the *Acts Interpretation Act 1901*, as applied to legislative instruments by subsection 13(1) of the *Legislation Act 2003*, the repeal of these Regulations does not affect their previous operation.

ATTACHMENT B

FINDING TABLE

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulation. This Explanatory Statement includes a finding table to assist in identifying which provision in the Regulation corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Banking Regulations 1966* unless otherwise specified. References to the new law are to the *Banking Regulation 2016* unless otherwise specified. Also, in the finding table, 'no equivalent' means that this is a new provision that has no equivalent in the old law.

Finding table – old law to new law

| <i>Old law</i> | <i>New law</i> |
|---------------------------------|--------------------------------|
| <i>Banking Regulations 1966</i> | <i>Banking Regulation 2016</i> |
| 1 | 1 |
| No equivalent | 2 |
| No equivalent | 3 |
| No equivalent | 4 |
| 2 | 5 |
| 3 | 6 |
| 4AAA | 7 |
| 4AAB | 8 |
| 4AA | 9 |
| 4A | 10 |
| 5 | 11 |
| 6 | 12 |
| 7 | 13 |
| 8 | 14 |
| 9 | 15 |
| 10 | 16 |

| | |
|---|--|
| Part 7 - Miscellaneous | Part 3 – Unclaimed Moneys |
| No equivalent heading | Division 1 – Specified accounts and conditions |
| 20(1) | 17 |
| 20(2) | 18(1) |
| 20(3) | 18(2) |
| 20(4) | 18(3) |
| 20(5) | 19(1) |
| 20(6) | 19(2) |
| 20(7) | 20(1) |
| 20(9) (a)(i) and (b)(i) | 20(2) |
| 20(8) | 20(3) |
| 20(9)(a)(ii) and (b)(ii) | 20(4) |
| 20(12) | 21(1) |
| 20(13) | 21(2) |
| 20(14) | 21(3) |
| 20(15) | 22(1) |
| 20(16) | 22(2) |
| 20(17) | 22(3) |
| No equivalent heading | Division 2 – Unclaimed moneys: other matters |
| 20A | 23 |
| 21 | 24 |
| Section 3 of the <i>Banking (Unclaimed Moneys) Regulations 1993</i> | 25 |
| 22 | 26 |
| No equivalent | Schedule 1 (Repeals) |

ATTACHMENT C

Schedule 1 to the Regulation repeals a number of Regulations. The table below explains the reason for each of the repeals.

| <i>Regulation</i> | <i>Reason for repeal</i> |
|--|---|
| <i>Banking Regulations 1966</i> | These Regulations are due to sunset on 1 April 2017 and are being remade by the Regulation. |
| <i>Banking (Savings Banks) Regulations (Statutory Rules 1960 No. 6)</i> | These Regulations are due to sunset on 1 April 2017 and are not being remade as they are redundant. |
| <i>Banking (Unclaimed Moneys) Regulations 1992 (Statutory Rules 1992 No. 117)</i> | These Regulations are due to sunset on 1 October 2018 and are not being remade as they are redundant. |
| <i>Banking (Unclaimed Moneys) Regulations 1993 (Statutory Rules 1993 No. 378)</i> | These Regulations are due to sunset on 1 October 2018 and the only remaining operative provision is being incorporated into the Regulation. |
| <i>Commonwealth Bank (Conversion into Public Company) Regulations (Statutory Rules 1991 No. 56)</i> | These Regulations are due to sunset on 1 October 2018 and are not being remade as they are redundant. |
| <i>Commonwealth Banking Corporation Service Regulations (Statutory Rules 1960 No. 5)</i> | These Regulations are due to sunset on 1 April 2017 and are not being remade as they are redundant. |
| <i>Commonwealth Banks Regulations (Statutory Rules 1960 No. 4)</i> | These Regulations are due to sunset on 1 April 2017 and are not being remade as they are redundant. |
| <i>Papua New Guinea (Transfer of Banking Business) Regulations (Statutory Rules 1974 No. 55)</i> | These Regulations are due to sunset on 1 October 2017 and are not being remade as they are redundant. |
| <i>Proceeds of Crime (Commonwealth Bank of Australia) Regulations (Statutory Rules 1993 No. 328)</i> | These Regulations are due to sunset on 1 October 2018 and are not being remade as they are redundant. |