

# EXPOSURE DRAFT

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017**

**No.     , 2017**

*(Treasury)*

**A Bill for an Act to amend the *Banking Act 1959*,  
and for related purposes**

**EXPOSURE DRAFT**



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# EXPOSURE DRAFT

1

## 2 **A Bill for an Act to amend the *Banking Act 1959*,** 3 **and for related purposes**

4 The Parliament of Australia enacts:

### 5 **1 Short title**

6 This Act is the *Treasury Laws Amendment (Banking Executive*  
7 *Accountability and Related Measures) Act 2017*.

### 8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with  
11 column 2 of the table. Any other statement in column 2 has effect  
12 according to its terms.

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#### **Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	1 July 2018.	1 July 2018

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.



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The Banking Executive Accountability Regime **Schedule 1**  
Main amendments **Part 1**

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1 **Schedule 1—The Banking Executive**  
2 **Accountability Regime**

3 **Part 1—Main amendments**

4 *Banking Act 1959*

5 **1 After Part II**

6 Insert:

7 **Part IIAA—The Banking Executive Accountability**  
8 **Regime**

9 **Division 1—Obligations under the Banking Executive**  
10 **Accountability Regime**

11 **Subdivision A—ADIs**

12 **37 Obligations of ADIs**

- 13 (1) An ADI must comply with:
- 14 (a) its accountability obligations under Division 2; and
- 15 (b) its key personnel obligations under Division 3; and
- 16 (c) its deferred remuneration obligations under Division 4; and
- 17 (d) its notification obligations under Division 5.
- 18 (2) However, this section does not apply to:
- 19 (a) an ADI:
- 20 (i) that the Minister has exempted under section 37A; or
- 21 (ii) that is included in a class of ADIs that the Minister has
- 22 exempted under section 37A; or
- 23 (b) a foreign ADI, except to the extent that it operates a branch
- 24 of the foreign ADI in Australia.

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## Schedule 1 The Banking Executive Accountability Regime

### Part 1 Main amendments

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1 **37A Minister may exempt ADIs**

2 *Exemption of particular ADIs*

- 3 (1) The Minister may, by written notice given to an ADI, exempt the  
4 ADI from compliance with this Part.

5 *Class exemptions*

- 6 (2) The Minister may, by legislative instrument, exempt a class of  
7 ADIs from compliance with this Part.

8 **Subdivision B—Accountable persons**

9 **37B Obligations of accountable persons**

- 10 (1) An accountable person must comply with his or her accountability  
11 obligations under Division 2 in relation to each of the  
12 responsibilities that cause him or her to be an accountable person,  
13 of an ADI or a subsidiary of an ADI.

- 14 (2) However, this section does not apply to an accountable person to  
15 the extent that he or she is an accountable person of an ADI, or a  
16 subsidiary of an ADI, to which section 37 does not apply because  
17 of subsection 37(2).

18 **37BA Meaning of *accountable person***

19 *General principle*

- 20 (1) A person is an ***accountable person***, of an ADI or a subsidiary of an  
21 ADI, if the person:  
22 (a) holds a position in, or relating to, the ADI or subsidiary; and  
23 (b) because of that position, has actual or effective responsibility:  
24 (i) for management or control of the ADI or subsidiary; or  
25 (ii) for management or control of a significant or substantial  
26 part or aspect of the ADI's or subsidiary's operations.

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The Banking Executive Accountability Regime **Schedule 1**  
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1 *Particular responsibilities*

- 2 (2) Without limiting subsection (1), a person is also an **accountable**  
3 **person**, of an ADI, if the person:  
4 (a) holds a position in, or relating to, the ADI; and  
5 (b) because of that position, has a responsibility, relating to the  
6 ADI:  
7 (i) of a kind set out in subsection (3); or  
8 (ii) of a kind determined under subsection (4).
- 9 (3) For the purposes of subparagraph (2)(b)(i), the following are the  
10 responsibilities:  
11 (a) responsibility for oversight of the ADI as a member of the  
12 Board of the ADI, or a subsidiary of the ADI;  
13 (b) responsibility for carrying out the management of all or a  
14 significant part of the business activities of the ADI and its  
15 subsidiaries, including:  
16 (i) allocating to accountable persons responsibility for all  
17 parts or aspects of the ADI; and  
18 (ii) reporting directly to the Board of the ADI;  
19 (c) responsibility for management of the ADI's financial  
20 resources;  
21 (d) responsibility for overall risk controls and/or overall risk  
22 management arrangements of the ADI;  
23 (e) responsibility for management of the ADI's operations;  
24 (f) responsibility for information management, including  
25 information technology systems, for the ADI;  
26 (g) responsibility for management of the ADI's internal audit  
27 function;  
28 (h) responsibility for management of the ADI's compliance  
29 function;  
30 (i) responsibility for management of the ADI's human resources  
31 function;  
32 (j) responsibility for management of the ADI's anti-money  
33 laundering function.

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## Schedule 1 The Banking Executive Accountability Regime

### Part 1 Main amendments

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- 1 (4) APRA may, by legislative instrument, determine a responsibility  
2 for the purposes of subparagraph (2)(b)(ii) (other than a  
3 responsibility set out in subsection (3)).
- 4 (5) Subsection (2) does not apply in relation to a position that a person  
5 holds in an Australian branch of a foreign ADI.
- 6 *Head of an Australian branch of a foreign ADI*
- 7 (6) Without limiting subsection (1), a person is also an **accountable**  
8 **person**, of an ADI or a subsidiary of an ADI, if the person has  
9 responsibility for the conduct of all the activities of an Australian  
10 branch of a foreign ADI.

### 11 **37BB Exception for responsibilities excluded by APRA**

- 12 (1) Despite section 37BA, a person is not an **accountable person**, of  
13 an ADI or a subsidiary of an ADI, if each of the person's  
14 responsibilities that would, apart from this section, cause the  
15 person to be an accountable person of the ADI or subsidiary is  
16 either:
- 17 (a) a responsibility excluded under subsection (2) of this section  
18 in relation to that ADI or subsidiary; or
- 19 (b) a responsibility excluded under subsection (3) of this section  
20 in relation to a class of ADIs or subsidiaries that includes that  
21 ADI or subsidiary.
- 22 (2) APRA may, by written notice given to an ADI or a subsidiary of an  
23 ADI, exclude specified responsibilities that would, apart from this  
24 section, cause any person who holds a position in, or relating to,  
25 the ADI or subsidiary to be an accountable person.
- 26 (3) APRA may, by legislative instrument, exclude specified  
27 responsibilities that would, apart from this section, cause any  
28 person who holds a position in, or relating to:
- 29 (a) an ADI included in a class of ADIs specified in the  
30 instrument; or
- 31 (b) a subsidiary an ADI included in a class of such subsidiaries  
32 specified in the instrument;  
33 to be an accountable person.

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The Banking Executive Accountability Regime **Schedule 1**  
Main amendments **Part 1**

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1 **Division 2—Accountability obligations**

2 **37C The accountability obligations of an ADI**

3 The accountability obligations of an ADI are to:

- 4 (a) conduct its business with honesty and integrity, and with due  
5 skill, care and diligence; and  
6 (b) deal with APRA in an open, constructive and co-operative  
7 way; and  
8 (c) take reasonable steps in conducting its business to prevent  
9 matters from arising that would adversely affect the ADI's  
10 prudential standing or reputation; and  
11 (d) take reasonable steps to ensure that each of its accountable  
12 persons meets his or her accountability requirements under  
13 section 37CA; and  
14 (e) take reasonable steps to ensure that each of its subsidiaries  
15 that is not an ADI complies with paragraphs (a), (b), (c) and  
16 (d) as if the subsidiary were an ADI.

17 **37CA The accountability obligations of an accountable person**

- 18 (1) The accountability obligations of an accountable person of an ADI,  
19 or of a subsidiary of an ADI, are to:  
20 (a) conduct the responsibilities of his or her position as an  
21 accountable person with honesty and integrity, and with due  
22 skill, care and diligence; and  
23 (b) deal with APRA in an open, constructive and co-operative  
24 way; and  
25 (c) take reasonable steps in conducting those responsibilities to  
26 prevent matters from arising that would adversely affect the  
27 prudential standing or reputation of the ADI.
- 28 (2) If more than one of the accountable persons of an ADI or a  
29 subsidiary of an ADI have the same responsibility mentioned in  
30 section 37BA in relation to the ADI or subsidiary, all of those  
31 accountable persons have the accountability obligations jointly in  
32 relation to that responsibility.

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## Schedule 1 The Banking Executive Accountability Regime

### Part 1 Main amendments

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1 Note: Under section 37DB, APRA may direct an ADI to reallocate a  
2 responsibility of an accountable person.

### 3 **37CB Taking reasonable steps**

4 Without limiting what constitutes the taking of reasonable steps in  
5 relation to a matter for the purposes of this Division, the taking of  
6 reasonable steps in relation to that matter includes ensuring that:

- 7 (a) there is appropriate governance, control and risk management  
8 in relation to that matter; and  
9 (b) any delegations of responsibility in relation to that matter are  
10 appropriate; and  
11 (c) there are appropriate procedures for identifying and  
12 remediating problems that arise or may arise in relation to  
13 that matter.

### 14 **Division 3—Key personnel obligations**

#### 15 **37D The key personnel obligations of an ADI**

- 16 (1) The key personnel obligations of an ADI are:  
17 (a) to ensure that the responsibilities of the ADI's accountable  
18 persons cover:  
19 (i) each significant or substantial part or aspect of the  
20 ADI's operations; and  
21 (ii) each of the responsibilities to which  
22 subsection 37BA(2) applies; and  
23 (b) to ensure none of the accountable persons of the ADI are  
24 prohibited under section 37DA; and  
25 (c) to comply with any directions APRA gives to the ADI under  
26 section 37DB; and  
27 (d) to take reasonable steps to ensure that each of the ADI's  
28 subsidiaries that is not an ADI complies with  
29 subparagraph (a)(i) and paragraphs (b) and (c) as if the  
30 subsidiary were an ADI.
- 31 (2) Paragraph (1)(a) does not apply in relation to a responsibility  
32 excluded by APRA under subsection 37BB(2) or (3).

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## 1 **37DA People prohibited from being an accountable person**

- 2 (1) A person is prohibited from being an accountable person if the  
3 person:  
4 (a) is not registered under Subdivision B of Division 6; or  
5 (b) is disqualified under section 37J.
- 6 (2) However, if a person becomes an accountable person of an ADI, or  
7 a subsidiary of an ADI, by filling a vacancy that was not foreseen  
8 at the time it arose, paragraph (1)(a) does not apply to the person  
9 until the person has been an accountable person for:  
10 (a) 21 days; or  
11 (b) such other period as is determined under subsection (3) or  
12 (4).
- 13 (3) APRA may, by written notice given to an ADI, determine a period  
14 for the purposes of paragraph (2)(b) in relation to the ADI or a  
15 subsidiary of the ADI.
- 16 (4) APRA may, by legislative instrument, determine a period for the  
17 purposes of paragraph (2)(b).

## 18 **37DB APRA may direct an ADI or subsidiary to reallocate** 19 **responsibilities**

- 20 (1) APRA may give an ADI, or a subsidiary of an ADI, a written  
21 direction to reallocate a responsibility to which  
22 paragraph 37D(1)(a) applies from an accountable person to another  
23 person if APRA has reason to believe that the current allocation of  
24 the responsibility is likely to give rise to a prudential risk.
- 25 (2) In deciding whether to issue a direction under subsection (1),  
26 APRA must have regard to the responsibilities of the accountable  
27 person set out in the accountability statement for the person under  
28 section 37F.
- 29 (3) The direction may specify the period within which it is to be  
30 complied with.

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## Schedule 1 The Banking Executive Accountability Regime

### Part 1 Main amendments

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- 1 (4) APRA may, by written notice given to the ADI or subsidiary, vary  
2 the direction if, at the time of the variation, it considers that the  
3 variation is necessary and appropriate.
- 4 (5) The direction has effect until APRA revokes it by written notice  
5 given to the ADI or subsidiary. APRA may revoke the direction if,  
6 at the time of revocation, it considers that the direction is no longer  
7 necessary or appropriate.

## 8 **Division 4—Deferred remuneration obligations**

### 9 **37E The deferred remuneration obligations of an ADI**

- 10 (1) The deferred remuneration obligations of an ADI are:
- 11 (a) to ensure that, in relation to the variable remuneration of an  
12 accountable person of the ADI:
- 13 (i) the payment of a portion of that variable remuneration is  
14 deferred for a period; and
- 15 (ii) the amount of that portion is at least the amount  
16 required under section 37EB; and
- 17 (iii) that period is at least the period required under  
18 section 37EC; and
- 19 (b) to have a remuneration policy in force that requires that, if  
20 the person:
- 21 (i) has failed to comply with his or her accountability  
22 obligations under section 37CA; or
- 23 (ii) is likely to have failed to comply with those obligations;  
24 the person's variable remuneration is to be reduced by an  
25 amount that is proportionate to the failure or likely failure;  
26 and
- 27 (c) to ensure that, if the remuneration policy requires the variable  
28 remuneration to be reduced because of that failure or likely  
29 failure, the amount of the reduction is not paid to the person;  
30 and
- 31 (d) to take reasonable steps to ensure that, if:
- 32 (i) variable remuneration may become payable an  
33 accountable person of a subsidiary of the ADI; and  
34 (ii) the subsidiary is not an ADI;
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1 the subsidiary complies with paragraphs (a), (b) and (c) as if  
2 the subsidiary were an ADI.

3 Note: Under section 37ED, an accountable person of a small ADI, or one of  
4 its subsidiaries, may be exempt from this section.

- 5 (2) A reduction of variable remuneration:  
6 (a) need not be a reduction of variable remuneration relating to a  
7 period in which the failure or likely failure occurred; and  
8 (b) may be a reduction to zero.

- 9 (3) **Remuneration**, of an accountable person, includes:  
10 (a) in relation to an accountable person of an ADI—any amount  
11 of remuneration that:  
12 (i) is paid or payable to the accountable person by a related  
13 body corporate of the ADI; and  
14 (ii) if that related body corporate is a non-ADI holding  
15 company of the ADI—does not relate only to the  
16 accountable person holding a position in the related  
17 body corporate; or  
18 (b) in relation to an accountable person of a subsidiary of an  
19 ADI—any amount of remuneration that:  
20 (i) is paid or payable to the accountable person by a related  
21 body corporate of the subsidiary; and  
22 (ii) if that related body corporate is a non-ADI holding  
23 company of the subsidiary—does not relate only to the  
24 accountable person holding a position in the related  
25 body corporate.

## 26 **37EA Meaning of variable remuneration**

- 27 (1) The **variable remuneration** of an accountable person of an ADI, or  
28 a subsidiary of an ADI, is so much of the accountable person's  
29 total remuneration as:  
30 (a) is conditional on the achievement of objectives; or  
31 (b) is a retention bonus (however described);  
32 and includes so much of the accountable person's total  
33 remuneration as is remuneration of a kind determined under  
34 paragraph (3)(a) or (4)(a).

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## Schedule 1 The Banking Executive Accountability Regime

### Part 1 Main amendments

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- 1 (2) However, remuneration of a kind determined under  
2 paragraph (3)(b) or (4)(b) is not **variable remuneration** of an  
3 accountable person of an ADI, or a subsidiary of an ADI.
- 4 (3) APRA may, by written notice given to an ADI, or a subsidiary of  
5 an ADI, determine that:  
6 (a) remuneration of a particular kind, of one or more accountable  
7 persons of the ADI or subsidiary, is variable remuneration; or  
8 (b) remuneration of a particular kind, of one or more accountable  
9 persons of the ADI or subsidiary, is not variable  
10 remuneration.
- 11 A determination under this subsection may apply to all accountable  
12 persons of the ADI or subsidiary, or be limited to a particular  
13 accountable person or class of accountable persons of the ADI or  
14 subsidiary.
- 15 (4) APRA may, by legislative instrument, determine that:  
16 (a) remuneration of a particular kind is variable remuneration; or  
17 (b) remuneration of a particular kind is not variable  
18 remuneration.

### 37EB Minimum amount of variable remuneration to be deferred

- 19  
20 (1) The amount of an accountable person's variable remuneration that  
21 is required to be deferred under subparagraph 37E(1)(a)(ii) is as  
22 follows:  
23

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#### Minimum amount of variable remuneration to be deferred

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Item	If the accountable person is:	... the amount is:
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- |   |   |   |
|---|---|---|
| 1 | The Chief Executive Officer<br>of a large ADI | The lesser of:<br>(a) 60% of the Chief Executive Officer's<br>variable remuneration for the financial<br>year (the <b>relevant financial year</b> ) in<br>which the decision was made granting<br>the variable remuneration; or<br>(b) 40% of the Chief Executive Officer's<br>total remuneration for the relevant<br>financial year. |
|---|---|---|
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## Minimum amount of variable remuneration to be deferred

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<b>Item</b>	<b>If the accountable person is:</b>	<b>... the amount is:</b>
2	An accountable person of: (a) a large ADI; or (b) a subsidiary of a large ADI; other than the Chief Executive Officer of a large ADI	The lesser of: (a) 40% of the accountable person's variable remuneration for the relevant financial year; or (b) 20% of the accountable person's total remuneration for the relevant financial year.
3	An accountable person of: (a) a medium ADI; or (b) a subsidiary of a medium ADI	The lesser of: (a) 40% of the accountable person's variable remuneration for the relevant financial year; or (b) 20% of the accountable person's total remuneration for the relevant financial year.
4	An accountable person of: (a) a small ADI; or (b) a subsidiary of a small ADI	The lesser of: (a) 40% of the accountable person's variable remuneration for the relevant financial year; or (b) 10% of the accountable person's total remuneration for the relevant financial year.

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2 (2) For the purposes of this section, the value of a person's variable  
3 remuneration that has been deferred is taken to be what would have  
4 been the value of that remuneration if it had instead been paid to  
5 the person at the time the decision to grant it was made.

6 **37EC Minimum period of deferral**

7 (1) The required period under subparagraph 37E(1)(a)(iii) in relation  
8 to variable remuneration of an accountable person of an ADI, or a  
9 subsidiary of an ADI, is:

- 10 (a) 4 years; or  
11 (b) a shorter period approved by APRA under subsection (3) in  
12 relation to the variable remuneration;

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- 1 starting on the day after the day on which the decision was made  
2 granting the accountable person the variable remuneration.
- 3 (2) An ADI may apply to APRA for APRA to approve a shorter period  
4 under subsection (3) in relation to the variable remuneration of an  
5 accountable person of an ADI, or a subsidiary of an ADI, if the  
6 ADI is satisfied that:
- 7 (a) based on the information known at the time of the  
8 application, the accountable person has complied with his or  
9 her accountability obligations under section 37CA; and
- 10 (b) it is unlikely that further information will become known,  
11 before the end of the 4 year period mentioned in  
12 paragraph (1)(a), that indicates that the accountable person  
13 did not comply with those obligations.
- 14 (3) APRA may approve a shorter period in relation to the variable  
15 remuneration if APRA is satisfied that:
- 16 (a) the person is no longer an accountable person of the ADI or  
17 subsidiary, because of:
- 18 (i) the person's death, serious incapacity, serious disability  
19 or serious illness; or
- 20 (ii) a reason determined under subsection (4) or (5); and
- 21 (b) the ADI or subsidiary has taken all reasonable steps to satisfy  
22 itself of the matters mentioned in paragraphs (2)(a) and (b).
- 23 (4) APRA may, by written notice given to an ADI, determine reasons  
24 for the purposes of subparagraph (3)(a)(ii) in relation to the ADI  
25 and/or one or more subsidiaries of the ADI.
- 26 (5) APRA may, by legislative instrument, determine reasons for the  
27 purposes of subparagraph (3)(a)(ii).

### 28 **37ED Exemption for small amounts of variable remuneration**

- 29 Paragraph 37E(1)(a) does not apply in relation to the variable  
30 remuneration of an accountable person of an ADI, or of a  
31 subsidiary of an ADI, for a financial year if:
- 32 (a) the ADI is a small ADI; and  
33 (b) the sum of the following is less than \$50,000:
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- 1 (i) the amount (the *deferral amount*) of the person's  
2 variable remuneration that is required, or would apart  
3 from this section be required, under  
4 subparagraph 37E(1)(a)(ii) to be deferred for that  
5 financial year;
- 6 (ii) if the person is or was an accountable person of any  
7 related body corporate of the ADI or subsidiary that is  
8 also an ADI (or a subsidiary of an ADI)—the total  
9 amounts of deferral amounts of the person's variable  
10 remuneration from all such related bodies corporate for  
11 the financial year.

## 12 **Division 5—Notification obligations**

### 13 **37F The notification obligations of an ADI**

- 14 (1) The notification obligations of an ADI are:
- 15 (a) to give to APRA a document complying with section 37FA  
16 (an *accountability statement*) for each of its accountable  
17 persons, and to ensure that APRA is notified of any change to  
18 the accountability statement within the period, after the  
19 change, provided under subsection (2); and
- 20 (b) to give to APRA a document complying with section 37FB  
21 (an *accountability map*), and to ensure that APRA is notified  
22 of any change to the accountability map within the period,  
23 after the change, provided under subsection (2); and
- 24 (c) to notify APRA of an event mentioned in section 37FC  
25 within the period, after the event, provided under  
26 subsection (2); and
- 27 (d) to take reasonable steps to ensure that each of its subsidiaries  
28 that is not an ADI complies with paragraphs (a), (b) and (c)  
29 as if the subsidiary were an ADI.
- 30 (2) For the purposes of paragraph (1)(a), (b) or (c), the period is:
- 31 (a) 14 days; or  
32 (b) such other period as determined under subsection (3).

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## Schedule 1 The Banking Executive Accountability Regime

### Part 1 Main amendments

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- 1 (3) APRA may, by legislative instrument, determine, for the purposes  
2 of paragraph (2)(b), a period mentioned in paragraph (1)(a), (b) or  
3 (c).

#### 4 **37FA Accountability statements**

5 For the purposes of paragraph 37F(1)(a), an accountability  
6 statement of an ADI, or of a subsidiary of an ADI, for an  
7 accountable person of the ADI or subsidiary must contain a  
8 comprehensive statement of:

- 9 (a) the part or aspect of the ADI's or subsidiary's operations of  
10 which the accountable person has effective management or  
11 control; and  
12 (b) the responsibilities of the accountable person, including any  
13 responsibilities to which paragraph 37D(1)(a) applies.

#### 14 **37FB Accountability map**

15 For the purposes of paragraph 37F(1)(b), an accountability map of  
16 an ADI, or a subsidiary of an ADI, must contain the following  
17 information:

- 18 (a) the names of all of the accountable persons of the ADI or  
19 subsidiary;  
20 (b) the responsibilities of all those accountable persons;  
21 (c) details of the reporting lines and lines of responsibility of  
22 those accountable persons;  
23 (d) sufficient information to identify an accountable person for  
24 each of the responsibilities to which paragraph 37D(1)(a)  
25 applies.

#### 26 **37FC Events for which APRA must be notified**

27 For the purposes of paragraph 37F(1)(c), the following events must  
28 be notified to APRA by an ADI:

- 29 (a) a person ceasing to be an accountable person of the ADI or a  
30 subsidiary of the ADI;  
31 (b) the dismissal or suspension of a person by the ADI, or  
32 subsidiary of the ADI, because the person has failed to

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- 1                                    comply with, or is likely to have failed to comply with, his or  
2                                    her accountability obligations under 37CA;
- 3                                    (c) the reduction of the variable remuneration of a person by the  
4                                    ADI, or subsidiary of the ADI, because the person has failed  
5                                    to comply with, or is likely to have failed to comply with, his  
6                                    or her accountability obligations under section 37CA;
- 7                                    (d) the ADI becoming aware of:
- 8                                    (i) a breach by the ADI of its accountability obligations  
9                                    under section 37C; or
- 10                                    (ii) a breach by an accountable person of the ADI, or of a  
11                                    subsidiary of the ADI, of his or her accountability  
12                                    obligations under section 37CA.

## 13                    **Division 6—Enforcement and administration**

### 14                    **Subdivision A—Civil penalties**

#### 15                    **37G Pecuniary penalty for non-compliance with this Part**

- 16                    (1) An ADI is liable to a pecuniary penalty if:
- 17                                    (a) the ADI contravenes its obligations under this Part (other  
18                                    than this Division); and
- 19                                    (b) the contravention relates to prudential matters.
- 20                    (2) The amount of the pecuniary penalty is an amount not exceeding:
- 21                                    (a) if the ADI is a large ADI—1,000,000 penalty units; or
- 22                                    (b) if the ADI is a medium ADI—250,000 penalty units; or
- 23                                    (c) if the ADI is a small ADI—50,000 penalty units.
- 24                    (3) The Minister may, by legislative instrument, determine:
- 25                                    (a) the kinds of ADIs that are large ADIs; and
- 26                                    (b) the kinds of ADIs that are medium ADIs; and
- 27                                    (c) the kinds of ADIs that are small ADIs.
- 28                    (4) In determining the pecuniary penalty, the Federal Court of  
29                                    Australia must have regard to the impact that the penalty would  
30                                    have on the viability of the ADI.
- 31                    (5) Subsection (4) does not limit subclause 3(1) of Schedule 2.

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1 (6) This section is a civil liability provision.

## 2 **Subdivision B—Registration of accountable persons**

### 3 **37H Register of accountable persons**

4 (1) APRA must establish and keep a register of accountable persons.

5 (2) The register may be kept by electronic means.

6 (3) The register is not a legislative instrument.

7 (4) The register must contain, for each accountable person:

8 (a) the person's name and contact details; and

9 (b) the date of the person's registration as an accountable person;  
10 and

11 (c) the date the person ceases to be an accountable person; and

12 (d) details of any disqualification of the person under section 21  
13 or 37J; and

14 (e) details of any variation or revocation of disqualification  
15 under section 22 or 37JA; and

16 (f) details of any direction APRA has given in relation to the  
17 person that is:

18 (i) a direction under section 11CA of a kind mentioned in  
19 paragraph 11CA(2)(c) or (d); or

20 (ii) a direction under section 23; and

21 (g) such other information as APRA considers appropriate.

### 22 **37HA Registration of a person as an accountable person**

23 (1) An ADI may apply to APRA to register a person as an accountable  
24 person.

25 (2) The application must:

26 (a) be in the form approved in writing by APRA; and

27 (b) contain the information that the form requires; and

28 (c) include a signed declaration that the ADI is satisfied the  
29 person is suitable to be an accountable person; and

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- 1 (d) include the accountability statement for the person under  
2 section 37F.
- 3 (3) APRA may, by written notice given to the ADI, request the ADI to  
4 give to APRA further information in relation to the application.
- 5 (4) APRA must, within the period provided under subsection (5),  
6 register a person as an accountable person if:  
7 (a) the application meets the requirements of subsection (2); and  
8 (b) the ADI gives to APRA any further information requested  
9 under subsection (3) in relation to the application;  
10 unless the ADI withdraws the application before the day of  
11 registration.
- 12 (5) The period for registration under subsection (4) is the period of 14  
13 days after:  
14 (a) the day the application is made; or  
15 (b) if APRA requests the ADI to give further information under  
16 subsection (3) in relation to the application—the day the ADI  
17 gives the further information to APRA.

## 18 **Subdivision C—Disqualification of accountable persons**

### 19 **37J APRA may disqualify an accountable person**

#### 20 *Disqualification by APRA*

- 21 (1) APRA may disqualify a person from being or acting as an  
22 accountable person, for a period that APRA considers appropriate,  
23 if APRA is satisfied:  
24 (a) the person has not complied with his or her accountability  
25 obligations under section 37CA; and  
26 (b) the disqualification is justified.
- 27 (2) For the purposes of subsection (1), APRA may disqualify a person  
28 from being or acting as an accountable person of one or more of  
29 the following:  
30 (a) a particular ADI;  
31 (b) a particular subsidiary of an ADI;

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- 1 (c) a class of ADIs;  
2 (d) a class of subsidiaries of ADIs;  
3 (e) any ADI;  
4 (f) any subsidiary of an ADI.
- 5 (3) Without limiting the matters to which APRA may have regard in  
6 deciding whether disqualification is justified as mentioned in  
7 paragraph (1)(b), APRA may have regard to any matters  
8 determined under subsection (4).
- 9 (4) The Minister may, by legislative instrument, determine matters to  
10 which APRA may have regard for the purposes of subsection (3).
- 11 *Written notice*
- 12 (5) APRA must give written notice of a disqualification to the person  
13 and the ADI.
- 14 (6) A disqualification takes effect on the day specified in the notice,  
15 which must be not earlier than 7 days after it is signed.
- 16 (7) Before disqualifying a person, APRA must give written notice to:  
17 (a) the person; and  
18 (b) the ADI;  
19 giving each of them an opportunity to make submissions on the  
20 matter.
- 21 (8) If a submission is made to APRA in response to the notice, APRA  
22 must have regard to the submission and may discuss any matter  
23 contained in the submission with such persons as it considers  
24 appropriate for the purpose of assessing the truth of the matter.
- 25 (9) A notice given under subsection (7) to an accountable person and  
26 an ADI must state that any submissions made in response to the  
27 notice may be discussed by APRA with any other persons as  
28 mentioned in subsection (8).

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## 1 **37JA APRA may vary or revoke a disqualification**

- 2 (1) APRA may vary or revoke a disqualification made under  
3 section 37J on its own initiative or on application by a person  
4 disqualified under that section.
- 5 (2) A variation or revocation of a disqualification takes effect on the  
6 day on which it is made.
- 7 (3) APRA must give the person written notice of:  
8 (a) a variation or revocation of a disqualification; or  
9 (b) if the person applied for a disqualification to be varied or  
10 revoked—a refusal to vary or revoke the disqualification.

## 11 **37JB Allowing a person disqualified by APRA to act as an** 12 **accountable person**

- 13 (1) An ADI, or a subsidiary of an ADI, contravenes this subsection if:  
14 (a) a person is disqualified under section 37J; and  
15 (b) the person is or acts as an accountable person of the ADI or  
16 subsidiary; and  
17 (c) the person is disqualified from being or acting as an  
18 accountable person in the ADI or subsidiary; and  
19 (d) the ADI or subsidiary allows the person to be or act as an  
20 accountable person.

### 21 *Fault-based offence*

- 22 (2) An ADI, or a subsidiary of an ADI, commits an offence if it  
23 contravenes subsection (1).

24 Penalty: 250 penalty units.

### 25 *Strict liability offence*

- 26 (3) An ADI, or a subsidiary of an ADI, commits an offence of strict  
27 liability if it contravenes subsection (1).

28 Penalty: 60 penalty units.

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1 **Division 7—Miscellaneous**

2 **37K General administration of this Part**

3 APRA has the general administration of this Part.

4 **37KA Minister may exempt ADIs from taking reasonable steps**  
5 **relating to subsidiaries**

6 *Exemption relating to particular subsidiaries*

7 (1) The Minister may, by written notice given to an ADI, exempt the  
8 ADI from one or more of the following in relation to a particular  
9 subsidiary of the ADI:

- 10 (a) compliance with paragraph 37C(e) (subsidiary complying  
11 with the accountability obligations);  
12 (b) compliance with paragraph 37D(d) (subsidiary complying  
13 with the key personnel obligations);  
14 (c) compliance with paragraph 37E(d) (subsidiary complying  
15 with the deferred remuneration obligations);  
16 (d) compliance with paragraph 37F(d) (subsidiary complying  
17 with the notification obligations).

18 *Class exemptions*

19 (2) The Minister may, by legislative instrument, exempt ADIs from  
20 compliance with one or more of the paragraphs mentioned in  
21 subsection (1) in relation to a particular class of subsidiaries of  
22 ADIs.

23 **37KB Indemnifying ADIs and accountable persons**

24 (1) A related body corporate of an ADI must not (whether by  
25 agreement or by making a payment and whether directly or through  
26 an interposed entity):

- 27 (a) indemnify the ADI against the consequences of breaching an  
28 obligation under this Part; or

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- 1 (b) pay, or agree to pay, a premium for a contract insuring the  
2 ADI against the consequences of breaching an obligation  
3 under this Part.
- 4 (2) An ADI, or a related body corporate of an ADI, must not (whether  
5 by agreement or by making a payment and whether directly or  
6 through an interposed entity):
- 7 (a) indemnify a person who is or was an accountable person of  
8 the ADI against the consequences of breaching an obligation  
9 under this Part; or
- 10 (b) pay, or agree to pay, a premium for a contract insuring such a  
11 person against the consequences of breaching an obligation  
12 under this Part.
- 13 (3) This section does not apply to a liability for legal costs.

# EXPOSURE DRAFT

Schedule 1 The Banking Executive Accountability Regime

Part 2 Other amendments

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1 **Part 2—Other amendments**

2 ***Banking Act 1959***

3 **2 Subsection 5(1)**

4 Insert:

5 ***accountable person*** has the meaning given by sections 37BA and  
6 37BB.

7 ***large ADI*** means an ADI of a kind determined under  
8 paragraph 37G(3)(a).

9 ***medium ADI*** means an ADI of a kind determined under  
10 paragraph 37G(3)(b).

11 ***non-ADI holding company***, of another body corporate, means a  
12 body corporate (other than an ADI) of which the other body  
13 corporate is a subsidiary.

14 ***remuneration***, of an accountable person, includes the meaning  
15 given by subsection 37E(3).

16 ***small ADI*** means an ADI of a kind determined under  
17 paragraph 37G(3)(c).

18 ***variable remuneration*** has the meaning given by section 37EA.

# EXPOSURE DRAFT

The Banking Executive Accountability Regime **Schedule 1**  
Application of amendments **Part 3**

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## 1 **Part 3—Application of amendments**

### 2 **3 Deferral of variable remuneration**

3 (1) Division 4 of Part IIAA of the *Banking Act 1959* as inserted by this Act  
4 applies in relation to the variable remuneration of an accountable person  
5 only if the decision granting the accountable person the variable  
6 remuneration was made on or after 1 January 2019.

7 (2) Despite subitem (1), if:

- 8 (a) an accountable person's variable remuneration is payable  
9 under a contract entered into before the day this Act received  
10 the Royal Assent; and  
11 (b) the contract is not, between that day and 31 December 2019,  
12 amended in a way that affects or relates to that variable  
13 remuneration;

14 Division 4 of Part IIAA of the *Banking Act 1959* as inserted by this Act  
15 does not apply in relation to the variable remuneration until 1 January  
16 2020.

17 (3) Despite subitem (1), if:

- 18 (a) an accountable person's variable remuneration is payable  
19 under a contract entered into before the commencement of  
20 Part IIAA of the *Banking Act 1959* as inserted by this Act;  
21 and  
22 (b) apart from this subitem, the application of Division 4 of that  
23 Part in relation to the variable remuneration would result in  
24 an acquisition of property (within the meaning of  
25 paragraph 51(xxxi) of the Constitution) from a person  
26 otherwise than on just terms (within the meaning of that  
27 paragraph);

28 that Division does not apply in relation to the variable remuneration to  
29 the extent that it would result in such an acquisition.

# EXPOSURE DRAFT

## Schedule 2 Examination powers

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1 **Schedule 2—Examination powers**  
2

3 ***Banking Act 1959***

4 **1 Subsection 5(1)**

5 Insert:

6 *lawyer* means a duly qualified legal practitioner and, in relation to  
7 a person, means such a practitioner acting for the person.

8 **2 Part VII (heading)**

9 Repeal the heading, substitute:

10 **Part VII—Financial records**

11 **3 After section 60**

12 Insert:

13 **Part VIII—Powers of APRA**

14 **Division 1—Investigations**

15 **4 After section 61**

16 Insert:

17 **Division 2—Examinations**

18 **61A Notice requiring appearance for examination**

19 If:

- 20 (a) APRA has appointed a person (the *investigator*) under  
21 subsection 13(4), 13A(1) or 61(1); and  
22 (b) the investigator reasonably believes or suspects that a person  
23 (the *examinee*) can give information relevant to the  
24 investigation;

# EXPOSURE DRAFT

Examination powers **Schedule 2**

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1 the investigator may, by written notice given to the examinee,  
2 require the examinee:

- 3 (c) to give the investigator all reasonable assistance in  
4 connection with the investigation; and  
5 (d) to appear before the investigator for examination.

6 Note: Failure to comply with a requirement made under this subsection is an  
7 offence (see section 61E).

## 8 **61B Requirements made of examinee**

9 (1) The investigator may examine the examinee on oath or affirmation  
10 and may, for that purpose:

- 11 (a) require the examinee to either take an oath or make an  
12 affirmation; and  
13 (b) administer an oath or affirmation to the examinee.

14 Note: Failure to comply with a requirement made under this subsection is an  
15 offence (see section 61E).

16 (2) The oath or affirmation to be taken or made by the examinee for  
17 the purposes of the examination is an oath or affirmation that the  
18 statements that the examinee will make will be true.

19 (3) The investigator may require the examinee to answer a question  
20 that is put to the examinee at the examination and is relevant to a  
21 matter that the investigator is investigating, or is to investigate.

22 Note: Failure to comply with a requirement made under this subsection is an  
23 offence (see section 61E).

## 24 **61C Who may be present at examinations**

25 (1) The examination must take place in private.

26 (2) The following people may be present at the examination:

- 27 (a) the investigator;  
28 (b) the examinee;  
29 (c) the examinee's lawyer;  
30 (d) an APRA staff member approved by APRA to be present;  
31 (e) a person directed by the investigator to be present.
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# EXPOSURE DRAFT

## Schedule 2 Examination powers

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- 1 (3) A person commits an offence if the person:  
2 (a) is present at an examination; and  
3 (b) is not a person mentioned in subsection (2).

4 Penalty: 30 penalty units.

- 5 (4) The examinee's lawyer may, at such times during the examination  
6 as the investigator determines, address the investigator and  
7 examine the examinee about matters about which the investigator  
8 has examined the examinee.

- 9 (5) The investigator may require a person to stop addressing the  
10 investigator or examining the examinee if, in the investigator's  
11 opinion, the person is trying to obstruct the examination by  
12 exercising rights under subsection (4).

13 Note: Failure to comply with a requirement made under this subsection is an  
14 offence (see section 61E).

### 15 **61D Record of examination**

#### 16 *Written record of statements*

- 17 (1) The investigator must cause a written record to be made of  
18 statements made at the examination.
- 19 (2) The investigator may require the examinee to read the written  
20 record, or to have it read to him or her, and may require him or her  
21 to sign it.

22 Note: Failure to comply with a requirement made under this subsection is an  
23 offence (see section 61E).

#### 24 *Copies of record*

- 25 (3) The investigator must give a copy of a written record to the  
26 examinee, without charge, but subject to such conditions (if any) as  
27 the investigator imposes.
- 28 (4) APRA may give a copy of a written record, or such a copy together  
29 with a copy of any related book, account or document, to a  
30 person's lawyer if APRA is satisfied that the person is carrying on,

# EXPOSURE DRAFT

Examination powers **Schedule 2**

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1 or contemplating in good faith, proceedings in relation to a matter  
2 to which the examination is related.

3 *Use of copies*

4 (5) If the investigator gives a copy of a written record to a person  
5 under subsection (3) subject to conditions, the person, or any other  
6 person who has possession, custody or control of the copy or a  
7 copy of it, must comply with the conditions.

8 Penalty: Imprisonment for 6 months.

9 (6) If APRA gives a copy of a written record to the person under  
10 subsection (4), the person, or any other person who has possession,  
11 custody or control of the copy or a copy of it, must not, except in  
12 connection with preparing, beginning or carrying on, or in the  
13 course of, proceedings:

14 (a) use the copy or a copy of it; or

15 (b) publish, or communicate to a person, the copy, a copy of it,  
16 or any part of the copy's contents.

17 Penalty: Imprisonment for 6 months.

18 *Record to accompany report*

19 (7) A report about an investigation under subsection 61(1) must be  
20 accompanied by each record (if any) of the examination.

21 (8) If APRA considers a statement made at an examination is relevant  
22 to any other investigation under this Act, a copy of the record of  
23 the statement must accompany any report about the other  
24 investigation.

25 **61E Offences**

26 A person commits an offence if he or she:

27 (a) is required under this Division to do an act; and

28 (b) refuses or fails to comply with that requirement.

29 Penalty: 30 penalty units.

# EXPOSURE DRAFT

Schedule 2 Examination powers

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1 **Division 3—Information**

2 **5 Before section 62A**

3 Insert:

4 **Part IX—Miscellaneous**

5