FSU
AUSTRALIA

FSU Submission

Banking Executive Accountability Regime Consultation Paper July 2017

FINANCE SECTOR UNION

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Introduction:

1. The Finance Sector Union (FSU) of Australia welcomes the opportunity to participate and provide a submission on the proposed Banking Executive Accountability Regime (the BEAR)

2. The FSU represents and advocates for more than 400,000 workers in the finance sector - including those who are required to provide general and personal advice.

3. The FSU represents finance workers across the ADI's in scope of the proposed BEAR

4. The FSU's comments are based on the thoughts & experiences of FSU members as well as our well placed understanding of the finance industry and industry practices

Commentary:

1. The FSU firmly supports the objective of these reforms. The finance industry is currently experiencing a trust deficit with its workers, its shareholders and the community at large.
2. The accountability of senior executives and directors for the continued poor conduct and outcomes that are occurring throughout the finance industry are key to rebuilding trust and confidence across the sector.
3. However the FSU would like to raise two important points regarding the proposed BEAR, firstly does the BEAR provide appropriate expectations for accountable persons? And secondly does the proposed BEAR appropriately deal with the remuneration structures of accountable persons?

Does the BEAR provide appropriate expectations for accountable persons?

In Treasury's Consultation paper it is envisaged that the BEAR "will apply where there is poor conduct or behaviour that is of a systemic and prudential nature", however poor conduct and poor outcomes are much broader than that currently contemplated by the proposed BEAR.

There are a multitude of examples where poor conduct has led to poor outcomes that would not currently be captured by the application of the BEAR. There has been much said about some of these issues, and the Review of the Four Major Banks has covered off many of them, however despite this we continue to see poor conduct displayed across the industry.

On 14 August 2017 the Commonwealth Bank announced that they were undergoing a process of review and remediation for employees and customers, this announcement outlined the following areas in which CBA had to review and remediate

- Back payment to approximately 36000 current and former employees of over $16.7m for unpaid employee superannuation and other entitlements
- Reimbursement of $10m to customers who were sold a consumer credit insurance product that they were unable to make a claim against
- Refund to over 9000 customers who were charged an incorrect premium for Home Loan Protection Insurance
- Review of failure to cancel insurance products for deceased estates
- Review about potential failure to comply with Freedom of Financial Advice laws

Each one of these issues demonstrates both poor conduct and poor outcomes for employees and customers however it is unlikely that the proposed BEAR would be triggered for any of these scandals.

Furthermore in the case of the Commonwealth Bank there are 11 individuals other than the CEO that make up the Group Executive Team and only 4 of these individuals would be captured by the proposed BEAR.

Does the proposed BEAR appropriately deal with the remuneration structures of accountable persons?

The FSU supports the intent of the BEAR as it relates to remuneration. We understand that there are arguments being made that the remuneration of accountable persons is an issue for the Board and in turn the shareholders at the AGM, however recent decisions by the Commonwealth Bank Board as reaffirmed our view that regulatory oversight and controls are required to manage the way remuneration is used to enhance accountability.

On the 3 August AUSTRAC outlined numerous allegations of the Commonwealth Banks failure to comply with AML laws over more than 5 years.

On the 8 August 2017 CBA Chairman Catherine Livingstone AO announced that the CBA Board and determined that the short term incentives(STI) for the CBA CEO & Group Executive Team would equal zero, and that the Board would also take a 20% reduction in their fees for the 2018 financial year.

The Board made no announcement regarding the Long Term Incentives (LTI) for the CEO & Group Executive Team.

The decision by the CBA Board to reduce the STI to zero but allow executives to continue to access their Long Term Incentives meant that incentives earned over the past 5 years while the AUSTRAC issue was allegedly occurring would still be pocketed by executives. In the case of CBA's CEO, the reduction of STI to zero equates to a loss of approximately $2.8m however the Long Term Incentive of $6.5m was still payable.

The failure of the CBA Board to address the LTI payments in this case raises concerns over whether or not Boards would intervene to determine remuneration based on poor conduct and poor outcomes.

Recommendations;

1. That any Banking Executive Accountability Regime be able to hold executives accountable for poor conduct and poor outcomes whether they are of a systemic and prudential nature or not.

2. That the BEAR ensures accountability of executives that matches their responsibility and remuneration.

3. That the accountability of executives is one of a statutory nature taking into consideration both prudential requirements and broader applicable laws.

4. That the BEAR continue to provide a framework for regulatory oversight and control of remuneration to ensure remuneration is used to enhance accountability

For further information, please contact FSU National Secretary Julia Angrisano on julia.angrisano@fsunion.org.au or 0418 994 418.

Yours faithfully

Julia Angrisano

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National Secretary
Finance Sector Union of Australia

OUR JOBS
OUR FUTURE