

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 222

Issued by authority of the Treasurer

Banking Act 1959

Banking Amendment Regulations 2008 (No. 1)

Subsection 71(1) 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 Act regulates banking in Australia and was recently amended by the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008* (the Amendment Act) to put in place the Financial Claims Scheme (FCS).

The Regulations set a threshold on payments made under the FCS of \$1 million. This puts in place the Government's free deposit guarantee for deposits up to A\$1 million (or its foreign currency equivalent) per account holder.

For deposit amounts over A\$1 million (or its foreign currency equivalent), a fee will be charged to receive the benefits of the deposit guarantee. It will be up to each Authorised Deposit-taking Institution (ADI) whether it wishes the Government to guarantee its deposits above the \$1 million threshold and if so pay the appropriate fee. This will be given effect through a deed of guarantee.

This fee will ensure the deposit and wholesale funding guarantees apply in a consistent manner for larger investments, for which deposits and securities are interchangeable. In particular, it will ensure that the deposit guarantee does not provide disincentives for market participants to operate in short-term money markets.

Treasury, the Reserve Bank of Australia, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, and industry were consulted on the operation of these guarantees.

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

These Regulations commence on 28 November 2008.