Australian Shareholders' Association Limited
Suite 1A Level 2
20 Loftus Street Sydney NSW 2000
GPO Box 359 Sydney NSW 2001
t 02 9252 4244
f 02 9252 4966
e share@asa.asn.au
ABN 40 000 625 669

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

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

INQUIRY INTO THE TREASURY LAWS AMENDMENT (BANKING EXECUTIVE ACCOUNTABILITY AND RELATED MEASURES) BILL 2017 [PROVISIONS]

Dear Sir/Madam

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors and self-managed superannuation fund (SMSF) trustees. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We refer to the Inquiry into the Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017 [Provisions] (**the Bill**). We have previously lodged submissions on the Exposure Draft of the Bill and the earlier consultation paper on the proposed laws.

We wish to stress that while we remain supportive of the move to strengthen accountability in the Australian banking system, we also remain concerned that the proposed Bill undermines the function of company boards. We have noted in previous submissions that we support the obligation on an authorised deposit-taking institution (ADI) to give APRA accountability statements and an accountability map, which strengthens accountability. But we have also stated in previous submissions that we strongly oppose the government or government agencies prescribing, in detail, remuneration structures for the private sector.

The ASA is of the view that increased accountability of ADIs and the framework for that accountability should not come at cost to the current corporate law framework whereby shareholders delegate the management of companies to boards, including the framework for the remuneration of executive management. In turn, boards are held accountable to shareholders for that remuneration framework and other aspects of company management.

We oppose, therefore, a central premise of the Bill which legislates the determination of aspects of remuneration, when the ASA is of the view that such determination is the role of the board of directors, having regard to the views of shareholders and other stakeholders. We do not see determination of executive remuneration as the role of government or the Australian Prudential Regulation Authority (APRA). We have expressed previously and continue to express our concern that the introduction of the Bill will distort remuneration structures in the entire financial services sector and have unforeseen consequences in overlapping sectors, rather than bringing clarity and discipline as intended.

Notwithstanding this, we remain opposed to the introduction of deferral of variable remuneration as applying to all ADIs. It is not uncommon for a portion of variable remuneration for senior executives at listed companies to be deferred for a period, but this is not necessarily the case at smaller Australian and foreign owned ADIs. Accordingly, the introduction of this reform is likely to require significant changes to the way remuneration is structured at these entities. We see this as an intrusion on the role of boards. The threshold of $50,000 may accommodate this concern, but the application of the deferral of variable remuneration for smaller Australian and foreign owned ADIs is likely to lead to a shift from variable to base remuneration, and possibly higher base remuneration. This is a matter of concern for shareholders.

In our submission on the Bill, we noted that we support the recognition in the Bill that the introduction of deferral of a proportion of the remuneration of an accountable person for a period of four years depends on the size of the ADI. We also noted in that submission our support for the introduction of a tiered structure or threshold, where if the minimum amount of remuneration to be deferred, as calculated in the Explanatory Memorandum, is less than $50,000 a year, it is excluded from the deferral rules. However, our support of the recognition in the Bill that the legislation cannot take a “one-size-fits-all” approach cannot be read as our support of the Bill introducing a role for the government and government agencies in determining remuneration in the private sector.

The ASA also has concerns with the application in the Bill of fines to the company rather than the non-complying accountable persons. The Bill proposes that an ADI can be fined up to 1m penalty units for failure to comply with the legislation. The ASA notes that this has the effect of penalising shareholders rather than the non-complying accountable persons, when shareholders bear no responsibility for the lack of compliance.

Implementation and transitional periods

While we acknowledge the government’s desire to implement the legislation as soon as possible, we are of the view that ADIs will need time to undertake changes to policies, contracts and systems. In our submissions on the consultation paper and the Exposure Draft, we recommended a minimum of 12 months be provided for ADIs to implement the legislation after its passage through parliament. However, we note that the Bill is set is set to apply as of 1 July 2018. Given that the Bill is currently under inquiry and is not likely to pass — if approved by the Senate Committee — until the final sitting of parliament in December 2017, this provides insufficient time for the implementation and

transition period. It is not acceptable that governments continue to reduce implementation timeframes for complex legislation. The additional costs borne by companies in implementing complex legislation in reduced timeframes is a cost borne by shareholders without their consent.

Finally, we note that stakeholder consultation continues to suffer from extremely tight timeframes. Only one week was offered to stakeholders to provide feedback on the Exposure Draft of the Bill and only two weeks has been offered to provide feedback to the Senate Committee inquiry. This conflicts with the government's own guidelines on best practice regulation and provides stakeholders with insufficient time to provide a comprehensive response. Our view is that it is in the interests of all stakeholders for a government to provide an adequate amount of time for productive consultation to occur and this continues to not apply in relation to the proposed reforms.

If you have any questions about this submission, please do not hesitate to contact me on [redacted].

Yours sincerely

[redacted]

Judith Fox
Chief Executive Officer