

Banking Executive Accountability Regime

Getting on the front foot

June 2017



What is BEAR?



Foreshadowed in both the Sedgwick inquiry and recent banking sector parliamentary inquiries, the 2017 Federal Budget included a proposed Banking Executive Accountability Regime (BEAR). The proposed regime will be administered by the Australian Prudential Regulation Authority (APRA) and will include a number of measures that are similar to the **UK's Senior Manager & Certification Regime (SM&CR)**.

Whilst there are still a number of key questions to be clarified, it is our expectation that a consultation paper will be released imminently and Authorised Deposit-taking Institutions (ADIs) should leverage the learnings from the UK, socialise internally and start to consider implications and what “good” looks like, particularly with regard to the new accountability mapping requirements.

The spirit of BEAR is to improve accountability through a sound risk culture, effective corporate governance and impose stronger consequences. The regime recognises that leadership is key to driving cultural change, and offers many opportunities to empower people to do the right thing. The impact to ADIs and the extent of work required will vary depending on previous programs undertaken in this space for implementation.

What does this mean for ADIs?



To both implement and administer the regime, different areas of the business will need to work together in a way they may not have previously – Human Resources will be further brought into the regulatory picture and we foresee the need for increased interaction with Compliance, Risk, Legal, Audit and CoSec.



Considered decision-making through increased accountability and transparency will likely lead to a reduction in costly compliance mistakes, therefore improving shareholder confidence and consumer trust.



If seen as more than a compliance or legal exercise, the measures implemented as part of BEAR could help ADIs achieve real benefits to not only their risk culture, but their business as a whole.

What is BEAR? (cont'd)

Proposed measures announced in the Budget

	New measure	Detail
	Executive registration with APRA	All current senior executives and directors of ADIs will be required to be registered with APRA, and APRA will need to be advised prior to any future senior appointments. APRA will have the power to deregister and disqualify senior executives who fail to meet expectations.
	Accountability mappings	ADIs will be required to provide APRA with accountability maps of senior executives' roles and responsibilities across all business areas.
	APRA powers over remuneration policy	APRA will be given stronger powers to require ADIs to review and adjust their remuneration policies when APRA believes these policies are not appropriate.
	Remuneration deferral	ADIs will be required to defer a minimum of 40% of bank executives' variable remuneration for a minimum of four years, increasing to 60% for certain executives.
	Increased expectations and penalties for executives	<p>Conduct standards for executives and directors - covering matters such as conducting business with integrity, due skill, care and diligence and acting in a prudent manner.</p> <p>Introduction of civil penalties for ADIs who fail to meet the new expectations (e.g. hiding misconduct), or do not appropriately monitor suitability of executives to hold senior positions.</p> <p>Executives may no longer be able to be registered or employed in senior roles if they are found to have breached their accountabilities.</p>
	Penalties for ADIs	APRA will be able to impose civil penalties of up to \$200 million for ADIs that do not appropriately monitor the suitability of their executives to hold senior positions.

What is yet to be determined

Information on the new regime released in the Budget announcement was light on detail, and we can expect further clarity when the Government releases their **consultation paper, which we believe will be released imminently**. The Government is keen to consult and then proceed to drafting the new regime. Other matters still to be clarified, and which ADIs can potentially help influence, include:

Defining senior executives

Along with non-executive directors, will the requirements apply to direct reports to the CEO, or encompass further layers of management? The scope of the regime in the UK has been quite broad and beyond the “traditional” scope of responsible person – for example a Head of Payments has been considered a senior manager role.



“Reasonable steps” measure

Will a reasonable steps measure similar to the UK be introduced? Will minimum standards for reasonable steps be defined? Further, what evidence will be required in order to demonstrate reasonable steps? In the UK, this concept allows for the fact that things may go wrong, and executives are only held accountable if they are unable to demonstrate they took reasonable steps to manage the risk. In the UK, whilst there has been high level guidance, it has been up to each organisation to define reasonable steps.



Interaction with existing responsible person requirements

APRA has existing requirements for ADIs to nominate responsible persons within the business who meet ‘Fit and Proper’ requirements – how will these change (if at all) with the new requirements?



What is yet to be determined (cont'd)

Remuneration deferral

What will be included in the definition of 'variable' pay? Will long-term incentives be included and at what value? What are the restraints on the vesting schedule, and can it occur on a pro-rata basis over the minimum four year period? The current remuneration models adopted by the major banks already align with the intention of the deferral requirements and will likely satisfy many aspects of the proposed requirements. However, it is likely a greater concern for smaller Australian and foreign ADIs.



Remuneration policy

How will APRA's new powers to review and adjust the remuneration policies of ADI's interact with the existing responsibilities and rights of boards and shareholders? These additional powers are significant and have the potential to add more confusion to the already blurred sharing of responsibility for executive remuneration between policy makers, regulators, shareholders and boards.



International implications

What will be the impact for ADI's headquartered overseas that contain an ADI and have other operations and permissions, or international banking groups with subsidiaries or branches operating in Australia? In the UK, a big challenge has been for regionally matrixed organisations where accountabilities have often been blurred and not aligned to legal entity structures. Further, what about ADI's that already have legal entities subject to other regimes such as the UK regime and who will now be subject to BEAR – how will they manage any potential conflicts between requirements?



Many ADIs are not expecting a regime as granular as the UK, but what if it is? Are you ready?

There are likely to be differences between the UK's SM&CR and the proposed BEAR here in Australia, however, the overarching principles remain the same. ADIs can benefit from the UK experience in terms of considerations for developing new processes, leveraging what has worked well, and anticipate challenges that may not come to pass.

The biggest challenge cited by the UK banks was obtaining clarity from the UK regulators around expectations on ambiguous requirements, along with ensuring sufficient lead time and the right resources for the significant amount of work to implement the new requirements. Many UK banks had underestimated how much work was involved. Some banks also initially treated it as a legal exercise, and spent significant time and wasted effort on technical design that did not consider practical implementation.

Other anticipated challenges in the UK have not yet been realised – such as banking executives either leaving the UK or the banking industry due to the increased personal risk involved, or executives being overly conservative in decision making to the extent this negatively impacts company financial performance. Whilst there have not yet been any prosecutions, there is debate whether the SM&CR will underline (or be undermined by) company law if cases are brought to trial.

Another major change for the UK banks has been for governance structures and committees – however not always in the same way. Some UK banks sought to simplify as individual accountability came to the fore, whilst others have created new committees to plug gaps identified.

Australian ADIs should consider...

01

Ownership of the implementation project

In the UK, there were different approaches with some organisations driving the changes from the first line, and others from Compliance / CoSec / Legal / HR. Whichever approach is taken, the crucial factor for success will be first line engagement and “buy in” to the changes.

02

Ongoing co-ordination and oversight of requirements

Many UK banks have set up a small team, often under the CEO, to ensure requirements are properly embedded and remain fit for purpose. ADIs here will need to consider whether this model is the “right fit” for their organisation. On the one hand, a dedicated team will relieve pressure on already stretched teams across a business, but on the other, it may mean the relevant executives may not see the new requirements as “their responsibility”.

03

How executives should approach their accountabilities

Whilst substantial effort will be required to determine the right accountabilities are mapped to the right executives, an overly legalistic and process-heavy approach may be counterproductive. There are examples in the UK of how senior executives did not know what was really going on ‘under the bonnet’ because they were putting too much faith in their dashboard reports and not asking searching questions.

04

The personal impact of the new regime

In the UK, the SM&CR implementation has highlighted internal politics, particularly with regard to interpreting “reasonable steps” as being accountable versus being informed. Further, it heightened the need to clarify responsibilities, as people typically do not like having the status quo or their authority challenged, as well as accepting responsibility for business decisions that they do not control.

How PwC can help

Whilst BEAR has not yet been legislated, we can support you in understanding the implications of the regime, defining what “good” looks like and identifying gaps to address. We can also assist in your response to the consultation paper, that we expect to be released imminently, as we anticipate it will closely resemble the UK regime. The PwC international network ensures we bring the UK firm’s experience advising leading global institutions on their response.

As you begin to consider the new measures, we can help by:



Assisting Regulatory Advocacy teams with feedback to Treasury and APRA especially on lesson learnt from the UK SM&CR



Designing and facilitating workshops to bring stakeholders across the business up-to-speed and help them understand the implications of BEAR



Defining what “good” looks like and how it will be measured, particularly with regard to the new accountability mapping requirements and conduct expectations



Reviewing maturity and operating of existing remuneration deferral and clawback policies



Reviewing maturity and operation of existing governance structures, along with monitoring and oversight measures



Identifying the likely gaps to the new regime that you will need to address, and prioritising activity to prepare for the new regime



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