



Australian
Shareholders'
Association

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Manager
Banking, Insurance and Capital Markets Unit
Financial System Division
The Treasury
Langton Crescent
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By email: BEAR@treasury.gov.au

**EXPOSURE DRAFT: TREASURY LAWS AMENDMENT (BANKING EXECUTIVE
ACCOUNTABILITY AND RELATED MEASURES) BILL 2017**

Dear Sir/Madam

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors and self-managed superannuation fund (SMSF) trustees. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We refer to the Exposure Draft of the Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017 (**Exposure Draft BEAR**) dated September 2017.

We are supportive of the move to strengthen accountability in the Australian banking system. For example, we support the obligation on an authorised deposit-taking institution (ADI) to give APRA accountability statements and an accountability map. As noted in the Explanatory Memorandum, "These documents show the governance and management controls expected of an ADI and show the organisation's lines of accountability".

However, we had expressed concerns in our submission on the consultation paper that the proposed reforms went too far in terms of seeking to manage organisations, with the effect of undermining the function of company boards. While we are in firm support of increased accountability and the framework for that accountability, we strongly oppose the government or government agencies prescribing, in detail, remuneration structures for the private sector.

We remain concerned, therefore, that the Exposure Draft BEAR legislates the determination of aspects of remuneration, when the ASA is of the view that such determination is the role of the board of directors, having regard to the views of shareholders and other stakeholders. We do not see determination of executive remuneration as the role of government or the Australian Prudential Regulation Authority (APRA).

While we recognise that a key concern related to the attempt to impose a 'one-size-fits-all' approach to all ADIs has been partially addressed in the Exposure Draft BEAR, this does not change our view that the introduction of BEAR will distort remuneration structures in the entire financial services sector and have unforeseen consequences in overlapping sectors, rather than bringing clarity and discipline as intended.

The change reflected in the Exposure Draft BEAR that we recognise as having addressed a concern that we raised in response to the consultation paper is that consideration has been given to the challenge of seeking to apply a 'one-size-fits-all' remuneration framework to all ADIs without regard to their size. We support the recognition in the Exposure Draft BEAR that the introduction of deferral of a proportion of the remuneration of an accountable person for a period of four years depends on the size of the ADI. We also support the introduction of a tiered structure or threshold, where if the minimum amount of remuneration to be deferred, as calculated in the Explanatory Memorandum, is less than \$50,000 a year, it is excluded from the deferral rules.

Notwithstanding this, we remain opposed to the introduction of deferral of variable remuneration as applying to all ADIs. As noted in our submission on the consultation paper, while it is not uncommon for a portion of variable remuneration for senior executives at listed companies to be deferred for a period, this is not necessarily the case at smaller Australian and foreign owned ADIs. Accordingly, the introduction of this reform is likely to require significant changes to the way remuneration is structured at these entities. We see this as an intrusion on the role of boards. The threshold of \$50,000 may accommodate this concern, but the application of the deferral of variable remuneration for smaller Australian and foreign owned ADIs is likely to lead to a shift from variable to base remuneration, and possibly higher base remuneration.

Given our concerns, we are pleased to see that it is proposed to grant power to APRA to allow an ADI to defer a person's remuneration for a shorter period and that the Minister has power to exempt an ADI or its subsidiary from the application of the BEAR in order to ensure that it can operate flexibly and is appropriately targeted.

The ASA is also pleased to see that the Exposure Draft BEAR clarifies that variable remuneration must be valued at face value, rather than fair value for the purposes of calculating an amount to be deferred.

The ASA has concerns with the application of fines to the company rather than the non-complying accountable persons. The Exposure Draft BEAR proposes that an ADI can be fined up to 1m penalty units for failure to comply with the BEAR. The ASA notes that this has the effect of penalising

shareholders rather than the non-complying accountable persons, when shareholders bear no responsibility for the lack of compliance.

Implementation and transitional periods

While we acknowledge the desire to implement the BEAR as soon as possible, we are of the view that ADIs will need time to undertake changes to policies, contracts and systems. In our submission on the consultation paper we recommended a minimum of 12 months be provided for ADIs to implement the BEAR after passage of the legislation. However, we note that BEAR is to apply as of 1 July 2018, with the legislation not due to be introduced to parliament until the October 2017 sitting. This reduces the implementation and transition period to nine months.

Finally, we note the extraordinarily limited time provided for consultation on the Exposure Draft BEAR, being one week. This conflicts with the government's own guidelines on best practice regulation and provides stakeholders with insufficient time to provide a comprehensive response. Our view is that it is in the interests of all stakeholders for a government to provide an adequate amount of time for productive consultation to occur and this has not taken place in this instance.

If you have any questions about this submission, please do not hesitate to contact me on (02) 92524244.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J Fox', written in a cursive style.

Judith Fox
Chief Executive Officer
Australian Shareholders' Association