



20 April 2018

Manager
Banking and Capital Markets Unit
The Treasury
GPO Box 89
SYDNEY NSW 2000
By email: bear@treasury.gov.au

Dear Pat

Draft Legislation: Banking Executive Accountability Regime - Size of an Authorised Deposit-taking Institution - Draft Legislative Instrument

The Australian Banking Association (**ABA**) appreciates the opportunity to respond to The Treasury's Draft Legislation on *Banking Executive Accountability Regime – Size of an Authorised Deposit-taking Institution – Draft Legislative Instrument* (**Draft Legislative Instrument**).

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

As noted in our submission of 4 August 2017¹ on the Banking Executive Accountability Regime (**BEAR**) Consultation Paper, and again in our 29 September 2017 submission² on the BEAR Exposure Draft Bill; the ABA welcomes reforms that strengthen accountability and competition in the banking industry. We support enhanced responsibility and accountability of Authorised Deposit-taking Institutions (**ADIs**) and the BEAR's stated policy intent to "provide greater clarity in relation to responsibilities and impose heightened expectations of behaviour in line with community expectations."

Opportunity to facilitate further competition in the banking system

In our previous submissions on BEAR the ABA called on the Government to expressly consider revisions to the BEAR to reduce the regulatory burden and negative competitive impacts that BEAR has on the smallest ADIs.

¹ ABA submission (4 August 2017), http://www.bankers.asn.au/images/uploads/Submissions/ABA-131090-v1-ABA_Submission_BEAR_4_August.pdf

² ABA submission (29 September 2017), http://www.bankers.asn.au/images/uploads/Submissions/ABA-131659-ABASubmission_Treasury_BEAR_Sept_17.pdf



The variable remuneration retention settings for smaller ADIs contained in the legislation unnecessarily hinders the ability of smaller ADIs to compete with other larger employers subject to BEAR. The BEAR alters the competitive neutrality within the industry and unduly impacts the ability of those smaller ADIs to attract and retain talent (Regtech, Fintech, etc.) from other parts of the financial services industry, other industries or overseas where there is already intense competition for these skills.

Recommendation

Accordingly, the ABA recommends that the draft legislative instrument be amended so that a 'small ADI' would be defined as having less than or equal to \$30 billion total resident assets rather than the current definition of having less than or equal to \$10 billion total resident assets (on a three-year average).

The ABA considers this a reasonable recommendation that would enhance competition in the banking industry by lowering the regulatory burden on these smaller ADIs (banks, credit unions and mutual banks) and allowing them some flexibility in remuneration practices to facilitate the attraction and retention of the skills needed to innovate and compete.

The recommendation of a \$30 billion figure of total resident assets is based on an analysis of Table 1: *Selected assets on Australian books of individual banks*, contained in APRA's Monthly Banking Statistics³. The table shows a logical \$30 billion threshold at which smaller ADIs should be defined, facilitating both an easing of the regulatory burden and the ability of these smaller ADIs to compete without any impact on systemic stability or the strength of the BEAR.

The medium ADI threshold would subsequently be between \$30 billion and \$100 billion on a three-year average of total resident assets; and the large ADI definition would remain unchanged, defined as any ADI with total resident assets greater than or equal to \$100 billion on a three-year average.

If you would like any further information, please contact me on the number below.

Yours faithfully

Signed by

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³ APRA Monthly Banking Statistics (February 2018), <http://www.apra.gov.au/adi/Publications/Pages/monthly-banking-statistics.aspx>