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Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600



By email: economics.sen@aph.gov.au

Dear Mr Fitt

Inquiry into the Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017

Thank you for the opportunity to provide a submission to the Committee's inquiry.

Macquarie notes the *Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017* (the Bill) was introduced as part of a response to the House of Representatives Standing Committee on Economics' *Review of the Four Major Banks*.

Macquarie has had a longstanding approach of holding its executives accountable for their actions and its remuneration approach appropriately balances risk and reward.

This longstanding approach includes the following mechanisms, which align with the policy aims and requirements of the Bill:

- long deferral periods for variable remuneration paid to senior executives, up to seven years – some of the longest deferral periods in the financial services industry;
- deferral of a high proportion of variable remuneration paid to senior executives of up to 80 per cent – some of the highest retention proportions in the industry; and
- the ability to terminate employment, or reduce or eliminate unvested variable remuneration in full where a senior executive has at any time: acted dishonestly, contributed to a breach of a significant legal or significant regulatory requirement, contributed to significant reputational harm, or significant unexpected financial loss, impairment charge, cost or provision; or contributed to Macquarie Group Limited or Macquarie Bank Limited making a material financial misstatement.

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These mechanisms are supported by Macquarie's longstanding Code of Conduct and our organisational principles of opportunity, accountability and integrity. Financial performance, risk management and compliance, business leadership, people leadership, and professional conduct consistent with our Code of Conduct and organisational principles are amongst the factors used to determine individual performance-based remuneration.

The Explanatory Memorandum (EM) states the key objective of the Bill is to "improve the operating culture of ADIs and increase transparency and accountability across the banking sector" by:

- the deferral of a portion of variable remuneration for a minimum of four years, creating an appropriate alignment between behaviour and incentives;
- the proposed listed functions/responsibilities and the general principle defining who is an "accountable person" appropriately captures those senior executives with responsibility for management or control of significant or substantial parts or aspects of the ADI group, without being so wide as to capture an overly large population that would allow for responsibility to be deflected and accountability to be avoided;
- using total resident assets as a measure of whether an ADI is a small, medium or large ADI for the purposes of the Bill, as proposed at paragraph 1.82 of the EM, is consistent with APRA's measurement of size as a factor in determining whether a bank is a domestic systemically important bank (D-SIB) and is reported to, and disclosed by, APRA on a monthly basis; and
- empowering APRA to disqualify an individual from holding an accountable person function are appropriately balanced by the ability of an affected person to seek merits review of that decision.

We also note the Bill enables APRA to draw on relevant existing prudential standards and powers. In Macquarie's view, the use of these well-understood mechanisms contributes to ADIs being better able to meet their obligations from the outset.

Deferred remuneration provisions

As set out above, Macquarie's current practice is consistent with the principles underpinning the remuneration requirements in the Bill - deferral of a substantial portion of senior executive remuneration for a meaningful period; the ability to reduce that deferred portion in proportion to any senior executive's failure to meet their obligations; and retention of a portion of deferred remuneration post-termination to maintain alignment and enable claw back of remuneration if serious issues arise in relation to actions taken just prior to termination.

However, there are some practical issues not contemplated by the Bill that the Committee may wish to consider which we outline below.

- We agree with APRA's ability to approve a shorter vesting period for the deferred portion of remuneration because of the accountable person's death, serious incapacity, serious disability or serious illness. In addition we suggest that the circumstances in which APRA could approve a shorter vesting period should be expanded to include redundancy and retirement (noting our comments on the tax treatment of departing employees below). In addition, we believe in the interests of efficiency, the Bill should allow APRA to approve a particular class of persons or set of circumstances in which shorter vesting periods would

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be permitted, rather than requiring APRA to approve separate approvals for each individual case brought to it by ADIs.

- Where deferred remuneration is delivered in equity, cessation of employment triggers a tax event for employees under Division 83A of the *Income Tax Assessment Act 1936*. This is the case even where vesting is deferred beyond termination and the terminated employee does not have control of the equity.
- We understand that in such circumstances, the Bill allows APRA to approve a shorter period of deferral only on a case-by-case basis. However, APRA's existing ADI prudential practice guide on remuneration (PPG 511) provides an institution with discretion to permit partial vesting of deferred remuneration to cover taxation obligations of employees. We believe that where there is an existing guidance document, APRA should have the ability to approve shorter vesting periods for a particular set of circumstances or class of individuals. This would not adversely impact the stated policy outcomes of the Bill.
- We request that the Committee review the current definition of "remuneration" in section 37E(3) of the Bill as this applies to persons who perform both an ADI "accountable person" role and a non-ADI role. We understand that section 37E(3) is intended to exclude "remuneration" paid to an accountable person where this relates to a non-ADI role (paragraph 1.126 of the EM states "the amount of deferred variable remuneration is apportioned according to the extent it relates to an accountable person role"). We are concerned that the current language in section 37E(3) is too narrow to give effect to this intention. In particular, section 37E(3) suggests that remuneration must "relate only" to a "position in" a "non-ADI holding company" in order to be excluded as non-ADI remuneration. We believe this raises the following issues:
 - where the ADI is held by a non-ADI holding company such as Macquarie Group Limited (a non-operating holding company, or 'NOHC', under the *Banking Act 1959*), the NOHC's activities may be very limited in nature and employment of key management and other 'corporate centre' roles may be undertaken through one or more service subsidiaries of the NOHC. In this case we believe the current language in section 37E(3) may have the unintended consequence of making 100 per cent of the person's non-ADI and ADI remuneration subject to the Bill merely because the individual is employed by a service subsidiary, rather than the NOHC. We believe revising the current language in section 37E(3) to clarify that the accountable person's non-ADI remuneration is excluded in these circumstances would not be inconsistent with the intention of the EM;
 - the requirement that remuneration must "relate only" to a "position in" the non-ADI holding company is unclear. For example, in the case of a person with a single employment contract covering both non-ADI and ADI roles and duties to the broader NOHC group, it is unclear on what basis remuneration could be said to "relate only" to the NOHC position. We believe it would be impractical and inconsistent with normal market practice to require separate employment contracts for such individuals. Paragraph 1.126 of the EM provides clearer language with regard to apportioning variable remuneration according "to the extent" it relates to the accountable person role or amount of time spent working in a non-ADI role, and we would request similar wording be adopted in the legislation.

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Implementation considerations

We understand there is a desire for the Bill to be in effect as soon as possible. However, we believe eight months is too short a timeframe given the practical steps that would need to be taken to implement and the possible associated complexities.

The Bill recognises complexities may arise by enabling APRA to determine transitional requirements for up to 18 months. However this is in relation to accountability statements and maps only. There will be a substantial amount of work required and in some cases, the order in which this work will need to be done will be sequential rather than concurrent.

Once responsibilities have been allocated and accountabilities mapped, institutions may need to update processes, compliance frameworks, update or implement new systems, and update employment contracts for accountable persons. Accountable persons may need to review contracts with new terms and seek advice.

While it is difficult at this early stage to have a complete picture of what is required to properly implement, we can take some guidance from the implementation of the United Kingdom's Senior Managers' Regime and comparable regimes in other jurisdictions. In the UK, the allowed timeframe for implementation was approximately three years after the core legislation was introduced into parliament and almost two years after the release of detailed draft rules.

Formally extending the implementation date, even if only by six to twelve months, would produce better implementation outcomes across the banking industry. This would provide institutions with sufficient time to implement the regime and importantly, better understand and deal with the flow-on changes that may be necessitated by all aspects of the Bill.

We hope this letter provides the Committee with information that will assist it in undertaking this inquiry.

Yours sincerely



Nicole Sorbara
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Macquarie Group Limited