

Royal Commission Series – Accountability

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Accountability is viewed by Commissioner Hayne as being at the heart of the framework needed to drive change which is evident from his Final Report and most notably where he states: “*Accountability is centrally important to any consideration of culture, governance and remuneration.*”¹ The Banking Executive Accountability Regime (**BEAR**) has therefore been extended to capture all ‘APRA-Regulated’ entities and prescribed responsibilities are to be extended to include product design, delivery and maintenance of all products offered by customers.

Regulation of the BEAR is to be shared by both APRA and ASIC which should have the overall effect of increasing the teeth of the regime with more targeted focus by each of the regulators. The recommendation to bring ASIC into the fold is described as being both a practical measure to address overlap given similarities between the obligations under the BEAR and general obligations under the Corporations Act and to recognise that the BEAR has both a conduct and prudential outlook which should be regulated according to the respective regulators’ areas of remit.

Expansion of the BEAR to other APRA-regulated entities is viewed as being an essential and logical step to furthering the reach of accountability. In support of his recommendation to extent the regime, the Commissioner comments: “*Given that systems of even greater reach have been implemented in other jurisdictions, there is, in my view, every reason to go down this path, and no satisfactory reason to draw back.*”²

In the same way that the BEAR was implemented in the banking industry for ADIs, the expansion of the BEAR to other APRA regulated entities will first start with the largest RSE licensees and insurers with medium to small regulated entities to follow under a staggered timeline. ASIC and APRA have indicated in their responses to this recommendation they will develop and publish its own accountability statements before the end of 2019.³

Summary of Recommendations for **Accountability**

<i>Category</i>	<i>Recommendations</i>	<i>Comments/Impact</i>
Further BEAR Prescribed Responsibilities	<p>Recommendation 1.17 BEAR Product Responsibility</p> <p>Responsibilities under the BEAR should be extended to include a responsibility for all steps in the design, delivery and maintenance of all products offered to customers by ADIs</p>	<ul style="list-style-type: none"> Accountability Statements and Maps for ADIs will need to be reviewed and amended (where applicable) to allocate additional responsibilities relating to product design, delivery and maintenance of all products. Failing controls, processes and systems for design, distribution and administration of products could amount to a breach of accountable BEAR obligations. Products that are assessed as being poorly designed or delivering no value for

¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Volume 1, Page 407

² Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Volume 1, Page 407

³ ASIC update on implementation of Royal Commission recommendations, 19 February 2019; APRA update on implementation of Royal Commission recommendations, 11 February 2019.

		clients could amount to a breach of BEAR obligations.
Extension of the BEAR	<p>Recommendation 3.9 – Accountability regime</p> <p>The BEAR should be extended to all RSE licensees.</p> <p>Recommendation 4.12 – Accountability regime</p> <p>The BEAR should be extended to all APRA-regulated insurers.</p> <p>Recommendation 6.8 – Accountability regime</p> <p>BEAR to be extended to include all APRA-regulated financial services institutions.</p>	<ul style="list-style-type: none"> • RSE licensees, insurers and all other APRA-regulated will be required to implement the BEAR including Accountability Maps, Statements and changes to remuneration. • Remuneration structures will require review and reform to align with BEAR requirements. • In addition to development of Maps and Statements, the BEAR has a consequential reach to Human Resource policies and employment contracts and Governance, Risk and Compliance frameworks in order to be implemented effectively.
Co-regulation by ASIC and APRA	<p>Recommendation 6.6 – Joint administration of the BEAR</p> <p>ASIC and APRA to jointly administer the BEAR. ASIC to oversee those aspects of the BEAR that concern consumer protection.</p> <p>Recommendation 6.7 – Statutory amendments</p> <p>Obligations to be extended such that an Accountable Person is obliged to deal with APRA and ASIC in an open, constructive and co-operative way.</p>	<ul style="list-style-type: none"> • Breaches could trigger an obligation to report to ASIC/APRA or both Regulators. • This should result in increased focus on regulation of the BEAR by both regulators. However, funding and resourcing for ASIC and APRA may need to be increased for the change to be effective.

What can you do now to prepare?

Commissioner Hayne has recommended that a reasonable timeframe should be put in place to extend the BEAR to other APRA-regulated entities. While the timeframe for the banking sector is recommended to be reasonable and staggered, it is unlikely to be long-winded.

The level of effort involved in implementing the BEAR including mapping accountabilities, the development of accountability statements and ensuring that appropriate governance, risk and compliance frameworks are in place to support the regime, should not be underestimated.

To prepare for the BEAR, APRA-regulated entities are soon to be brought under the regime can begin to review their organisational structure and consider whether clear accountabilities are already in place or whether substantial work will be required to clarify lines of accountability including for instance structural changes that may take time to put in place. A preliminary review of the organisational structure and how this would operate under the BEAR will provide these entities with an understanding of the time that may be needed to implement the regime, once timeframes are provided under the proposed amendments and enable forward planning for the organisation to ensure sufficient budget and resource is allocated to implement the BEAR.

Existing incident management and breach reporting frameworks can also be reviewed now to ensure there is appropriate identification and classification of breaches to facilitate reporting of breaches to both ASIC and/or

APRA such as ensuring there is an existing or capability to distinguish between prudential and conduct-related breaches.

Closing Comments

While the Recommendations in relation to the BEAR do result in increased obligations for entities there are positive benefits to be gained here if the regime is implemented effectively. In our experience, the process of mapping accountabilities and developing Accountability Statements for Accountable Persons can lead to increased certainty, clarity and awareness of individual accountabilities within an organisation and a sharper focus on the roles and responsibilities of boards and executive management. When properly implemented, it has the potential to lead to improved governance and overall performance as well.

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We view the Royal Commission recommendations as an opportunity for industries to strengthen their compliance frameworks and apply independent practices to their respective businesses.

Call Ash St. today on + 61 2 8651 8700 to help you interpret the Recommendations and formulate effective solutions for your organisation.

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