**PROMULGATE PTY LTD**

**ACN 148 013 736**

**promulgateptyltd@gmail.com**

Manager

Banking, Insurance and Capital Markets Unit

Financial System Division

The Treasury

by email to [BEAR@treasury.gov.au](mailto:BEAR@treasury.gov.au)

Dear Manager

**Banking Executive Accountability Regime – Draft Explanatory Memorandum for Bill**

This submission suggests corrections to the draft Explanatory Memorandum. In particular, the current draft paragraphs 1.37, 1.74, 1.79, 1.97, 1.107, 1.142 and 1.53 could be regarded as not fully aligned with the content of the draft Bill.

Paragraph 1.30, change Bear to BEAR.

Paragraph 1.32, change “it” to “the Minister”, change 37A to 37A(1).

Paragraph 1.34, change “it” to “the Minister” (twice).

Paragraph 1.37, delete the phrase “which is informed by its unique position as the prudential regulator” (because the function described in this paragraph is now being given to the Minister).

Delete paragraph 1.38; it substantially repeats 1.36.

Paragraph 1.47, change 37D(d) to 37D(1)(d), change 37E(d) to 37E(1)(d), change 37F(d) to 37F(1)(d).

Paragraph 1.73: Change “The Government expects that APRA would” to “The Bill provides that APRA can”.

Paragraph 1.74, after “by making a legislative instrument” add “with general effect or by giving notice to a particular ADI”, change “subsection 37EC(4)” to “subsections 37EC(4) and (5)”.

Paragraph 1.79 says “a person is an accountable person if the person is in a senior executive position with … the management or control [of] a substantial part of the ADI group’s operations. The group would include a non-ADI parent …”. This is not an accurate reflection of s 37BA(1)(b)(ii), which refers to “management or control of a significant or substantial part or aspect of the ADI’s or subsidiary’s operations”. Contrary to paragraph 1.79, control of a significant or substantial part or aspect of a subsidiary’s operations would suffice, even if that is far short of being “a substantial part of the ADI group’s operations”. Conversely, control of a substantial part of a non-ADI parent’s operations, but not of the ADI’s operations, would not suffice.

Paragraph 1.80 begins with the sentence: “It is not the Government’s intention that simply being in a management role *in a subsidiary* means the person is an accountable person” (emphasis added). There is scope to clarify this. It is apparent from the Bill that “simply being in a management role”, whether in an ADI or a subsidiary, does not mean a person is an accountable person.

Paragraph 1.82, Table 1.2, third cell, add “Board” at the end.

Paragraph 1.97, final dot point, after the phrase “take reasonable steps to”, delete “comply with the law and”.

Paragraph 1.107: delete the phrase “both ‘remuneration’ and”; this is because proposed s 37EA(4) is only a power to change the meaning of “variable remuneration”.

Paragraph 1.141, change “and is subject to 30 penalty units” to “and is subject to a maximum penalty of 30 penalty units”.

Paragraph 1.142, change “stop an examination or line of enquiry” to “require the person’s lawyer to stop addressing the investigator or to stop examining their client”.

Paragraph 1.153, third dot point, delete (as repetition) “APRA exercises

this power by making a legislative instrument.”.

Paragraph 1.153, fourth dot point, delete “both ‘remuneration’ and” (for the reason set out above in relation to paragraph 1.107).

Yours sincerely

Gregory Parkin

Director

Promulgate Pty Ltd

ACN 148 013 736