

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 163

Issued by authority of the Minister for Superannuation and Corporate Law for the Attorney-General

Electronic Transactions Act 1999

Electronic Transactions Amendment Regulations 2008 (No. 2)

Section 16 of the *Electronic Transactions Act 1999* (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 objects of the Act include facilitating the use of electronic transactions and enabling business and the community to use electronic communications in their dealings with the Government. The Act generally provides that if a Commonwealth law requires or permits transactions to be in written form that requirement is met if the transaction is made in electronic form.

However, under subsection 13(3) of the Act, certain laws of the Commonwealth may be exempted from the operation of Division 2 of the Act by being specified in regulations. The effect of the exemption is that requirements in those laws for writing, signature and production and retention of documents cannot be met in an electronic form. The *Electronic Transactions Regulations 2000* (the Principal Regulations) specify those laws that are exempt from Division 2.

Schedule 1 to the Principal Regulations sets out the laws of the Commonwealth to which certain provisions of the Act do not apply.

The Regulations insert a reference to the *First Home Saver Accounts Act 2008* (the FHSA Act) into Schedule 1, so that Part 7 of the FHSA Act is exempt from the requirements of subsection 8(1), Division 2 of Part 2 and sections 14 and 15 of the Act.

The effect of the amendment is that First Home Saver Account (FHSA) providers submitting certain applications and notices under the FHSA Act to the Australian Prudential Regulation Authority (APRA) need to provide hard copies of these documents.

Under Part 7 of the FHSA Act, account providers that are registrable superannuation entity (RSE) licensees must apply to APRA for authorisation before offering FHSAs. Account providers that are authorised deposit-taking institutions and life insurance companies are required to submit a notice to APRA before offering FHSAs.

These applications and notices require signatures, but APRA does not currently have the technology to accept electronic signatures. An electronic signature is intended to take the place of a traditional handwritten signature in a document. Its purpose is to identify the person, provide certainty that the person was involved in signing/approving the document and associate the person with the content of the document. An example of an electronic signature is a digitised version of a handwritten signature. At present, APRA does not have the technology in place to convert handwritten signatures into a digitised version and will continue to require a handwritten signature on its forms.

The exemption is consistent with exemptions provided to other prudential laws (the *Banking Act 1959*, the *Insurance Act 1973*, the *Life Insurance Act 1995* and the *Superannuation Industry (Supervision) Act 1993*).

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

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

These Regulations form part of a package of amendments relating to the introduction of the First Home Saver Accounts scheme. As part of consultation for the package of regulations, the Government has consulted industry representatives through a Technical Reference Group, the Attorney-General's Department and the Australian Prudential Regulation Authority in making these regulations.

Additionally, as part of a public consultation on the proposed scheme, APRA sent a letter to authorised deposit-taking institutions, life companies and RSE licensees seeking comments in June 2008. The letter included a draft of the Application for Authorisation form for RSE licensees who wish to provide FHSAs.