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## **SUNCORP SUBMISSION – BANKING EXECUTIVE ACCOUNTABILITY REGIME**

Suncorp supports the principle of accountability, and mechanisms geared to driving superior customer outcomes.

We therefore welcome the Exposure Draft of the Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017, which was released for consultation on 22 September 2017, and appreciate the opportunity to provide feedback.

The following comments are made in addition to Suncorp's initial submission, which was lodged with the Government on 3 August 2017.

While supporting the intent of the legislation, Suncorp believes the Banking Executive Accountability Regime (the BEAR) remains, in part, ambiguous which could result in unintended consequences.

It is disappointing that impacted companies have only seven days to provide feedback on such a critical piece of legislation, one which we anticipate will generate significant governance and implementation requirements.

Suncorp believes the legislation also contains a challenging start date, especially for the non-major banks who wear a disproportionate compliance burden on the implementation of a reform of this magnitude.

We encourage the Government to consider the following key points:

## 1. Unrealistic implementation date

As stated in our previous submission, Suncorp strongly supports regulation that ensures good corporate governance and protects consumers. We also value the healthy relationship that exists between financial institutions and financial regulators, particularly APRA.

However, the 1 July 2018 commencement date of the BEAR leaves the industry with inadequate time to plan, prepare, and comply, with a very complex and onerous piece of legislation.

We know from the UK experience that even with an implementation timeframe of close on 3 years, the introduction of the Senior Manager and Certification Regime was challenging and fraught with difficulty.

Suncorp understands the Government's desire to have an accountability regime in place as soon as possible, but it is paramount that the BEAR is practical, focussed, easy to understand, complied with, and free of unintended consequences.

Regulatory change in the banking system is proceeding at an unprecedented volume and pace. While well-intentioned, these regulations impose additional compliance burdens on all banking institutions.

However, new regulation disproportionately impacts smaller banks due to their reduced ability to absorb the costs involved compared to large banks.

Suncorp expects the requirement to provide comprehensive and accurate accountability statements, accountability mapping, and other associated information, will be a significant program of work.

While planning could begin on scoping this work, banks will not fully understand the requirements until APRA's reporting framework is known.

If this does not occur until legislation is passed towards the end of the year, banks will have little more than six months, at best, to comply with the BEAR. This extremely short period could set ADIs up to fail.

Suncorp recommends that the Government adopt a phased approach to ensure that all ADIs are afforded adequate time to implement the new legislative requirements.

Under this approach, smaller ADIs would be given additional time (until 1 July 2019) to comply with the legislation. A staged implementation of this kind is appropriate given the disproportionate burden of new regulations on smaller institutions. We note that providing ADIs with this additional time would still leave the Government with a more aggressive implementation timeframe than that adopted in the UK.

## 2. Ambiguity around obligations

There remains significant concern regarding the continued ambiguity about the obligations of ADIs and accountable persons.

Particularly troubling, is the introduction of 'reputation' as a key element of an accountability obligation. Specifically, Section 37C requires the ADI and accountable persons to *"take reasonable steps in conducting those responsibilities to prevent matters from arising that would adversely affect the prudential standing or reputation of the ADI."*

It is unclear what 'reputation' could mean in this context, however Suncorp would be concerned that protecting the prudential standing of an ADI might conflict with the consumer reputation, or perception, of an ADI.

For example, one of the cornerstones of running a viable ADI is setting appropriate interest rates. Under this regime, it could be interpreted that while an ADI takes a prudential decision to raise interest rates, based on compelling factors and challenges, it could be in breach of the BEAR for damaging the ADI's reputation among consumers.

Further, any unsubstantiated allegation raised through either a political process such as a Senate Hearing or via the media may result in reputational damage to the bank, without any regard to due process. An accountable person should not be held to be responsible for arbitrary and unfair circumstances such as these.

Suncorp strongly recommends that the word 'reputation' be removed from the legislation.

### **3. Procedural Fairness**

As Suncorp stated in its previous submission, it is vital that accountable persons are afforded procedural fairness before being found liable under the BEAR and receiving penalties from APRA.

The legislation currently contains no rights of appeal or other avenues to challenge the merits of APRA's decisions in relation to BEAR breaches.

APRA's new powers to essentially remove accountable persons without reference to due process is a significant concern that unnecessarily adds to the risk individuals must assume when being appointed to roles that are covered by the BEAR.

This provision would not be in keeping with a fair and just society, nor provide an adequate level of accountability and safety net for APRA's decisions, which may have the consequence of ending a person's career.

### **4. Suncorp operating model**

As stated in our initial submission, Suncorp believes that the BEAR must, as far as practical, accommodate the different structures and operating models of companies.

To this end, accountable institutions should be given appropriate flexibility to apply a principles-based approach, to achieve alignment to the greatest extent possible with existing regulatory frameworks (e.g. 'responsible persons' already exist under Prudential Standard CPS 520 Fit and Proper), and in recognition that every regulated entity's structure and business model is different.

Suncorp requests the Government consider these concerns when finalising the legislation.

We also support the ABA's submission which raises a number of drafting, definitional and terminology concerns which require further attention.

Should you wish to discuss any of the points raised in this submission, please contact Joshua Cooney, Senior Manager, Government, Industry and Public Policy, Suncorp, on 0477 391 260 or [Joshua.cooney@suncorp.com.au](mailto:Joshua.cooney@suncorp.com.au).

Regards,



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