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Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

FINANCIAL ACCOUNTABILITY REGIME BILL 2021

Dear Secretary

APRA welcomes the opportunity to assist the Senate Economics Legislation Committee's Inquiry into the Financial Accountability Regime Bill 2021 (the FAR Bill). In this context, this submission sets out APRA's experience with the Banking Executive Accountability Regime (BEAR) and also confirms preparatory work undertaken by APRA and ASIC (the Regulators) in anticipation of the introduction of the FAR Bill.

APRA's experience with the Banking Executive Accountability Regime (BEAR)

The BEAR, set out in Part IIAA of the *Banking Act 1959*, establishes certain obligations for authorised deposit-taking institutions (ADIs) and their senior executives and directors. The BEAR was designed to improve the risk and governance cultures of ADIs by imposing a strengthened responsibility and accountability framework for those institutions, and their directors and the most senior and influential executives (accountable persons).

The BEAR commenced on 1 July 2018 for large ADIs and 1 July 2019 for all other ADIs. Large ADIs were defined as those that had total assets of more than $100 billion. There were four large ADIs at the time: Australia and New Zealand Banking Group Limited (ANZ), Commonwealth Bank of Australia (CBA), National Australia Bank Limited (NAB) and Westpac Banking Corporation (WBC).

APRA worked closely with all ADIs from early 2018 to mid-2019 to assist them prepare for the BEAR implementation. For ADIs, their preparation involved documenting key individual accountabilities across their whole operations.

Since then, the BEAR has been a key regulatory lever for APRA to drive action from ADIs through the identified accountable persons and to transform governance, risk culture, remuneration and accountability outcomes across the banking industry. APRA primarily aims to use the BEAR in its day-to-day supervision, to influence preventative or remedial action to be taken by ADIs and accountable persons well before there is a threat to the ADIs' financial viability. An example of where this has proven particularly effective is identifying who the relevant accountable person is for specific action items in remediation plans that have been agreed with ADIs.

In late 2019 and early 2020, APRA conducted a review of the implementation of the BEAR at ANZ, CBA and NAB.[1] The main objective of this review was to assess how effectively these three ADIs had implemented the BEAR. An information paper summarising the observations and outcomes of the review was published in December 2020.[2] The review found that all three large ADIs had designed adequate frameworks to administer the BEAR, although the overall maturity of the approaches to implement the BEAR differed across them.

At a high level, APRA also found that the implementation of the BEAR has helped to clarify and enhance accountability at ADIs, benefitting their boards and senior executives, as well as APRA as the prudential regulator. In particular, the BEAR had helped in:

- improving clarity, understanding and transparency of individual accountability within ADIs;
- reinforcing the need for accountable persons to take remedial or preventative action to deliver on their obligations before an event goes wrong or a risk crystallises;
- generating more challenging and engaging board oversight as the BEAR has made it easier for directors to ask sharper questions directly to the relevant accountable person and to more comprehensively question what actions they had taken to address any concerns held by the Board; and
- facilitating more targeted engagement between APRA and ADIs to achieve better prudential outcomes.

APRA supports the introduction of the FAR

Given the positive outcomes from the BEAR, APRA supported recommendations[3] from the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* to broaden the regime to all APRA-regulated entities. This will extend the coverage of an accountability regime from around 143 ADIs under the BEAR to approximately 435 entities under the FAR.[4] APRA would expect to see similar benefits in the insurance and superannuation industries to those identified in the previous section on the BEAR.

More generally, APRA is supportive of the objective of the FAR to ‘improve the risk and governance cultures of Australia’s financial institutions by imposing a strengthened responsibility and accountability framework for those institutions and the directors and the most senior and influential executives (accountable persons) of those institutions’.[5]

APRA notes the design of the FAR has taken into account feedback from industry that has led to some changes relative to the BEAR that should reduce regulatory burden for industry while retaining the core goal of improving accountability. Examples include extending the period for entities to submit notifications for certain events from 14 to 30 days and clarifying that only material changes to accountability statements and maps need to be notified to the Regulators.

[1] WBC was not included in the review due to an ongoing investigation into potential breaches of the *Banking Act 1959* at the time.

[2] APRA 2020, [Implementation of the Banking Executive Accountability Regime (BEAR)](), 11 December 2020.

[3] Recommendations 3.9, 4.12, 6.6, 6.7 and 6.8.

[4] Based on June 2021 data.

[5] Explanatory memorandum to the FAR Bill, 1.7.

Preparation for the commencement of the FAR

The FAR is to be jointly administered by the Regulators. This will require coordination and cooperation to ensure the FAR's objectives are achieved efficiently and without imposing unnecessary regulatory burden. The Regulators are wholly committed to achieving this objective.

To this end, the Regulators have been working together closely to develop the joint administration framework and infrastructure in preparation for the anticipated implementation of the FAR, should the legislation be passed. These efforts complement the activities already being undertaken across areas where the Regulators are looking to work together more closely and build on the Memorandum of Understanding in place between the Regulators. This work is supported by a dedicated FAR Project Steering Committee and FAR Implementation Team, with additional oversight through reporting to the APRA-ASIC Committee comprising APRA Members and ASIC Commissioners.

Preparatory work underway by the Regulators includes:

- A public Joint Administration Agreement (JAA) is being drafted by the Regulators setting out the high-level principles of cooperation and arrangements for this joint administration. The JAA will cover areas such as oversight of the arrangements, exercising of powers, industry communication, information sharing and enforcement and investigations.

- Developing the detailed joint administration framework that will amongst other things:

  - clearly define roles and responsibilities between the Regulators, supported by agreed processes and procedures;

  - ensure appropriately resourced administration teams for ongoing coordination and interaction; and

  - provide training and support to supervisors of both Regulators to ensure consistent regulatory approaches.

- Industry communication and guidance will also be published to support industry with the implementation of, and ongoing compliance with, the FAR.

- The Regulators are developing a single point of contact for engagement for entities in relation to the FAR. This single portal — which will use APRA's new data collection system, 'APRA Connect' — will avoid the need for entities to report to APRA and ASIC separately. Using APRA Connect for the FAR is also anticipated to provide significant benefits for entities when compared to the BEAR, which relies on less automated systems.

Yours sincerely,

[redacted]

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