Banking (executive accountability regime) determination No. 1 of 2019

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

*Banking Act 1959*, paragraph 37EA(4)(b)

Under paragraph 37EA(4)(b) of the *Banking Act 1959* (the Act), APRA has the power to determine that remuneration of a particular kind is not variable remuneration.

On 12 June 2019, APRA made Banking (executive accountability regime) determination No. 1 of 2019 (the instrument). The instrument commences on 1 July 2019.

1. Background

The Banking Executive Accountability Regime (BEAR) set out in Part IIAA of the Act imposes deferred remuneration obligations on authorised deposit-taking institutions (ADIs), which, among other things, require ADIs to defer a specified minimum portion of the variable remuneration of its accountable persons for a prescribed minimum period of time.

1. Purpose and operation of the instrument

The deferred remuneration obligations under the BEAR are intended to apply to an accountable person’s variable remuneration but only in relation to the individual’s accountable person role. That is, where an individual has both an accountable person role and another role, the portion of the individual’s variable remuneration that does not relate to the individual’s accountable person role is not subject to the deferred remuneration obligations.

There are already provisions within the BEAR that exclude the portion of an individual’s variable remuneration that does not relate to the individual’s accountable person role from the deferred remuneration obligations under certain circumstances. However, the varied and diverse remuneration practices of the financial services sector still means that the deferred remuneration obligations may unintentionally apply to a broader scope of an accountable person’s variable remuneration depending on the corporate group structure to which the ADI belongs.

Further, in relation to foreign ADIs, the deferred remuneration obligations may have a broader than intended application and when compared to all other obligations under the BEAR for such ADIs.

The operation of the instrument would ensure consistency of approach across various corporate group structures to the extent possible such that no ADI would be disadvantaged because of the corporate group structure to which it belongs and better alignment with the intent of the BEAR.

1. Consultation

APRA undertook a public consultation on its proposed schedule to the determination between 1 April 2019 and 30 April 2019. APRA received a total of seven submissions from ADIs, industry bodies, and other interested parties. Whilst a number of issues have been raised, they do not raise any significant concerns and have not resulted in material changes to APRA’s proposal.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this legislative instrument.

5. Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

ATTACHMENT A

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instrument listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

**Overview of the Legislative Instrument**

The purpose of the instrument is to ensure consistency of approach to applying the deferred remuneration obligations under the BEAR across various organisational structures to the extent possible such that no ADI, including foreign ADIs, would be disadvantaged because of the corporate structure to which it belongs.

**Human rights implications**

APRA has assessed the instrument and is of the view that it does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act. Accordingly, in APRA’s assessment, the instrument is compatible with human rights.

**Conclusion**

The instrument is compatible with human rights as it does not raise any human rights issues.