



Australian Banking Association

17 December 2021

Senate Economics Committee
PO Box 6100
Parliament House
Canberra ACT 2600
economics.sen@aph.gov.au

Dear Committee Secretary,

The Australian Banking Association (**ABA**) supports passage of the Financial Accountability Regime (**FAR**) Bill 2021 and Financial Services Compensation Scheme of Last Resort (**CSLR**) Levy (Collection) Bill 2021.

Our position

The ABA is committed to the implementation of the recommendations of the *Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry (Royal Commission)*. Since 2019, the banking industry has enacted a wide range of changes to improve operating culture, increase accountability and to ensure the problems identified by the Royal Commission have been addressed.

A number of key changes began in October 2021. Banks are now required by law to design their products with their customers' needs in mind. They are banned from pressure selling for extra products and services and they are required to give customers four days before selling add-on insurance products. In addition, banks must also report more breaches to ASIC and resolve customer complaints in a faster and more transparent way.

It is undeniable that bank culture has changed for the better since 2019. The ABA encourages the committee to consider the cumulative impact of the Royal Commission reforms on the Australian economy, and not in isolation. The Royal Commission has already led to a significant number of new laws and regulations to protect customers, including more than doubling the size of the *National Consumer Credit Protection Act*. These new rules and regulations touch every part of an industry that employs more than 188,000 Australians and serves more than 19.3 million customers.

Financial Accountability Regime

To ensure the full and effective implementation of the FAR, the ABA supports a regime that is:

- consistent with the recommendations of the Royal Commission and is modelled on the Banking Executive Accountability Regime (BEAR).
- enables clear identification of accountability at senior executive level.
- operates clearly together with other licensing, conduct and accountability requirements.
- is enforced and administered by ASIC and APRA in a coordinated way.



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Compensation Scheme of Last Resort

The ABA is supportive of establishing a forward-looking CSLR that is industry-funded, operated by the Australian Financial Complaints Authority (AFCA), is initially limited to personal advice failures, is scalable, and has design features consistent with the recommendations of the Ramsay review.

Further commentary on the draft Bills are provided in Appendices A and B to this letter. If you would like to discuss any aspects of this submission, please contact me at fiona.landis@ausbanking.org.au.

Yours sincerely,



Fiona Landis
Executive Director, Policy

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.



Appendix A: Financial Accountability Regime

The Australian Banking Association (ABA) has supported the introduction of the Banking Executive Accountability Regime (BEAR) and supports the consolidation and extension of that regime into the Financial Accountability Regime (FAR) by means of the *Financial Accountability Regime Bill 2021*.

The Bill covers matters of considerable significance for the financial sector and its customers. The ABA welcomes the key provisions of the bill to strengthen accountability and transparency in the financial system.

Civil penalties

The ABA has consistently taken the view that the FAR should build on the key strengths of the existing BEAR regime rather than replace it. In line with this, we welcome the decision not to proceed with a civil penalty for individual accountable persons under the regime, given the clear and substantial consequences for individuals provided for in the existing BEAR regime.

The ABA considers the potential for disqualification as an Accountable Person impacting future employment in the banking industry, together with the potential for those individuals to lose significant variable remuneration under the current BEAR creates significant and effective incentives to improve conduct and ensure adequate sanctions for not meeting requisite standards. There is no evidence to suggest that the current BEAR enforcement options are ineffective. As acknowledged in APRA's Enforcement Strategy Review, disqualification is a very significant sanction and further penalties are unnecessary.

Coordination between ASIC and APRA

While not directly related to the Bill, the ABA notes that the Bill provides that ASIC and APRA share regulatory and administrative powers for the FAR. While supportive of this, the ABA recommends a clear and comprehensive administrative arrangement is entered into between the regulators, as ensuring effective coordination between regulators will contribute to the efficiency of the FAR and provide greater certainty regarding its operations. This coordination should include alignment of expectations across conduct and prudential standards set by ASIC and APRA respectively.

Where enforcement actions are taken, only one regulator should pursue those actions.

Start date

The ABA notes the bill is due to commence for ADIs on either:

- (a) 1 July 2022; or
- (b) 6 months after the commencement of the Act.

In our view, given the complexity of the Bill and the challenges in implementing new measures that were not part of the BEAR, nine months after the commencement the Bill would be a more realistic timeframe to provide organisations subject to FAR with an opportunity to appropriately prepare for and implement relevant systems and processes.



Appendix B: Compensation Scheme of Last Resort

The CSLR Bill is intended to enact Recommendation 7.1 of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission)*, which found that a compensation scheme of last resort should be established in line with the prior findings of the *Supplementary Final Report of the Review of the financial system external dispute resolution and complaints framework (Ramsay Review)*.

The ABA supports the establishment of a CSLR for customers that is industry-funded and operated by the Australian Financial Complaints Authority (AFCA). In the ABA submission to Treasury, we detailed concerns about some aspects of the scheme. Primarily the ABA believes the scheme does not meet the mandate of the Ramsay review that a CSLR should only be established to the extent that it was “limited and carefully targeted at the areas of the financial sector with the greatest evidence of need”.

Key design features

To ensure the success and viability of the CSLR, the ABA recommends that scheme should be amended to have the following design features:

1. The CSLR should initially be restricted to financial advice failures where a financial adviser has provided personal and/or general advice on ‘relevant financial products’ to a consumer or small business.
2. The CSLR should be designed for the future and accordingly be scalable, which means it can be expanded over time to cover other types of financial and credit services should evidence of significant problems of uncompensated losses emerge.
3. The Government should fund the unpaid determinations that have accumulated prior to the commencement of the scheme.
4. The special levy cost-recovery mechanism must be subject to full parliamentary approval (i.e., not enacted through a legislative instrument), given the potential magnitude and effect of a black swan event on consumers and industry.

In addition, the following design features that are incorporated into the Bill should be retained:

- The scheme cap should be retained to allow funding organisations to estimate emerging liabilities, whilst balancing the need to provide fair compensation to claimants from the scheme contributors.
- The Commonwealth should provide funding to the CSLR operator to fund the first year of the scheme’s operation.
- The CSLR must prepare a report for each levy period. The report must contain the information prescribed by regulations and must be published on the operator’s website.
- The CSLR should not impose a minimum levy threshold. Instead, there should be an annual fee that all leviable firms must pay, regardless of size.
- To prevent further consumer losses and harm, ASIC should be required to suspend or cancel a financial firm’s licence where the CSLR has compensated the firm’s customer in relation to an unpaid AFCA determination, or where the firm has failed to pay the CSLR levy or any other outstanding AFCA fee.

Need for concurrent reforms

Ramsay noted that it was important to strengthen other regulatory requirements in conjunction with the establishment of the scheme, so that “there may be fewer claims made on a CSLR.”¹ The ABA is supportive of the Government’s recent announcement to consult on proposals to enhance the effectiveness of professional indemnity insurance in responding to compensation claims.² We are of the view that these reforms are vital to ensure that the CSLR truly operates as a scheme of last resort.

¹ The Australian Government, *Review of the financial system external dispute resolution and complaints framework – Supplementary Final Report*, September 2017, p. 117.

² Government meets legislative commitments in response to Hayne Royal Commission, Joint media release with the Hon Jane Hume and the Hon Josh Frydenberg, 28 October 2021.