



12 June 2019

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

### **RESPONSE TO SUBMISSIONS – THE BANKING EXECUTIVE ACCOUNTABILITY REGIME – DETERMINATION UNDER PARAGRAPH 37EA(4)(b) OF THE *BANKING ACT 1959* (the Act)**

On 1 April 2019, APRA released for consultation its proposal 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 Banking Executive Accountability Regime (BEAR), where certain conditions are met. The purpose of the proposal is to ensure that application of the deferred remuneration obligations across ADIs is consistent with the intent of the BEAR.

APRA received seven submissions in response to the proposal.

#### **Changes to the definition of total remuneration**

Three submissions made suggestions on how the calculation of the minimum amount of variable remuneration to be deferred can be modified to make it even more ‘structure neutral’. These suggestions all involved making changes to the definition of total remuneration.

APRA notes that whilst it can determine certain types of remuneration not to be variable remuneration for the purposes of the BEAR, it does not have any power under the BEAR to tailor or modify the definition of total remuneration. Accordingly, no change to the wording of the determination is proposed.

#### **Suggested wording changes to the determination**

Two submissions made suggested alternative wording to the use of the expression “holding a position” in paragraph 1(b) of the schedule to the determination. One submission suggested that the determination be focused on responsibilities rather than source of remuneration payment, positions held or employing entity. Otherwise, the draft schedule could be too limited in its application.

The structure and use of certain words or expressions in the schedule align with the BEAR legislation to the extent possible. APRA considers the use of any alternative structure or wording would potentially create conflicts with the rest of the BEAR legislation. Accordingly, no change to the wording of the schedule is proposed.

#### **Guidance on the apportionment of variable remuneration**

Three submissions requested that APRA provide further guidance on the apportionment of variable remuneration.

APRA has already provided some high level guidance under section 4.3 of its October 2018 Information Paper.<sup>1</sup> That guidance aligns with paragraph 1.126 of the revised Explanatory Memorandum.<sup>2</sup> Given the need to apportion an accountable person's variable remuneration is not solely driven by the application of this determination, APRA does not propose to provide any further guidance as part of the release of the final wording of the schedule. APRA will continue to assess the need to provide any further guidance moving forward.

### **Relief from the BEAR**

Two submissions requested that APRA provide relief from the deferred remuneration obligations under the BEAR to foreign ADIs where their accountable persons' variable remuneration are already subject to similar regime elsewhere.

APRA can only exempt an ADI from having to comply with certain BEAR obligations if an ADI can demonstrate to APRA's satisfaction that complying with such obligations would result in an actual contravention of corresponding foreign laws by the ADI. It has been APRA's longstanding position that administrative challenges is not an adequate reason for granting exemptions from any obligations under the BEAR.

### **Related body corporate of a foreign ADI**

One submission noted that the proposed application of paragraph 2(b) of the schedule was overly restrictive in that it would only apply to an accountable person holding a position in an Australian-incorporated non-ADI subsidiary of the foreign ADI.

APRA acknowledges that where an accountable person of a foreign ADI holds a position in a non-ADI related body corporate which does not relate to his/her accountable person role, the portion of this individual's variable remuneration that does not relate to his/her accountable person role should be excluded from the definition of variable remuneration for the purposes of the BEAR. APRA has amended the wording of paragraph 2(b) of the schedule accordingly.

Together with this letter, APRA has released the final wording of the schedule which is available at: <http://www.apra.gov.au/banking-executive-accountability-regime>. The schedule will become effective from 1 July 2019.

Yours sincerely,

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<sup>1</sup> October 2018 Information Paper "Implementing the Banking Executive Accountability Regime": [http://www.apra.gov.au/sites/default/files/information\\_paper\\_implementing\\_the\\_bear.pdf](http://www.apra.gov.au/sites/default/files/information_paper_implementing_the_bear.pdf)

<sup>2</sup> [Revised Explanatory Memorandum](#) to the *Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2018*.