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

The Parliament of Australia enacts:

1 **Short title**

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

2 **Commencement**

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

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

Note: This table relates only to the provisions of this Act as originally enacted.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.

(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.
3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—The Banking Executive Accountability Regime

Part 1—Main amendments

Banking Act 1959

1 After Part II

Insert:

Part II A—The Banking Executive Accountability Regime

Division 1—Obligations under the Banking Executive Accountability Regime

Subdivision A—ADIs

37 Obligations of ADIs

(1) An ADI must comply with:
   (a) its accountability obligations under Division 2; and
   (b) its key personnel obligations under Division 3; and
   (c) its deferred remuneration obligations under Division 4; and
   (d) its notification obligations under Division 5.

(2) However, this section does not apply to:
   (a) an ADI:
      (i) that the Minister has exempted under section 37A; or
      (ii) that is included in a class of ADIs that the Minister has
          exempted under section 37A; or
   (b) a foreign ADI, except to the extent that it operates a branch
       of the foreign ADI in Australia.
Schedule 1  The Banking Executive Accountability Regime

Part 1  Main amendments

37A  Minister may exempt ADIs

Exemption of particular ADIs

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

Class exemptions

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

Subdivision B—Accountable persons

37B  Obligations of accountable persons

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

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

37BA  Meaning of accountable person

General principle

(1) A person is an accountable person, of an ADI or a subsidiary of an ADI, if the person:

(a) holds a position in, or relating to, the ADI or subsidiary; and

(b) because of that position, has actual or effective responsibility:

(i) for management or control of the ADI or subsidiary; or

(ii) for management or control of a significant or substantial part or aspect of the ADI’s or subsidiary’s operations.
(2) Without limiting subsection (1), a person is also an **accountable person**, of an ADI, if the person:

(a) holds a position in, or relating to, the ADI; and

(b) because of that position, has a responsibility, relating to the ADI:

(i) of a kind set out in subsection (3); or

(ii) of a kind determined under subsection (4).

(3) For the purposes of subparagraph (2)(b)(i), the following are the responsibilities:

(a) responsibility for oversight of the ADI as a member of the Board of the ADI, or a subsidiary of the ADI;

(b) responsibility for carrying out the management of all or a significant part of the business activities of the ADI and its subsidiaries, including:

(i) allocating to accountable persons responsibility for all parts or aspects of the ADI; and

(ii) reporting directly to the Board of the ADI;

(c) responsibility for management of the ADI’s financial resources;

(d) responsibility for overall risk controls and/or overall risk management arrangements of the ADI;

(e) responsibility for management of the ADI’s operations;

(f) responsibility for information management, including information technology systems, for the ADI;

(g) responsibility for management of the ADI’s internal audit function;

(h) responsibility for management of the ADI’s compliance function;

(i) responsibility for management of the ADI’s human resources function;

(j) responsibility for management of the ADI’s anti-money laundering function.
Schedule 1 The Banking Executive Accountability Regime  

Part 1 Main amendments

(4) APRA may, by legislative instrument, determine a responsibility for the purposes of subparagraph (2)(b)(ii) (other than a responsibility set out in subsection (3)).

(5) Subsection (2) does not apply in relation to a position that a person holds in an Australian branch of a foreign ADI.

Head of an Australian branch of a foreign ADI

(6) Without limiting subsection (1), a person is also an accountable person, of an ADI or a subsidiary of an ADI, if the person has responsibility for the conduct of all the activities of an Australian branch of a foreign ADI.

37BB Exception for responsibilities excluded by APRA

(1) Despite section 37BA, a person is not an accountable person, of an ADI or a subsidiary of an ADI, if each of the person’s responsibilities that would, apart from this section, cause the person to be an accountable person of the ADI or subsidiary is either:

(a) a responsibility excluded under subsection (2) of this section in relation to that ADI or subsidiary; or

(b) a responsibility excluded under subsection (3) of this section in relation to a class of ADIs or subsidiaries that includes that ADI or subsidiary.

(2) APRA may, by written notice given to an ADI or a subsidiary of an ADI, exclude specified responsibilities that would, apart from this section, cause any person who holds a position in, or relating to, the ADI or subsidiary to be an accountable person.

(3) APRA may, by legislative instrument, exclude specified responsibilities that would, apart from this section, cause any person who holds a position in, or relating to:

(a) an ADI included in a class of ADIs specified in the instrument; or

(b) a subsidiary an ADI included in a class of such subsidiaries specified in the instrument;

to be an accountable person.
Division 2—Accountability obligations

37C The accountability obligations of an ADI

The accountability obligations of an ADI are to:

(a) conduct its business with honesty and integrity, and with due skill, care and diligence; and

(b) deal with APRA in an open, constructive and co-operative way; and

(c) take reasonable steps in conducting its business to prevent matters from arising that would adversely affect the ADI’s prudential standing or reputation; and

(d) take reasonable steps to ensure that each of its accountable persons meets his or her accountability requirements under section 37CA; and

(e) take reasonable steps to ensure that each of its subsidiaries that is not an ADI complies with paragraphs (a), (b), (c) and (d) as if the subsidiary were an ADI.

37CA The accountability obligations of an accountable person

(1) The accountability obligations of an accountable person of an ADI, or of a subsidiary of an ADI, are to:

(a) conduct the responsibilities of his or her position as an accountable person with honesty and integrity, and with due skill, care and diligence; and

(b) deal with APRA in an open, constructive and co-operative way; and

(c) take reasonable steps in conducting those responsibilities to prevent matters from arising that would adversely affect the prudential standing or reputation of the ADI.

(2) If more than one of the accountable persons of an ADI or a subsidiary of an ADI have the same responsibility mentioned in section 37BA in relation to the ADI or subsidiary, all of those accountable persons have the accountability obligations jointly in relation to that responsibility.
Note: Under section 37DB, APRA may direct an ADI to reallocate a responsibility of an accountable person.

37CB Taking reasonable steps

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

(a) there is appropriate governance, control and risk management in relation to that matter; and

(b) any delegations of responsibility in relation to that matter are appropriate; and

(c) there are appropriate procedures for identifying and remediating problems that arise or may arise in relation to that matter.

Division 3—Key personnel obligations

37D The key personnel obligations of an ADI

(1) The key personnel obligations of an ADI are:

(a) to ensure that the responsibilities of the ADI’s accountable persons cover:

(i) each significant or substantial part or aspect of the ADI’s operations; and

(ii) each of the responsibilities to which subsection 37BA(2) applies; and

(b) to ensure none of the accountable persons of the ADI are prohibited under section 37DA; and

(c) to comply with any directions APRA gives to the ADI under section 37DB; and

(d) to take reasonable steps to ensure that each of the ADI’s subsidiaries that is not an ADI complies with subparagraph (a)(i) and paragraphs (b) and (c) as if the subsidiary were an ADI.

(2) Paragraph (1)(a) does not apply in relation to a responsibility excluded by APRA under subsection 37BB(2) or (3).
37DA People prohibited from being an accountable person

(1) A person is prohibited from being an accountable person if the person:
   (a) is not registered under Subdivision B of Division 6; or
   (b) is disqualified under section 37J.

(2) However, if a person becomes an accountable person of an ADI, or a subsidiary of an ADI, by filling a vacancy that was not foreseen at the time it arose, paragraph (1)(a) does not apply to the person until the person has been an accountable person for:
   (a) 21 days; or
   (b) such other period as is determined under subsection (3) or (4).

(3) APRA may, by written notice given to an ADI, determine a period for the purposes of paragraph (2)(b) in relation to the ADI or a subsidiary of the ADI.

(4) APRA may, by legislative instrument, determine a period for the purposes of paragraph (2)(b).

37DB APRA may direct an ADI or subsidiary to reallocate responsibilities

(1) APRA may give an ADI, or a subsidiary of an ADI, a written direction to reallocate a responsibility to which paragraph 37D(1)(a) applies from an accountable person to another person if APRA has reason to believe that the current allocation of the responsibility is likely to give rise to a prudential risk.

(2) In deciding whether to issue a direction under subsection (1), APRA must have regard to the responsibilities of the accountable person set out in the accountability statement for the person under section 37F.

(3) The direction may specify the period within which it is to be complied with.
EXPOSURE DRAFT

Schedule 1  The Banking Executive Accountability Regime

Part 1  Main amendments

(4) APRA may, by written notice given to the ADI or subsidiary, vary
the direction if, at the time of the variation, it considers that the
variation is necessary and appropriate.

(5) The direction has effect until APRA revokes it by written notice
given to the ADI or subsidiary. APRA may revoke the direction if,
at the time of revocation, it considers that the direction is no longer
necessary or appropriate.

Division 4—Deferred remuneration obligations

37E  The deferred remuneration obligations of an ADI

(1) The deferred remuneration obligations of an ADI are:

(a) to ensure that, in relation to the variable remuneration of an
accountable person of the ADI:
    (i) the payment of a portion of that variable remuneration is
        deferred for a period; and
    (ii) the amount of that portion is at least the amount
        required under section 37EB; and
    (iii) that period is at least the period required under
        section 37EC; and

(b) to have a remuneration policy in force that requires that, if
the person:
    (i) has failed to comply with his or her accountability
        obligations under section 37CA; or
    (ii) is likely to have failed to comply with those obligations;
        the person’s variable remuneration is to be reduced by an
        amount that is proportionate to the failure or likely failure;
        and

(c) to ensure that, if the remuneration policy requires the variable
remuneration to be reduced because of that failure or likely
failure, the amount of the reduction is not paid to the person;
and

(d) to take reasonable steps to ensure that, if:
    (i) variable remuneration may become payable an
        accountable person of a subsidiary of the ADI; and
    (ii) the subsidiary is not an ADI;
the subsidiary complies with paragraphs (a), (b) and (c) as if
the subsidiary were an ADI.

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

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

(3) Remuneration, of an accountable person, includes:
(a) in relation to an accountable person of an ADI—any amount
of remuneration that:
   (i) is paid or payable to the accountable person by a related
       body corporate of the ADI; and
   (ii) if that related body corporate is a non-ADI holding
       company of the ADI—does not relate only to the
       accountable person holding a position in the related
       body corporate; or
(b) in relation to an accountable person of a subsidiary of an
ADI—any amount of remuneration that:
   (i) is paid or payable to the accountable person by a related
       body corporate of the subsidiary; and
   (ii) if that related body corporate is a non-ADI holding
       company of the subsidiary—does not relate only to the
       accountable person holding a position in the related
       body corporate.

37EA Meaning of variable remuneration

(1) The variable remuneration of an accountable person of an ADI, or
a subsidiary of an ADI, is so much of the accountable person’s
total remuneration as:
(a) is conditional on the achievement of objectives; or
(b) is a retention bonus (however described);
and includes so much of the accountable person’s total
remuneration as is remuneration of a kind determined under
paragraph (3)(a) or (4)(a).
(2) However, remuneration of a kind determined under paragraph (3)(b) or (4)(b) is not variable remuneration of an accountable person of an ADI, or a subsidiary of an ADI.

(3) APRA may, by written notice given to an ADI, or a subsidiary of an ADI, determine that:

(a) remuneration of a particular kind, of one or more accountable persons of the ADI or subsidiary, is variable remuneration; or

(b) remuneration of a particular kind, of one or more accountable persons of the ADI or subsidiary, is not variable remuneration.

A determination under this subsection may apply to all accountable persons of the ADI or subsidiary, or be limited to a particular accountable person or class of accountable persons of the ADI or subsidiary.

(4) APRA may, by legislative instrument, determine that:

(a) remuneration of a particular kind is variable remuneration; or

(b) remuneration of a particular kind is not variable remuneration.

37EB Minimum amount of variable remuneration to be deferred

(1) The amount of an accountable person’s variable remuneration that is required to be deferred under subparagraph 37E(1)(a)(ii) is as follows:

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

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

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

### 37EC Minimum period of deferral

1. The required period under subparagraph 37E(1)(a)(iii) in relation to variable remuneration of an accountable person of an ADI, or a subsidiary of an ADI, is:
   - (a) 4 years; or
   - (b) a shorter period approved by APRA under subsection (3) in relation to the variable remuneration;
starting on the day after the day on which the decision was made granting the accountable person the variable remuneration.

(2) An ADI may apply to APRA for APRA to approve a shorter period under subsection (3) in relation to the variable remuneration of an accountable person of an ADI, or a subsidiary of an ADI, if the ADI is satisfied that:
   (a) based on the information known at the time of the application, the accountable person has complied with his or her accountability obligations under section 37CA; and
   (b) it is unlikely that further information will become known, before the end of the 4 year period mentioned in paragraph (1)(a), that indicates that the accountable person did not comply with those obligations.

(3) APRA may approve a shorter period in relation to the variable remuneration if APRA is satisfied that:
   (a) the person is no longer an accountable person of the ADI or subsidiary, because of:
       (i) the person’s death, serious incapacity, serious disability or serious illness; or
       (ii) a reason determined under subsection (4) or (5); and
   (b) the ADI or subsidiary has taken all reasonable steps to satisfy itself of the matters mentioned in paragraphs (2)(a) and (b).

(4) APRA may, by written notice given to an ADI, determine reasons for the purposes of subparagraph (3)(a)(ii) in relation to the ADI and/or one or more subsidiaries of the ADI.

(5) APRA may, by legislative instrument, determine reasons for the purposes of subparagraph (3)(a)(ii).

37ED Exemption for small amounts of variable remuneration

Paragraph 37E(1)(a) does not apply in relation to the variable remuneration of an accountable person of an ADI, or of a subsidiary of an ADI, for a financial year if:
   (a) the ADI is a small ADI; and
   (b) the sum of the following is less than $50,000:
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(i) the amount (the deferral amount) of the person’s variable remuneration that is required, or would apart from this section be required, under subparagraph 37E(1)(a)(ii) to be deferred for that financial year;

(ii) if the person is or was an accountable person of any related body corporate of the ADI or subsidiary that is also an ADI (or a subsidiary of an ADI)—the total amounts of deferral amounts of the person’s variable remuneration from all such related bodies corporate for the financial year.

Division 5—Notification obligations

37F The notification obligations of an ADI

(1) The notification obligations of an ADI are:

(a) to give to APRA a document complying with section 37FA (an accountability statement) for each of its accountable persons, and to ensure that APRA is notified of any change to the accountability statement within the period, after the change, provided under subsection (2); and

(b) to give to APRA a document complying with section 37FB (an accountability map), and to ensure that APRA is notified of any change to the accountability map within the period, after the change, provided under subsection (2); and

(c) to notify APRA of an event mentioned in section 37FC within the period, after the event, provided under subsection (2); and

(d) to take reasonable steps to ensure that each of its subsidiaries that is not an ADI complies with paragraphs (a), (b) and (c) as if the subsidiary were an ADI.

(2) For the purposes of paragraph (1)(a), (b) or (c), the period is:

(a) 14 days; or

(b) such other period as determined under subsection (3).
(3) APRA may, by legislative instrument, determine, for the purposes of paragraph (2)(b), a period mentioned in paragraph (1)(a), (b) or (c).

37FA Accountability statements

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

(a) the part or aspect of the ADI’s or subsidiary’s operations of which the accountable person has effective management or control; and

(b) the responsibilities of the accountable person, including any responsibilities to which paragraph 37D(1)(a) applies.

37FB Accountability map

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

(a) the names of all of the accountable persons of the ADI or subsidiary;

(b) the responsibilities of all those accountable persons;

(c) details of the reporting lines and lines of responsibility of those accountable persons;

(d) sufficient information to identify an accountable person for each of the responsibilities to which paragraph 37D(1)(a) applies.

37FC Events for which APRA must be notified

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

(a) a person ceasing to be an accountable person of the ADI or a subsidiary of the ADI;

(b) the dismissal or suspension of a person by the ADI, or subsidiary of the ADI, because the person has failed to
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comply with, or is likely to have failed to comply with, his or her accountability obligations under 37CA;

(c) the reduction of the variable remuneration of a person by the ADI, or subsidiary of the ADI, because the person has failed to comply with, or is likely to have failed to comply with, his or her accountability obligations under section 37CA;

(d) the ADI becoming aware of:
   (i) a breach by the ADI of its accountability obligations under section 37C; or
   (ii) a breach by an accountable person of the ADI, or of a subsidiary of the ADI, of his or her accountability obligations under section 37CA.

**Division 6—Enforcement and administration**

**Subdivision A—Civil penalties**

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

(1) An ADI is liable to a pecuniary penalty if:
   (a) the ADI contravenes its obligations under this Part (other than this Division); and
   (b) the contravention relates to prudential matters.

(2) The amount of the pecuniary penalty is an amount not exceeding:
   (a) if the ADI is a large ADI—1,000,000 penalty units; or
   (b) if the ADI is a medium ADI—250,000 penalty units; or
   (c) if the ADI is a small ADI—50,000 penalty units.

(3) The Minister may, by legislative instrument, determine:
   (a) the kinds of ADIs that are large ADIs; and
   (b) the kinds of ADIs that are medium ADIs; and
   (c) the kinds of ADIs that are small ADIs.

(4) In determining the pecuniary penalty, the Federal Court of Australia must have regard to the impact that the penalty would have on the viability of the ADI.

(5) Subsection (4) does not limit subclause 3(1) of Schedule 2.
(6) This section is a civil liability provision.

Subdivision B—Registration of accountable persons

37H  Register of accountable persons

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

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

(3) The register is not a legislative instrument.

(4) The register must contain, for each accountable person:
   (a) the person’s name and contact details; and
   (b) the date of the person’s registration as an accountable person; and
   (c) the date the person ceases to be an accountable person; and
   (d) details of any disqualification of the person under section 21 or 37J; and
   (e) details of any variation or revocation of disqualification under section 22 or 37JA; and
   (f) details of any direction APRA has given in relation to the person that is:
      (i) a direction under section 11CA of a kind mentioned in paragraph 11CA(2)(c) or (d); or
      (ii) a direction under section 23; and
   (g) such other information as APRA considers appropriate.

37HA  Registration of a person as an accountable person

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

(2) The application must:
   (a) be in the form approved in writing by APRA; and
   (b) contain the information that the form requires; and
   (c) include a signed declaration that the ADI is satisfied the person is suitable be an accountable person; and
(d) include the accountability statement for the person under section 37F.

(3) APRA may, by written notice given to the ADI, request the ADI to give to APRA further information in relation to the application.

(4) APRA must, within the period provided under subsection (5), register a person as an accountable person if:
   (a) the application meets the requirements of subsection (2); and
   (b) the ADI gives to APRA any further information requested under subsection (3) in relation to the application;
   unless the ADI withdraws the application before the day of registration.

(5) The period for registration under subsection (4) is the period of 14 days after:
   (a) the day the application is made; or
   (b) if APRA requests the ADI to give further information under subsection (3) in relation to the application—the day the ADI gives the further information to APRA.

Subdivision C—Disqualification of accountable persons

37J APRA may disqualify an accountable person

Disqualification by APRA

(1) APRA may disqualify a person from being or acting as an accountable person, for a period that APRA considers appropriate, if APRA is satisfied:
   (a) the person has not complied with his or her accountability obligations under section 37CA; and
   (b) the disqualification is justified.

(2) For the purposes of subsection (1), APRA may disqualify a person from being or acting as an accountable person of one or more of the following:
   (a) a particular ADI;
   (b) a particular subsidiary of an ADI;
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(c) a class of ADIs;
(d) a class of subsidiaries of ADIs;
(e) any ADI;
(f) any subsidiary of an ADI.

(3) Without limiting the matters to which APRA may have regard in deciding whether disqualification is justified as mentioned in paragraph (1)(b), APRA may have regard to any matters determined under subsection (4).

(4) The Minister may, by legislative instrument, determine matters to which APRA may have regard for the purposes of subsection (3).

Written notice

(5) APRA must give written notice of a disqualification to the person and the ADI.

(6) A disqualification takes effect on the day specified in the notice, which must be not earlier than 7 days after it is signed.

(7) Before disqualifying a person, APRA must give written notice to:
   (a) the person; and
   (b) the ADI;
   giving each of them an opportunity to make submissions on the matter.

(8) If a submission is made to APRA in response to the notice, APRA must have regard to the submission and may discuss any matter contained in the submission with such persons as it considers appropriate for the purpose of assessing the truth of the matter.

(9) A notice given under subsection (7) to an accountable person and an ADI must state that any submissions made in response to the notice may be discussed by APRA with any other persons as mentioned in subsection (8).
37JA APRA may vary or revoke a disqualification

(1) APRA may vary or revoke a disqualification made under section 37J on its own initiative or on application by a person disqualified under that section.

(2) A variation or revocation of a disqualification takes effect on the day on which it is made.

(3) APRA must give the person written notice of:
   (a) a variation or revocation of a disqualification; or
   (b) if the person applied for a disqualification to be varied or revoked—a refusal to vary or revoke the disqualification.

37JB Allowing a person disqualified by APRA to act as an accountable person

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

Fault-based offence

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

Penalty: 250 penalty units.

Strict liability offence

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

Penalty: 60 penalty units.
Division 7—Miscellaneous

37K  General administration of this Part

APRA has the general administration of this Part.

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

Exemption relating to particular subsidiaries

(1) The Minister may, by written notice given to an ADI, exempt the ADI from one or more of the following in relation to a particular subsidiary of the ADI:
   (a) compliance with paragraph 37C(e) (subsidiary complying with the accountability obligations);
   (b) compliance with paragraph 37D(d) (subsidiary complying with the key personnel obligations);
   (c) compliance with paragraph 37E(d) (subsidiary complying with the deferred remuneration obligations);
   (d) compliance with paragraph 37F(d) (subsidiary complying with the notification obligations).

Class exemptions

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

37KB  Indemnifying ADIs and accountable persons

(1) A related body corporate of an ADI must not (whether by agreement or by making a payment and whether directly or through an interposed entity):
   (a) indemnify the ADI against the consequences of breaching an obligation under this Part; or
(b) pay, or agree to pay, a premium for a contract insuring the
ADI against the consequences of breaching an obligation
under this Part.

(2) An ADI, or a related body corporate of an ADI, must not (whether
by agreement or by making a payment and whether directly or
through an interposed entity):
(a) indemnify a person who is or was an accountable person of
the ADI against the consequences of breaching an obligation
under this Part; or
(b) pay, or agree to pay, a premium for a contract insuring such a
person against the consequences of breaching an obligation
under this Part.

(3) This section does not apply to a liability for legal costs.
Part 2—Other amendments

Banking Act 1959

2 Subsection 5(1)

Insert:

- **accountable person** has the meaning given by sections 37BA and 37BB.
- **large ADI** means an ADI of a kind determined under paragraph 37G(3)(a).
- **medium ADI** means an ADI of a kind determined under paragraph 37G(3)(b).
- **non-ADI holding company**, of another body corporate, means a body corporate (other than an ADI) of which the other body corporate is a subsidiary.
- **remuneration**, of an accountable person, includes the meaning given by subsection 37E(3).
- **small ADI** means an ADI of a kind determined under paragraph 37G(3)(c).
- **variable remuneration** has the meaning given by section 37EA.
Part 3—Application of amendments

3 Deferral of variable remuneration

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

(2) Despite subitem (1), if:
   (a) an accountable person’s variable remuneration is payable under a contract entered into before the day this Act received the Royal Assent; and
   (b) the contract is not, between that day and 31 December 2019, amended in a way that affects or relates to that variable remuneration;

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

(3) Despite subitem (1), if:
   (a) an accountable person’s variable remuneration is payable under a contract entered into before the commencement of Part IIAA of the Banking Act 1959 as inserted by this Act; and
   (b) apart from this subitem, the application of Division 4 of that Part in relation to the variable remuneration would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph);

that Division does not apply in relation to the variable remuneration to the extent that it would result in such an acquisition.
Schedule 2—Examination powers

Banking Act 1959

1 Subsection 5(1)
   Insert:

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

2 Part VII (heading)
   Repeal the heading, substitute:

   Part VII—Financial records

3 After section 60
   Insert:

   Part VIII—Powers of APRA

Division 1—Investigations

4 After section 61
   Insert:

   Division 2—Examinations

61A Notice requiring appearance for examination
   If:
   (a) APRA has appointed a person (the investigator) under
       subsection 13(4), 13A(1) or 61(1); and
   (b) the investigator reasonably believes or suspects that a person
       (the examinee) can give information relevant to the
       investigation;
the investigator may, by written notice given to the examinee, require the examinee:
(c) to give the investigator all reasonable assistance in connection with the investigation; and
(d) to appear before the investigator for examination.

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

61B Requirements made of examinee

(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose:
(a) require the examinee to either take an oath or make an affirmation; and
(b) administer an oath or affirmation to the examinee.

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

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

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

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

61C Who may be present at examinations

(1) The examination must take place in private.

(2) The following people may be present at the examination:
(a) the investigator;
(b) the examinee;
(c) the examinee’s lawyer;
(d) an APRA staff member approved by APRA to be present;
(e) a person directed by the investigator to be present.
Schedule 2 Examination powers

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

Penalty: 30 penalty units.

(4) The examinee’s lawyer may, at such times during the examination
as the investigator determines, address the investigator and
examine the examinee about matters about which the investigator
has examined the examinee.

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

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

61D Record of examination

Written record of statements

(1) The investigator must cause a written record to be made of
statements made at the examination.

(2) The investigator may require the examinee to read the written
record, or to have it read to him or her, and may require him or her
to sign it.

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

Copies of record

(3) The investigator must give a copy of a written record to the
examinee, without charge, but subject to such conditions (if any) as
the investigator imposes.

(4) APRA may give a copy of a written record, or such a copy together
with a copy of any related book, account or document, to a
person’s lawyer if APRA is satisfied that the person is carrying on,
or contemplating in good faith, proceedings in relation to a matter to which the examination is related.

**Use of copies**

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

Penalty: Imprisonment for 6 months.

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

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

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

Penalty: Imprisonment for 6 months.

**Record to accompany report**

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

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

**61E Offences**

A person commits an offence if he or she:

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

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

Penalty: 30 penalty units.
Division 3—Information

5 Before section 62A

Insert:

Part IX—Miscellaneous