



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

14 August 2017

The Manager
Banking, Insurance and Capital Markets Unit
Financial Systems Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: useofbank@treasury.gov.au

Dear Sir/Madam,

**RE: REDUCING BARRIERS TO NEW ENTRANTS TO THE BANKING SECTOR –
REMOVING RESTRICTIONS ON THE USE OF THE TERM ‘BANK’**

Thank you for the opportunity to submit comments on the Exposure Draft Treasury Laws Amendment (2017 Measures No.8) Bill 2017 on reducing barriers to new entrants to the banking sector.

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) advocates for small business and family enterprise in relation to policies, practices and legislation that impact on small business and family enterprise. A core concern for small business relates to access to finance. We recently completed an inquiry into small business lending, releasing a report in December 2016, with 15 recommendations designed to address gaps in the existing regulatory environment and shortfalls in the practices of industry participants. Consistent with other inquiries, we found an almost complete asymmetry of power in the relationship between banks and small business borrowers.

Our submission addresses the following issues:

- Small business access to finance
- Benefits of using the term ‘bank’
- The effect of the amendment on new small ADI entrants

Small business access to finance

The power and control of the established ‘banks’, particularly around access to finance, remains a barrier for small businesses seeking funding to start, or expand, their operations. For example, our inquiry found the cost of seeking legal advice before signing a loan contract can be as much as \$10,000, or more for complex circumstances. Another significant cost is the time involved for small business in

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reviewing legal contracts that often contain unfair terms. Similarly, ‘negotiations’ with banks on these terms are often non-negotiable.

A further barrier to accessing finance is a general requirement by established ‘banks’ for ‘bricks and mortar’ security. This requirement immediately defines the risk the established bank is willing to accept in order to lend. Often a loan has to be secured by some form of ‘property’, which in the case of housing security, can fluctuate in value in line with the market. As we observed in our inquiry, the challenge for small business seeking finance is that, unless they meet and fulfil explicit requirements set by the ‘established banks’ they have limited options to access finance. Removing the restrictions on the use of the term ‘bank’ should allow more industry participants to compete with the established participants which will reduce barriers to accessing finance for small business through greater competition.

Benefits of using the term ‘bank’

While we agree with the Treasurer’s comments in his Media Release of 17 July 2017 that “the restriction on ‘bank’ may also lead the public to mistakenly believe that small banking businesses differ from the larger players in terms of regulatory protection.”¹ we would note there are more complex challenges with public perception for new banking industry participants. Recent banking scandals² have afflicted the reputation and community perceptions of the major banks, such that there is little incentive for new industry participants to use the term ‘bank’. Fintechs are an example. Anecdotal information suggests it is not in their interest to be seen as a ‘bank’ due to the perception of the associated regulatory burden.

There is also a further consideration: *reputation*. We note the consumer-based results of an AMR Corporate Reputation Index for 60 companies in Australia (April 2017)³ revealed that Air New Zealand, Mazda Australia and JB Hi-Fi were ranked one, two and three respectively. Of the banks listed in the Index, ING Direct was ranked 6th, Bendigo and Adelaide Bank – 18th, Commonwealth Bank of Australia – 36th, National Australia Bank – 43rd, Macquarie Group – 46th and Westpac – 48th.

The effect of the amendment on new small ADI entrants

The Explanatory Memorandum for the Bill states the proposed 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). We would contrast this with the Australian Prudential Regulatory Authority’s (APRA) guidelines. APRA’s Guidelines: ‘Implementation of section 66 of the *Banking Act 1959* (April

¹ Joint Media Release of the Treasurer and Minister for Revenue and Financial Services, “Further action to create a more competitive banking system for Australians”, [http://sjm.ministers.treasury.gov.au/media-release/062-2017/?utm_source=wysija&utm_medium=email&utm_campaign=Media+Release+-+Further+action+to+create+a+more+competitive+banking+system+for+Australians]

² Most recently the civil action by ASIC against the Commonwealth Bank of Australia for breaches of anti-money laundering and terrorism financing legislation but also the long list of transgressions succinctly captured in the following article ‘Timeline: banking scandals in Australia since 2009’ [<https://www.theguardian.com/australia-news/ng-interactive/2016/apr/29/timeline-banking-scandals-in-australia-since-2009>]

³ AMR Corporate Reputation Index (April 2017) [http://www.amr-australia.com/asset/cms/AMR_Corporate_Reputation_Australia_-_2017_results_26.04.2017.pdf]

2013)⁴, section 19 states “APRA requires that, where an ADI wishes to operate as a bank, the ADI must hold at least \$50million in Tier 1 capital.”

APRA’s requirements are also noted in the Explanatory Memorandum accompanying the draft bill, though this minimum requirement is not referenced in Bill. It follows that if the law is amended it will have no material impact - as far as the minimum capital requirements are concerned - unless APRA changes its guidelines.

While there may be a number of smaller ADIs which are prudentially regulated by APRA who might benefit from the use of the term ‘bank’, the minimum Tier 1 capital requirements in APRA’s policy can potentially thwart this objective. Thus in order to meet the objective of increasing the number of ADI participants to the banking sector and creating a more level playing field, APRA will need to review its policy guidelines for the minimum capital requirements as a relevant next step.

We hope these comments assist your deliberations. Please feel free to contact either myself or Mr James Strachan, by telephone 02 62631537 or email james.strachan@asbfeo.gov.au if you have any questions relating to this submission.

Yours sincerely,



Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman

⁴ <http://www.apra.gov.au/adi/PrudentialFramework/Documents/130418-Guidelines-Implementation-of-Section-66-FINAL-DRAFT.pdf>