

Banking Executive Accountability Regime Exposure draft law and explanatory materials

To assist in identifying relevant issues this table sets out the key elements of the BEAR and shows the relevant sections and references.

In some cases, the exposure draft does not include specific details on particular issues. These are explained below.

| Issue | Bill ref. | Brief explanation |
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| Which entities are covered by the BEAR? | | BEAR obligations fall on an ADI, which must take reasonable steps to ensure that its subsidiaries meet certain obligations. There are specific requirements on the Australian branch of a foreign ADI. |
| Coverage of ADIs and subsidiaries | 37 | |
| Application to foreign ADIs | 37(2)(b) | |
| Minister's power to exempt ADIs | 37A 37KA | |
| Coverage of accountable persons | 37B | |
| Definition of small, medium and large ADI | 37G(3) | |
| Who is an accountable person? | 37BA | A person's responsibilities or the level of control and influence over an ADI determine whether they are an accountable person. Accountable persons must be in the ADI and can be in its subsidiaries or non-ADI parent. |
| General definition of accountable person | 37BA(1) | |
| Types of responsibilities for accountable persons covered by the BEAR | 37BA(3) | |
| APRA's power to exclude particular responsibilities from the operation of the BEAR | 37BB | |
| Who is prohibited from being an accountable person? | 37DA | |
| What are an ADI's BEAR obligations? | | An ADI's obligations relate to the way it conducts its business and engages with APRA, allocates responsibilities to accountable persons, adjusts its remuneration policies and defers remuneration, and provides information to APRA. An ADI is responsible for taking reasonable steps to ensure its subsidiaries meet the obligations on business conduct and engagement |
| Accountability obligations of an ADI and subsidiaries | 37C | |
| Key personnel obligations of an ADI and subsidiaries | 37D | |
| Deferred remuneration obligations of an ADI and subsidiaries | 37E | |
| Notification obligations of the ADI | 37F | |
| ADI obligations to provide accountability | 37FA | |

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| statements | | with APRA, and remuneration. |
| ADI obligations to provide accountability maps | 37FB | |
| ADI obligations to notify APRA of certain events | 37FC | |
| Registering an accountable person | 37HA | |
| What are an accountable person's BEAR obligations? | | An accountable person's obligations include behaving with honesty and integrity and taking reasonable steps to prevent matters arising which would affect the reputation of the ADI. |
| Accountability obligations of an accountable person | 37CA | |
| Deferral of remuneration | | A proportion of an accountable person's remuneration must be deferred for 4 years. The size of the ADI determines how to calculate the amount to be deferred. In some circumstances shorter deferral periods may apply. |
| Deferred remuneration obligations of an ADI | 37E | |
| Definition of remuneration | 37E(3) | |
| Meaning of variable remuneration | 37EA | |
| Method for calculating amount to be deferred | 37EB | |
| Shorter deferral periods may apply | 37EC(3)-(5) | |
| Exemption for small amounts of deferred remuneration | 37ED | |
| Adjusting remuneration policies | 37E(1)(b) 37E(1)(c) | |
| What are the Minister's powers? | | |
| Minister will define small, medium and large ADI | 37G(3) | |
| Minister's power to exempt ADIs or subsidiaries | 37A 37KA | |
| What are APRA's powers? | | APRA has a number of powers providing flexibility to recognise the variety of ADIs and business structures in the Australian financial system. |
| APRA's power to prescribe additional responsibilities for accountable persons | 37BA(4) | |
| APRA's power to exclude particular responsibilities for accountable persons | 37BB | |
| APRA's power to direct an ADI or subsidiary to reallocate responsibilities held by accountable persons | 37DB | |
| APRA's power to disqualify an accountable person | 37J | |
| APRA's power to vary or revoke the disqualification of an accountable person | 37JA | |

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| APRA's examination powers | Sch. 2 | |
| Penalties and other enforcement powers | | APRA may seek civil penalties where an ADI breaches BEAR in a way which causes systemic or prudential concerns. |
| Consequences and penalties applicable to an ADI | 37G | |
| Consequences and penalties applicable to an accountable person | 37J | APRA may disqualify an 'accountable person' for breaching the requirements of BEAR. |
| Consequences applicable to a person prohibited from being an accountable person | 37JB | |
| Insurance | | An ADI or accountable person is prevented from obtaining insurance to cover the penalties which may apply for breaching BEAR. |
| Prohibition on indemnification of ADIs and accountable persons | 37KB | |
| Commencement date and transitional provisions | Part 3 | 1 July 2018, with transitional provisions for the remuneration requirements. |