
TREASURY LAWS AMENDMENT (2017 MEASURES NO.8) BILL 2017

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ADI	Authorised Deposit-taking Institution
APRA	Australian Prudential Regulation Authority
FCS	Financial Claims Scheme

Chapter 1 Removing restrictions on the use of the term ‘bank’

Outline of chapter

1.1 This Schedule will result in a reduction of barriers to new entrants to the banking sector and provide a more level playing field amongst authorised deposit-taking institutions (ADIs). Further, the changes will align community expectations in respect of the use of the term ‘bank’ with the fact that ADIs are prudentially supervised by Australian Prudential Regulation Authority (APRA) and deposits are covered by the Financial Claims Scheme (FCS) guarantee.

Context of amendments

1.2 These amendments are being made in the context of several initiatives to improve the banking sector in Australia. The restriction on the use of the term ‘bank’ was noted in the 2016 House of Representatives Standing Committee on Economics Review of the Four Major Banks (the Coleman Review) as being ‘prohibitive to new entrants to the sector’, although no specific recommendations were made with respect to this finding.

1.3 Enabling the use of the term ‘bank’ by ADIs will also assist new entrants to the market for whom the use of the term ‘bank’ may be an essential component in a new entrants’ business model, particularly in the early phase of development.

Summary of new law

1.4 The amendments in this Schedule remove an existing practical impediment to the use of the term ‘bank’ by ADIs. Provided that a financial entity has been granted an ADI authorisation by APRA, that entity will be entitled to use the term ‘bank’ should they so choose.

1.5 APRA will retain its ability to restrict the use of the term ‘bank’ in certain circumstances; for example, where a purchase payment facility is an ADI but does not conduct traditional ‘banking’ business.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Under the new section 66AA of the Banking Act, it will no longer be an offence for an ADI to assume or use the words ‘bank’, ‘banker’ or ‘banking’ in relation to the ADI’s financial business.</p> <p>Further, it is no longer an offence for a person to assume or use the word ‘bank’ in relation to the person’s financial business if the person is an ADI and APRA has not issued a determination prohibiting the use of the term ‘bank’ by that person.</p>	<p>Section 66 of the <i>Banking Act 1959</i> (the Banking Act) contains a restriction on the use of certain words and expressions, including the terms ‘bank’, ‘banker’ and ‘banking’.</p>
<p>Under the amended section 66, decisions taken by APRA in relation to section 66 will not be reviewable under Part VI of the Banking Act.</p> <p>Usual review processes for administrative decisions will continue to have application, including review under the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</p>	<p>Subsection 66(2C) invokes the Part VI review powers in relation to decisions made by APRA pursuant to section 66 of the Banking Act.</p>

Detailed explanation of new law

1.6 The current restriction on the use of the words ‘bank’, ‘banker’ and ‘banking’ under section 66 of the Banking Act will be removed to the effect that where an entity is an ADI, that entity will be able to use those terms in its business. This will allow a range of ADIs to use the term ‘bank’.

1.7 Subsection 66(1) of the Banking Act created an offence if a person carries out a financial business and uses or assumes a restricted word or expression in relation to that business.

1.8 APRA currently only permit ADIs with Tier 1 capital exceeding \$50 million to use the terms ‘bank’, ‘banker’ and ‘banking’. However, there are a number of smaller ADIs which are prudentially regulated by APRA who would benefit from the use of these terms. Amending section 66 to allow all ADIs to use the terms will create a more level

playing field in the banking sector. *[Item 3, subsection 66(1AC) of the Banking Act]*

1.9 It is important that APRA retains the ability to determine that some ADIs may not use the restricted terms. Therefore, APRA will continue to be able to restrict the use of the terms 'bank', 'banker' and 'banking' through providing an affected ADI with a written determination restricting that ADI from use of the terms. *[Item 5, subsection 66AA(3) of the Banking Act]*

1.10 Determinations made by APRA to restrict the use of these terms may apply to a single ADI or to a class or classes of ADI. It is expected that APRA would use the power to prohibit certain ADIs which do not have the ordinary characteristics of banks from utilising the term 'bank' (for example, purchase payment facilities). This power may also be used to deny the use of the term where serious or unusual circumstances warrant APRA making this determination. *[Item 5, subsection 66AA(4) of the Banking Act]*

1.11 In addition, the current review mechanism provided by subsection 66(2C) of the Banking Act, which makes decisions taken under section 66 reviewable under Part VI of the Banking Act, will be removed. *[Item 4]*

1.12 This change is not expected to disadvantage applicants under section 66 of the Banking Act because, as a result of the changes in this Schedule, the main applicants to use a restricted term will be able to use those terms. The majority of applicants to APRA are ADIs who are seeking to use the term 'bank' in their business name. Given that ADIs will now be provided with the ability to use that term, it is expected that APRA will make very few reviewable decisions under section 66 of the Banking Act.

1.13 APRA may still receive applications from non-ADI financial businesses for permission to use the term 'bank', or from ADIs who wish to apply for the use of other restricted terms, such as 'credit union' (non-mutual ADIs are separately prohibited from inaccurately describing themselves as 'credit unions' or like terms). The latter approval is not automatically granted in the same way as 'bank' given that these terms convey the concept of mutuality, which is not relevant to all ADIs.

1.14 However, given APRA will no longer receive applications from many ADIs, it is no longer desirable that the remainder of the decisions to be made under section 66 be reviewable. This more appropriately reflects the Government's intent to limit the use of the term 'bank' by financial businesses other than ADIs to very rare and unusual circumstances. This approach is consistent with Recommendation 35 of the Financial System

Inquiry to clearly differentiate the investment products financial companies and similar entities offer retail consumers from ADI deposits.

1.15 The usual review processes for administrative decisions, including review under the *Administrative Decisions (Judicial Review) Act 1977* will continue to apply to decisions of APRA.

1.16 Further amendments have been made to the Banking Act to ensure internal consistency of the Act as a result of these changes. [*Items 1 and 2, Subsections 9(3)(note 1) and 9(3)(note 2) of the Banking Act*]

Application and transitional provisions

1.17 The amendments made by this Schedule apply from the day after the end of the period of two months beginning on the day of Royal Assent.

1.18 APRA will be permitted to make determinations under subsection 66AA(3) following Royal Assent, in accordance with subsection 4(2) of the *Acts Interpretation Act 1901*.

