

## **Banking (restricted word or expression) consent No. 1 of 2018**

### **EXPLANATORY STATEMENT**

**Prepared by the Australian Prudential Regulation Authority (APRA)**

*Banking Act 1959*, paragraphs 66(2)(c) and 66(1)(d)

Subsection 66(1) of the *Banking Act 1959* (the Act) prohibits a person who carries on a financial business, whether or not in Australia, from assuming or using in Australia a restricted word or expression in relation to that financial business without APRA's consent. Paragraph 66(1)(d) of the Act provides that APRA may consent to the use or assumption of a restricted word or expression. Paragraph 66(2)(c) provides that APRA may revoke a consent.

On 23 October 2018, APRA made Banking (restricted word or expression) consent No. 1 of 2018 (the instrument) which revokes Banking (restricted word or expression) consent No. 3 of 2015 (the Consent) and makes a new class consent.

The instrument commences on the day that it is registered on the Federal Register of Legislation.

#### **1. Background**

Under section 66 of the Act, the use of the following terms is restricted:

- 'bank', 'banker' and 'banking';
- 'building society', 'credit union' and 'credit society';
- terms that have been specified in a determination in force under subsection 66(5), such as 'credit co-operative';
- any other word or expression that is of like import to any of these terms.

#### **2. Purpose and operation of the instrument**

The Consent permitted the use of the restricted words or expressions 'bank', 'banker', 'banking', 'building society', 'credit union', 'credit society', and 'credit co-operative' subject to a range of conditions. The Consent applied to building societies, credit unions, related bodies corporate of a building society or credit union, and trustees of certain superannuation entities.

*Treasury Laws Amendment (Banking Measures No. 1) of 2018* (the amending Act) was enacted on 5 March 2018. Schedule 3 of the amending Act, which commenced on 5 May 2018, inserted new subsection 66(1AC) and section 66AA into the Act. The effect of the amendments is that it is not an offence for an authorised deposit-taking institution (ADI) to assume or use the words 'bank', 'banker' or 'banking' in relation to the ADI's financial business except where APRA has made a determination under subsection 66AA(3) that applies to the ADI.

The instrument reproduces the same consents and conditions as were in the Consent for building societies and credit unions to use the expressions ‘building society’ and ‘credit union’, respectively, and for trustees of certain superannuation entities to use restricted words or expressions as part of the trustee or superannuation entity’s name.

The instrument removes the consents for a building society or credit union to use ‘banker’ and ‘banking’, including the phrase ‘mutual banking’. These consents are now redundant as all building societies and credit unions are ADIs, and have the right to use the words ‘bank’, ‘banker’ and ‘banking’ upon commencement of Schedule 3 of the amending Act on 5 May 2018.

The instrument also removes consents for related bodies corporate of building societies and credit unions to use restricted words to describe the financial business of the related building society or credit union. These consents are not necessary, because it is not an offence under section 66 of the Banking Act for a person to use a restricted word to describe another person’s financial business.

Additionally, the instrument amends the lists of entities in Schedules 2 and 3 of the Consent. The reason for this is to update the list to remove entities that have exited the Australian banking industry since December 2015, or are no longer operating as a building society or credit union.

### **3. Consultation**

Treasury conducted a consultation on the amending Act between 17 July 2017 and 14 August 2017.

APRA has consulted the Customer Owned Banking Association Limited about the removal of consents for related bodies corporate of building societies and credit unions to use restricted words to describe the financial business of the related building society or credit union. APRA has not undertaken a consultation in relation to the removal of consents that are redundant because of the changes made under the amending Act, or in relation to the updates to the lists of building societies and credit unions.

### **4. Regulation Impact Statement**

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this legislative instrument because removing consents that are redundant is a machinery change, and amending the list of entities is a non-regulatory change.

### **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*

#### **Banking (consent to assume or use restricted word or expression) No. 1 of 2018**

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**

The instrument revokes the existing *Banking (consent to use restricted word or expression) No. 3 of 2015* made on 14 December 2015 and replaces it with a new consent. The new consent continues to allow credit unions, building societies and trustees of certain superannuation entities to use certain words and expressions that are restricted under the *Banking Act 1959* (the Act), such as ‘banker’, ‘banking’, ‘building society’ and ‘credit union’. The new consent:

- removes certain consents that are no longer relevant as a result of amendments made to the Act by *Treasury Laws Amendment (Banking Measures No. 1) of 2018*;
- removes consents for related bodies corporate of building societies and credit unions to use restricted words to describe the financial business of the related building society or credit union, as such use is not restricted under the Act and the consents are therefore not necessary; and
- updates the list of entities that are identified as building societies and credit unions for the purposes of the consent.

#### **Human rights implications**

APRA has assessed the 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.