



3 August 2017

Kate Wall  
Manager  
Banking, Insurance and Capital Markets Unit  
Financial System Division  
The Treasury  
By email to: [bear@treasury.gov.au](mailto:bear@treasury.gov.au)

Dear Kate,

Thank you for the opportunity to review and comment on the design and application of the Bank Executive Accountability Regime (BEAR).

As noted in the BEAR Consultation Paper, the BEAR is part of a package of reforms with its origins in the House of Representatives Standing Committee on Economics Review of the four major banks (the *Coleman Report*). A strict focus on authorised deposit-taking institutions is made clear in the consultation paper, which states the BEAR is intended to respond to concerns about authorised deposit-taking institutions, their related financial institutions and, as a grouping, concerns around a “poor compliance culture”.

We also note the consultation paper outlines that ADIs “play a critical role in the financial system, including through their deposit-taking, payment and lending activities” and that this places them in “a privileged position of trust in the financial system, with prudential regulation designed to provide consumers with confidence in the safety of their deposits”.

In light of this, MLC Life Insurance strongly supports the Australian Government’s intention for the BEAR to apply only to ADI’s and their subsidiaries. Furthermore, we believe that properly executing this intent is key to the success of the BEAR and to the avoidance of any unintended consequences. We are particularly concerned to ensure that the scope of the BEAR is precisely worded so as to avoid targeting companies with a minority ADI shareholding.

MLC Limited, the entity that operates MLC Life Insurance, is a case in point: National Australia Bank Limited owns a 20% shareholding of MLC Limited, with the remaining and controlling interest held by the Japanese Nippon Life Insurance Company. While it appears clear that the policy intent of the Australian Government is not for the BEAR to apply to companies like MLC Limited, we are nonetheless concerned to ensure the legislation is carefully drafted to ensure this outcome.

We recommend that the best way for this intention to be fulfilled is for the primary legislation authorising the BEAR to clearly articulate its scope by specifically referring to ADIs in the legislation and by fully and clearly describing what constitutes an ADI subsidiary.

In relation to question of what constitutes a subsidiary, we recommend that - for the elimination of all doubt - the existing *Corporations Act 2001* definition of Related Bodies Corporate be applied. Section 50 of the Act defines a Related bodies Corporate as below:

**CORPORATIONS ACT 2001 - SECT 50**

**Related bodies corporate**

Where a body corporate is:

- (a) a holding company of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.

I trust this information is useful you. Should you have any questions related to the above please contact Mr James Connors on 0484 083 208 or via email at [james.connors@mlcinsurance.com.au](mailto:james.connors@mlcinsurance.com.au).

Yours sincerely,



David Hackett  
Chief Executive Officer  
MLC Life insurance