

Banking (restricted word or expression) determination No. 1 of 2015

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Banking Act 1959, subsection 66(5)

Acts Interpretation Act 1901, section 33

Under subsection 66(5) of the *Banking Act 1959* (the Act), APRA has the power to determine that a specified word or expression is to be a restricted word or expression for the purposes of section 66 of the Act. Subsection 33(3) of the *Acts Interpretation Act 1901* confers power to revoke an instrument made under an enactment.

This Explanatory Statement relates to Banking (restricted word or expression) determination No. 1 of 2015 (2015 Determination), which:

- revokes Banking (restricted word or expression) determination No. 1 of 2006 (2006 Determination) made on 18 January 2006, which determined the expressions ‘specialist credit card institution’ and ‘SCCI’ to be restricted expressions for the purposes of section 66 of the Act; and
- determines the expression ‘credit co-operative’ to be a restricted expression for the purposes of section 66 of the Act.

The 2015 Determination commences on the day that it is registered on the Federal Register of Legislative Instruments.

1. Background

Under sections 66 and 66A of the Act, it is an offence for a person to use or assume in Australia certain restricted words and expressions in relation to a financial business.

The Act provides for the regulation of banking business in Australia. On 17 July 2003, the *Banking Regulations 1966* (Banking Regulations) were amended to extend the definition of ‘banking business’ under the Act to include certain credit card acquiring and credit card issuing activities. Subsequently, APRA established a regulatory regime for the acquirers and issuers, who were referred to as ‘specialist credit card institutions’ (SCCI regime). On 18 January 2006, APRA made the 2006 Determination to determine the expressions ‘specialist credit card institution’ and ‘SCCI’ to be restricted expressions for the purposes of section 66 of the Act. On 11 December 2014, the Banking Regulations were amended to remove provisions setting out the SCCI regime, such that the activities of credit card acquiring and credit card issuing are no longer regulated under the Banking Act. APRA considers that it is no longer appropriate to restrict the use of the expressions ‘specialist credit card institution’ and ‘SCCI’.

APRA had previously determined the expression ‘credit co-operative’ to be a restricted expression for the purposes of section 66 of the Act through a determination made on 28 June 1999, which took effect on 1 July 1999 (1999 Determination). On 19 May 2000, APRA consented to the use of the expression ‘credit co-operative’ by a credit union and its related bodies corporate in relation to the financial business

carried on by the credit union (2000 Consent). The 2000 Consent also permitted the trustee of a superannuation entity whose members are all current or former officers or employees of a credit union to use the expression 'credit co-operative' in the context of using the name of the credit union in the name of the trustee or superannuation entity.

Upon the commencement of the *Legislative Instruments Act 2003* (LIA), legislative instruments made before 1 January 2005 were generally required to be registered on the Federal Register of Legislative Instruments (FRLI). Due to an oversight, the 1999 Determination was not registered on FRLI before 1 January 2008 as required under section 29 of the LIA. Accordingly, under section 31 of the LIA, the 1999 Determination is not enforceable by or against any person. Nevertheless, it is arguable that 'credit co-operative' continued to be a restricted expression for the purposes of section 66 of the Act because the meaning of a restricted expression under paragraph 66(4) of the Act includes an expression that is of like import to the expression 'credit union' or 'credit society'. The 2000 Consent was registered on FRLI on 24 January 2007, and has remained in effect. The 2015 Determination puts beyond doubt that 'credit co-operative' is a restricted expression.

2. Purpose of the instrument

The purpose of the Determination is to revoke the 2006 Determination and to determine that the expression 'credit co-operative' is a restricted expression for the purposes of section 66 of the Act.

3. Consultation

The Reserve Bank of Australia conducted 2 rounds of consultation in May and December 2013 on policy options for changes to the SCCI regime, which culminated in amendments to the Banking Regulations to remove provisions setting out the SCCI regime. The Treasury also engaged with key stakeholders, including MasterCard, Visa, SCCIs and potential entrants. In view of the extensive consultation conducted prior to the amendments to the Banking Regulations, and the fact that removal of the restricted expressions 'specialist credit card institution' and 'SCCI' is a natural consequence of the cessation of the SCCI regime, APRA considers that it is unnecessary to undertake further consultation on the revocation of the determination of these expressions as restricted expressions for the purposes of section 66 of the Banking Act.

APRA consulted on proposed changes to the *Guidelines on Implementation of section 66 of the Banking Act 1959* (the Guidelines) in April 2013. The Guidelines include reference to the restriction on the expression 'credit co-operative', including reference to the 2000 Consent. No submissions were received in relation to the restriction on the use of the expression 'credit co-operative'.

4. Regulation Impact Statement

A Preliminary Assessment in relation to the Guidelines was submitted the Office of Best Practice Regulation who confirmed that a Regulation Impact Statement was not required.

5. Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

Attachment A

Statement of Compatibility with Human Rights

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

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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

Under section 66 of the Act, it is an offence for a person to assume or use a restricted word or expression in Australia in relation to a financial business.

The 2015 Determination revokes the 2006 Determination. The effect of this revocation is that the expressions ‘specialist credit card institution’ and ‘SCCI’ will no longer be restricted expressions under section 66 of the Act.

The 2015 Determination further determines the expression ‘credit co-operative’ to be a restricted expression for the purposes of section 66 of the Act. Under subsection 66(4), a restricted expression includes the expression ‘credit union’ or ‘credit society’, or words of like import. This determination puts beyond doubt that the expression ‘credit co-operative’ is a restricted expression.

Human rights implications

APRA has assessed this Legislative Instrument and is of the view that it does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, in APRA’s assessment, the instrument is compatible with human rights.

Conclusion

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