

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2015 - 2016

Department/Agency: APRA

Question: SBT 58-59

Topic: Service One Members Banking - use of the word 'bank/banking'

Reference: Hansard page no. 28 - 21 October 2015

Senator: Williams, John

Question:

Senator WILLIAMS: Point 27 of APRA's section 66 guidelines says that credit unions and building societies may use expressions 'banker' and 'banking' in marketing and branding material to describe their banking activities but cannot use the terms as part of their registered corporate, business or trading names. Why has this regulation been introduced?

Mr Byres: That has been a longstanding requirement, that there are prohibitions on the use of the word 'bank' and 'banking' in business names so that consumers, depositors in particular, understand the nature of the organisation that they are dealing with. Those provisions have been in the Banking Act for many, many decades.

Senator WILLIAMS: Is it correct that they used to be able to use 'banking' in their names? I understand that Service One Members Banking was a credit union which used this name for a number of years without APRA's objection. Are you familiar with that?

Mr Byres: I am not familiar with the specific case. I am happy to take it on notice.

Senator WILLIAMS: Can you check that out and take it on notice? Service One Members Banking were using that name and were a credit union, and there were no complaints from APRA then. People go to credit unions to deposit money, withdraw money, borrow money and all their normal banking activities, but what you are saying is, 'Don't dare you call yourself a banking institution.' Is that what you are saying?

Mr Byres: In the Banking Act there are provisions for organisations that want to do banking business to become authorised deposit-taking institutions—credit unions, building societies and banks and a handful of other smaller institutions.

Senator WILLIAMS: St. George was a building society first.

Mr Byres: Yes. There is a narrower definition of a bank, primarily being that they have capital in excess of \$50 million. If they get beyond that point then it is available to them to come to us and seek approval to use the name bank in their business name and to call themselves a bank.

Senator WILLIAMS: So capital levels are one of the big issues as far as being called a bank?

Mr Byres: Yes.

Senator WILLIAMS: What would you need to change so that they could use the word 'banking' in their name, reduce that \$50 million capital level? Or do they have to raise above \$50 million in capital?

Mr Byres: \$50 million has been the longstanding requirement. It was looked at a few years ago at the request of the previous government. There were some steps taken to make sure that mutual organisations that wanted to become or use the name 'bank' were able to do so. As a result of that we have seen a number of organisations change their names—not their neutral status but their names—from either 'credit union' or 'building society' to 'bank', and we have a number of mutual banks now. So there is a process there. I could not tell you the number in

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recent years, but, in round terms, there have probably been 10 organisations that have made the switch. The option is there.

Senator WILLIAMS: Were they mutuals?

Mr Byres: They were mutuals, yes.

Mr Chapman: And they still are mutuals, even after the conversion.

Mr Byres: It is largely an issue of size of capital.

Senator WILLIAMS: How big they are, yes. That seems to be the issue. So please examine on notice Service One Members Banking, which apparently was around for years and there was no problem. They may have had more than \$50 million in capital, perhaps.

Mr Byres: We will look at it and provide you with a response.

Answer:

Under section 66 of the Banking Act 1959 the use of the terms 'bank', 'banker' and 'banking' is restricted, unless the Australian Prudential Regulation Authority (APRA) consents to the use of these terms. Authorised Deposit-taking Institutions (ADIs) that are authorised as banks by APRA will be granted unrestricted consent to use the terms 'bank', 'banker' and 'banking'. This includes the use of these terms in corporate, business or trading names.

APRA is working with a small number of ADIs who are not banks and who currently use the term 'banking' in business names and internet domain names on an individual basis. It is not APRA's intention to cause undue disruption or expense to such ADIs. A number of such ADIs have used such terms without prior communication with APRA.

Service One Credit Union Ltd has ceased to operate as a Credit Union and its authorisation to carry on banking business was revoked by APRA in April 2015.

Background

Under a Class Consent dated 19 May 2000 (2000 Consent), APRA consented to Credit Unions and Building Societies using the term 'banking' in relation to their banking activities. However this consent for the use of the word 'banking' was not unrestricted, as it is with ADIs approved as banks.

APRA has published Guidelines for Implementation of section 66 of the Banking Act 1959. Guidelines published in 2006 (2006 Guidelines) confirmed that ADIs approved by APRA as banks have unrestricted consent to use the words 'bank', 'banker' and 'banking', including in corporate, business or trading names. The 2006 Guidelines also confirm that Credit Unions and Building Societies may use the term 'banking' in relation to their banking activities. No allowance was made for use by Credit Unions or Building Societies of the word 'banking' in corporate, business or trading names.

In August 2015 APRA released updated Guidelines for Implementation of section 66 of the Banking Act 1959 (2015 Guidelines). Further on 6 August 2015 APRA issued a Class Consent for Credit Unions and Building Societies that replaced the previous 2000 Consent.

The 2015 Guidelines and consent do not reflect a change in position from the 2006 Guidelines and are consistent with APRA's long-standing position on the use of the words 'bank', 'banker' and 'banking'. In particular the 2015 Guidelines provide further

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clarification of APRA's long standing position on the use of the restricted words 'banker' and 'banking' by Credit Unions and Building Societies.

The 2015 Guidelines clarify the prior restriction, which is that a Credit Union may use the expressions 'banker' and 'banking' (but not 'bank') in marketing and branding material to describe its banking activities. The relevant clarifications are that the restricted terms 'banker' and 'banking' may not be used as part of a registered corporate, business or trading name, or in an internet domain name.

APRA has recently written to ADIs on the issue of banking brands as part of APRA's role as administrator of the Financial Claims Scheme (FCS). APRA is moving to establish a dedicated FCS website that will include a list of ADIs covered under the FCS. The FCS covers depositors up to \$250,000 per eligible ADI with this including, as part of the one amount, any banking brands the ADI operates. The website will list all business names (or ADI brands) that each ADI owns and operates for the purpose of carrying on banking business. Having this information on the FCS website will help inform members of the public how the FCS works and what deposits are covered under the FCS. Collecting this information may bring to light some additional cases where ADIs have inappropriately used protected terms. APRA will consider these cases on a case by case basis with the overall objective of ensuring the appropriate use of protected terms.