

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (2017
Measures No. 8) Bill 2017: amendment to
section 66 of Banking Act**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	The day after the end of the period of 2 months beginning on the day this Act receives the Royal Assent.	

EXPOSURE DRAFT

Schedule 1—Restricted words

Banking Act 1959

1 Subsection 9(3) (note 1)

Repeal the note.

2 Subsection 9(3) (note 2)

Omit “Note 2”, substitute “Note”.

3 Subsection 66(1AC)

Repeal the subsection, substitute:

(1AC) It is not an offence against subsection (1) for an ADI to assume or use the words *bank*, *banker* or *banking* in relation to the ADI’s financial business.

Note: See also section 66AA, which deals with the use of the word *bank* by ADIs.

4 Subsection 66(2C)

Repeal the subsection.

5 After section 66

Insert:

66AA Use of the word *bank* by ADIs

(1) A person commits an offence if:

- (a) the person is an ADI; and
- (b) the ADI carries on a financial business, whether or not in Australia; and
- (c) the person assumes or uses, in Australia, the word *bank* in relation to that financial business; and
- (d) a determination under subsection (3) is in force that specifies that this section applies to the ADI.

Penalty: 50 penalty units.

Note 1: For the meanings of *assume or use* and *financial business*, see subsection (9).

EXPOSURE DRAFT

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- 1 Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of
2 criminal responsibility.
- 3 Note 3: If a body corporate is convicted of an offence against this subsection,
4 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
5 fine of up to 5 times the penalty stated above.
- 6 (2) If a person assumes or uses the word **bank** in circumstances that
7 give rise to the person committing an offence against
8 subsection (1), the person commits an offence against that
9 subsection in respect of:
- 10 (a) the first day on which the offence is committed; and
11 (b) each subsequent day (if any) on which the circumstances that
12 gave rise to the person committing the offence continue
13 (including the day of conviction for any such offence or any
14 later day).
- 15 Note: This subsection is not intended to imply that section 4K of the *Crimes*
16 *Act 1914* does not apply to offences against this Act or the regulations.
- 17 (3) APRA may, in writing, determine that this section applies to an
18 ADI while the determination is in force.
- 19 (4) A determination under subsection (3):
20 (a) may be expressed to apply:
21 (i) to a particular ADI; or
22 (ii) to a class, or classes, of ADIs; and
23 (b) may specify the period during which the determination is in
24 force.
25 A period specified under paragraph (b) must not begin before the
26 day on which the determination is made.
- 27 (5) If APRA makes a determination under subsection (3) that applies
28 to a particular ADI, APRA must also give the ADI written notice
29 of the determination.
- 30 (6) APRA may, in writing, vary or revoke a determination made under
31 subsection (3).
- 32 (7) The following instruments are not legislative instruments:
33 (a) a determination under subsection (3) that applies to a
34 particular ADI;
35 (b) an instrument made under subsection (6) varying or revoking
36 a determination that applies to a particular ADI.
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EXPOSURE DRAFT

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(8) Otherwise, a determination under subsection (3) or an instrument under subsection (6) is a legislative instrument.

(9) In this section:

- (a) a reference to the word *bank* being assumed or used includes a reference to the word being assumed or used:
 - (i) as part of another word or expression; or
 - (ii) in combination with other words, letters or other symbols; and
- (b) a reference to a financial business is a reference to a business that:
 - (i) consists of, or includes, the provision of financial services; or
 - (ii) relates, in whole or in part, to the provision of financial services.