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## Banking Executive Accountability Regime Consultation

On behalf of the Australian Council of Superannuation Investors (ACSI), we are pleased to make this submission in response to the Government's consultation on the introduction of a new Banking Executive Accountability Regime (BEAR).

ACSI makes this submission on behalf of its members, 37 asset owners and large institutional investors, who together invest over $1.5 trillion. A significant proportion of our members' assets are invested in the Australian equity market, and the Australian economy more broadly, and we therefore support the maintenance of strong governance standards within authorised deposit-taking institutions (ADIs).

ACSI supports the objectives of the BEAR in creating heightened accountability in response to growing community and investor concern over a number of examples of poor culture and behaviour within Australian banks. In making this submission, ACSI would like to share its insights from our assessment of remuneration and governance practices within. These observations will be limited to a small number of issues raised within the consultation paper.

In summary, ACSI does not see the recommendations of BEAR as overly onerous given that boards are already increasing the deferral of executive remuneration and seeking to retain the ability to reduce, apply claw-back or 'malus' provisions, to remuneration where issues of poor performance, risk or poor culture arise.

## Remuneration

**Question 6 –Would deferring variable remuneration be likely to result in a shift from variable to base remuneration? Would this be problematic and, if so, can anything be done to prevent this outcome?**

ACSI does not see that the deferral of variable remuneration will require a wholesale change in current market practices. This view is supported by ACSI's research on the remuneration practices of the eight ADI's currently listed in the S&P/ASX200 that would subject to the BEAR. According to our statistics, half of the CEO's in these institutions already have more than 50% of their variable remuneration deferred for over 4 years, and are therefore close to the recommended threshold. For those institutions below the threshold, a shift from vesting long-term incentives from 3 to 4 years would go a long way to meeting the requirements of the BEAR.

We also observe that there is very little appetite among institutional investors to see large increases in fixed remuneration. In recent years, the challenge for listed ADI's has been demonstrating to investors that short-term incentives are truly 'at risk' as in many institutions 'at target' awards have become the norm as opposed to bonuses for significant out-performance.

In this context, any increases to the fixed remuneration of executives to 'compensate' for greater deferral of bonuses would be highly likely to attract large 'no' votes from institutional investors.

**Question 7 - What are the complexities in defining variable remuneration, including in relation to non-cash remuneration?**

There are a range of complexities in defining variable remuneration. Issues such as equity based sign-on arrangements in lieu of shares forfeited in another executive position will need to be considered. Similarly, there may be isolated cases where shares are granted that are based only on continued service. In these cases, the value of the award may be variable but the non-cash awards are not truly variable or 'at risk.'

**Question 8 - Does the proposed principles-based definition of variable remuneration provide sufficient clarity as to the application of the BEAR to current and potential future remuneration structures?**

ACSI agrees with the creation of a principles-based definition of variable remuneration. ACSI supports the proposed approach where variable remuneration is defined in the Consultation Paper as the 'part of total remuneration that is discretionary and conditional upon performance and the delivery of results, including individual and business performance and results' and the clarification that 'it is intended to reward performance and the delivery of results in excess of that required to fulfil a job description.' The concept that variable remuneration is truly 'at risk' is another important principle that should be considered within the definition.

**Question 9 - Is the proposal for deferring 60 percent of the variable remuneration of certain executive accountable persons appropriate?**

ACSI is supportive of the proposal for deferring 60 percent of variable remuneration of certain executives and we note that meaningful deferral of remuneration has become commonplace within listed ADI's. From a long-term investor perspective, the deferral of bonuses into equity can increase both alignment with shareholders and retention of executives. Deferral also allows boards to exercise appropriate discretion and malus provisions when significant issues arise within an ADI. Examples of these malus provisions would be cancelling deferred bonuses following significant failures of corporate culture, risk or compliance processes.

**Question 10 - Are the proposed enhancements to APRA's remuneration powers appropriate?**

ACSI supports the proposed enhancements to APRA's remuneration powers. If a senior executive of an ADI has failed to meet the requirements of the BEAR, and is consequently removed or disqualified, it is appropriate that APRA should have the power to reduce variable remuneration.

## Conclusion

I trust that our comments are of assistance to the Consultation and please contact me, or Ed John, ACSI's Executive Manager - Governance, Engagement & Policy, should you require any further information on ACSI's position.

Yours sincerely,

Louise Davidson
Chief Executive Officer