



1 April 2019

**TO: ALL AUTHORISED DEPOSIT-TAKING INSTITUTIONS**

**THE BANKING EXECUTIVE ACCOUNTABILITY REGIME – CONSULTATION ON DETERMINATION UNDER PARAGRAPH 37EA(4)(b) OF THE *BANKING ACT 1959***

Under the Banking Executive Accountability Regime (BEAR) in Part IIAA of the *Banking Act 1959* (the Act), an authorised deposit-taking institution (ADI) is required to defer a prescribed minimum portion of an accountable person's variable remuneration for a prescribed minimum period of time.

As noted in APRA's October 2018 Information Paper *Implementing the Banking Executive Accountability Regime*, APRA intends to determine, by legislative instrument, under paragraph 37EA(4)(b) of the Act, that certain variable remuneration is not variable remuneration for the purposes of the BEAR, where certain conditions are met. The purpose of this proposed legislative instrument is to ensure that application of the deferred remuneration obligations across ADIs is consistent with the intent of the BEAR.

APRA has today released for consultation a draft schedule of the kinds of remuneration that are not variable remuneration, to be made by legislative instrument. APRA proposes that, irrespective of the organisational structure or whether the ADI is a locally incorporated ADI or foreign ADI, where an individual has both an accountable person role with an ADI (or subsidiary of an ADI) and another role, only the portion of the individual's variable remuneration that relates to the accountable person role would be subject to the deferral requirements under Division 4 of Part IIAA of the Act.

APRA expects this proposed legislative instrument will not result in any large ADI (i.e. major bank) initiating any changes to the amount of deferred remuneration, as the legislative instrument does not apply to their particular corporate structure.

**Consultation period**

The draft legislative instrument will be subject to a four week public consultation and is available on the APRA website at:

<https://www.apra.gov.au/banking-executive-accountability-regime>

Written submissions on the proposal should be sent to [ADIpolicy@apra.gov.au](mailto:ADIpolicy@apra.gov.au) by 30 April 2019 and addressed to:

General Manager  
Policy Development  
Policy and Advice Division  
Australian Prudential Regulation Authority

APRA will release the final legislative instrument before 1 July 2019, the commencement date of the BEAR for medium and small ADIs.

Yours sincerely,

Pat Brennan  
Executive General Manager  
Policy & Advice Division

**Important disclosure notice – publication of submissions**

All information in submissions will be made available to the public on the APRA website unless a respondent expressly requests that all or part of the submission is to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as confidential in a separate attachment.

Submissions may be the subject of a request for access made under the *Freedom of Information Act 1982* (FOIA). APRA will determine such requests, if any, in accordance with the provisions of the FOIA. Information in the submission about any APRA-regulated entity that is not in the public domain and that is identified as confidential will be protected by section 56 of the *Australian Prudential Regulation Authority Act 1998* and will therefore be exempt from production under the FOIA.