



The professional
excellence pathway

3 November 2017

By email
economics.sen@aph.gov.au

Dear Committee Secretary, Senate Economics Legislation Committee

**Re: Inquiry into the Treasury Laws Amendment (Banking Executive
Accountability and Related Measures) Bill 2017 [Provisions]**

Thank you for the invitation to comment on the Senate Economics Legislation Committee's Inquiry into the Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017.

FINSIA previously made submissions to Treasury regarding the Banking Executive Accountability Regime (BEAR) Consultation Paper, and later the BEAR Exposure Draft.

FINSIA strongly supports the principle of individual accountability, and regards professionalisation as fundamental to maintaining a positive industry culture and good conduct.

FINSIA believes that accountability needs to be founded on demonstrated competence to perform a role in the banking industry. It is as important for industry to be proactive in raising standards of conduct and competence to minimise failure, as it is to focus on accountability for failure.

In this regard, in 2018, FINSIA will launch the Chartered Banker professional qualifications pathway in the Australian market. The program, based upon Chartered Banker Institute's (CBI) globally-recognised qualifications adapted for Australian context, will cover ethics, leadership, customer responsibilities, the role of banks in society and the economy, risk management, principles of credit and specialised areas of banking.

As a professional institute we expect our members to abide by the FINSIA Code of Conduct, and to be subject to the judgment of industry peers when its provisions are contravened. As part of the Chartered Banker certification, members will be subject to annual continuing professional development (CPD) requirements, and be required to demonstrate an ongoing commitment to ethics and integrity.

Professionalisation of the industry, including commitment to agreed standards of competency, conduct, and culture is best implemented as an industry-led initiative. FINSIA is proposing the establishment of the Professional Banking Council (PBC) consisting of key industry stakeholders.

Evidence suggests professionalisation of the UK banking industry through the introduction of professional qualifications and standards by the CBI and the Professional Banking Standards Board has had a direct, and positive, impact on

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consumer trust and confidence both in UK banks and individual bankers. Research has found:

- > A 10% increase in UK adults reporting that they have 'high' or 'some' confidence and trust in the banking industry (2013: 31%, 2017: 41%).
- > An 8% increase in UK adults reporting that they have 'high' or 'some' confidence in individuals who work in the banking industry (2013: 49%, 2017: 57%).
- > Nearly 40,000 banking practitioners engage in the Chartered Banker pathway annually across 33 countries, making the Chartered Banker qualifications the de facto bankers' standard globally.¹

In late October, FINSIA hosted Robert Dickie, President of the Chartered Banker Institute, to meet with Australian banks and regulators. He noted that the SMR continues to undergo significant change based on lessons learned during its implementation.

FINSIA remains concerned that the rapid approach to implementation taken by the Commonwealth Government may have not given due consideration to the concerns of industry participants, and the lessons being learned from implementing the Senior Managers Regime in the UK. Hence it is our belief that early review and revision may be required in Australia, as has been the case in the UK.

Powers such as the ability to disqualify accountable persons, and seeking pecuniary penalties where an ADI breaches BEAR may significantly change the character of a regulator that originally was founded to ensure prudential soundness and system stability. Mechanisms need to be in place to ensure that individuals and institutions remain proactive in their dealings with the regulator so that the BEAR does not create a culture of defensiveness between the industry and APRA.

In previous submissions we have observed that the regime potentially has unintended consequences for ADIs in attracting talent at executive and non-executive level. The BEAR's evidence requirements may lead to executives being overly legalistic and defensive with the effect that they become risk averse. It is noted that the UK SMR is now being extended to other sectors in financial services.

The power to disqualify individuals is a very significant new power, and FINSIA welcomes the insertion of merits review in the current draft of the legislation. Given the career impacts of disqualification, recourse for review of APRA decisions is essential.

An ongoing concern of FINSIA's is that the proposed legislation does not take meaningful account of differences in operations between ADIs of different sizes. These differences are captured in respect of provisions for the deferral of variable remuneration, and the application of penalties. However, the proposals in respect of accountability mapping and registration of accountable persons are overly complex, and relatively expensive to implement, for small ADIs.

The Bill's terminology remains vague, particularly in respect of the duties imposed on accountable senior executives and non-executive directors. FINSIA agrees that terms such as 'honesty', 'integrity', 'due skill' and 'diligence' have been considered in case law and have 'well understood common usage'. However additional guidance from the regulator on their meaning in the context of the BEAR legislation is warranted, because of the serious consequences of not meeting the accountable person obligations.

¹ Chartered Banker Professional Standards Board (2017) 'Building Professionalism in Banking: CB:PSB Research 2012–2017' p. 5 <https://www.cbpsb.org/news/CBPSB-research-2012-to-2017.html>

Advice from FINSIA's UK partner the Chartered Bankers Institute is that the test of reasonable steps has created uncertainty for UK banks and added to their compliance burden.

The duty to deal with APRA in an 'open, constructive and co-operative' manner, not being defined elsewhere, is also of concern. Clarification of this term, whether in the Banking Act, or APRA guidelines, would be welcomed by our members.

Finally, in summary, it is essential that the BEAR's focus on accountability and sanctions is balanced with maintaining high standards of professional competence, conduct and culture by encouraging effective self-regulation, personal accountability, and professional pride.

FINSIA welcomes the opportunity to contribute to further refinement of the Banking Executive Accountability Regime to assist the banking industry to meet its obligations.

Please refer any future enquiries to Caroline Falshaw A Fin, Head of Industry Affairs and Policy: c.falshaw@finsia.com

With kind regards,

A handwritten signature in black ink, appearing to read 'Chris Whitehead', with a stylized flourish at the end.

Chris Whitehead F Fin

CEO and Managing Director