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29 September 2017

By email
bear@treasury.gov.au

Dear Manager, Banking, Insurance and Capital Markets Unit

**Re: Exposure draft Treasury Laws Amendment (Banking Executive
Accountability and Related Measures) Bill 2017**

The Financial Services Institute of Australasia (FINSIA) welcomes the opportunity to comment on the exposure draft of the Bank Executive Accountability Regime legislation.

On 4 August FINSIA made a submission to Treasury commenting on the Banking Executive Accountability Regime Consultation Paper.

As we submitted at that time, FINSIA believes that accountability needs to be founded on demonstrated competence to perform a role in the banking industry, on the principle that it is better for industry to be proactive in raising standards of professionalism to minimise failure before focusing on accountability through regulation.

Banking is different to many other professions insofar as managers are also in effect practitioners right up to the CEO level given their responsibility for strategy, credit settings, liquidity and capital.

The industry accepts that reform of its culture is necessary; however, this cannot be achieved solely through regulatory-led reform, it requires professionalisation.

FINSIA is initiating this change, by collaborating with industry to agree on the defined body of knowledge and shared code of conduct for banking professionals in the Australian market leading to Chartered Banker status. In leading this initiative, FINSIA has received strong support from the industry regulators.

As stated in FINSIA's submission on the BEAR Consultation Paper, evidence from the UK suggests that professionalisation of the banking industry through the introduction of professional qualifications has had a direct, and positive, impact on consumer trust and confidence both in UK banks and individual bankers. Research on the impact of the Chartered Banker Qualifications has found:

- > A 10% increase in UK adults reporting that they have 'high' or 'some' confidence and trust in the banking industry (2013: 31%, 2017: 41%).

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- > An 8% increase in UK adults reporting that they have 'high' or 'some' confidence in individuals who work in the banking industry (2013: 49%, 2017: 57%).¹

Nearly 40,000 banking practitioners engage in the Chartered Banker pathway annually across 33 countries, making the Chartered Banker qualifications the de facto bankers' standard globally.

FINSIA's partnership with the UK Chartered Banker Institute (CBI) has been established so that the Australian industry takes a proactive approach to the regulation of its own conduct and recognition of agreed professional standards.

Consultation period

FINSIA cautions that the hasty timetable to implement the proposed reforms underscores the politicisation of the banking sector in a manner that is counterproductive.

The consultation period for the proposed reforms has been insufficient for the industry to consider their full impacts, and engage in constructive dialogue about the changes required to implement them.

Lack of detail

APRA's powers stand to be enhanced significantly, in ways that fundamentally alter the regulator's role. There has been scant detail on how these changes will be implemented.

Further detail is needed on what the accountability obligations on ADIs and accountable persons mean in practice. The obligations for ADIs detailed in the proposed s 37C, such as conducting 'business with honesty and integrity' and 'taking reasonable steps' that are mirrored in s 37CA, which proposes accountability obligations for accountable persons, need to be bolstered by regulatory guidance.

It is hoped that APRA engages in constructive consultation with the industry to facilitate understanding of the new obligations.

Further detail is also needed on how APRA and ASIC plan to interact in enforcement of BEAR and the proposed enhanced powers to ban senior officials in the financial sector.

Deferral of remuneration

FINSIA highlighted the implications of deferred remuneration obligations on talent acquisition in original submission, noting that it potentially puts smaller ADIs at a disadvantage. Having reviewed the exposure draft, FINSIA welcomes a tiered approach to deferral of remuneration based on size of ADI.

Notwithstanding these measures there remains a potential impact on talent acquisition and loss of talent to the industry with proposals on executive remuneration leading to talent moving to other industry segments or offshore.

Again, the ambitious timetable to implement the BEAR reforms means that detail is scant on implementation. How will deferral of compensation be monitored? Further, how

¹ Chartered Banker Professional Standards Board (2017) 'Building Professionalism in Banking: CB:PSB Research 2012–2017' p. 5 <https://www.cbpsb.org/news/CBPSB-research-2012-to-2017.html>

does monitoring of deferred remuneration fit within APRA's existing armoury and regulatory remit?

Accountable persons

Through UK partner CBI, FINSIA has been advised that the Senior Manager Regime (SMR), upon which BEAR is based, has had a considerable impact on governance and decision-making at UK banks. While some of this has been positive, and prompted a re-evaluation of practices, the SMR's focus on intensive record keeping in the mapping of accountability has led to changes in executive style.

The SMR shows that there is a real potential for BEAR to create an industry environment of personal risk avoidance that impacts on business performance and innovation. This ultimately may be to the detriment of consumer outcomes because of the significant contribution that Australia's banking sector makes to the wider economy through employment and industry value added.

One size fits all approach

FINSIA represents finance professionals that work in ADIs of various sizes, including the majors, customer owned banks and foreign ADIs with Australian operations. The feedback FINSIA has received indicates that the regime will impact ADIs differently, and that there is the potential for disproportionately negative impacts for smaller ADIs resulting in reduced competition in the sector.

FINSIA submits that the exposure draft, outside of the remuneration provisions, takes insufficient account of the differences in scale, systemic importance and operations of ADIs of various sizes. If these issues are not addressed in the legislation directly it is hoped that APRA's regulatory guidance takes account of these differences to facilitate implementation of the regime.

Implementation

FINSIA notes that the exposure draft proposes that the commencement date for BEAR is 1 July 2018. This is an insufficient length of time, particularly in the absence of regulatory guidance, for ADIs to structure their operations to comply with the reforms, including those relating to accountability mapping and enforcing compliant remuneration policies.

In the UK, where the SMR was implemented with a more generous timetable significant issues still arose.

Reforms of this complexity warrant an approach to implementation that is flexible, and gives ADIs adequate time and support to transition and adapt to the regime.

UK experience

In late October, FINSIA will host Robert Dickie, President of the Chartered Banker Institute, to meet with Australian banks and regulators. The Chartered Bankers Institute, like FINSIA, exists to raise professional standards and improve customer outcomes — working across industry, regulators and other stakeholders. Robert will be able to share insights about the implementation of the SMR and the likely impact of SMR on community outcomes. He can also describe the work of the UK industry to raise standards of professionalism through the adoption of the Chartered Banker program.

It is essential that the BEAR's focus on accountability and sanctions is balanced with raising professional competence, conduct and culture by encouraging effective self-regulation.

Future policy development

FINSIA welcomes the opportunity to contribute to further refinement of the Banking Executive Accountability Regime to assist the banking industry to meet its obligations.

Please refer any future enquiries to Caroline Falshaw A Fin, Head of Industry Affairs and Policy: c.falshaw@finsia.com

With kind regards,

A handwritten signature in black ink, appearing to read "Chris Whitehead". The signature is fluid and cursive, with the first name "Chris" and the last name "Whitehead" clearly distinguishable.

Chris Whitehead F Fin

CEO and Managing Director