Australian Banking Association

14 February 2020

Ms Ly Reeve
Manager, Redress and Accountability Unit
Financial Services Reform Taskforce
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: FAR@treasury.gov.au

Dear Ms Reeve

# Financial Accountability Regime

At the release of the Final Report of the Royal Commission last year the banking industry committed to learning the lessons, fixing the problems and making things right.

One year on from the Royal Commission the banking industry has tougher rules imposed by the Government and regulators, a back to basics approach to banking which is squarely centred on the customer and a renewed focus on fixing culture.

The banking industry strongly supports the Government acting on the recommendations of the Royal Commission and is committed to working together to see recommendations 3.9, 4.12, 6.6, 6.7 and 6.8 of the Royal Commission are fully and effectively implemented.

## The ABA's position

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

- Consistent with the recommendations of the Royal Commission, is modelled on the BEAR and does not substantially diverge from the existing regime.
- Enables clear identification of accountability at senior executive level.
- Operates clearly together with other licensing, conduct and accountability requirements.
- Is certain, with key elements set out in legislation rather than left to regulator discretion.
- Is enforced and administered by ASIC and APRA in a coordinated way.

This submission makes 16 recommendations to better align the FAR with these principles.

## Key points

### Divergence from BEAR - Civil penalties for individuals

The ABA believes that the potential for disqualification, together with the restrictions on remuneration under the current BEAR create effective incentives to improve conduct and ensure adequate sanctions for not meeting requisite standards. The BEAR was designed to sanction culpable accountable persons through disqualification and remuneration impacts. As acknowledged in APRA's Enforcement Strategy Review, disqualification is a very significant sanction.

The ABA does not support the immediate introduction of civil penalty provisions for individuals. This is consistent with our view that the FAR should be modelled on BEAR and that a post-implementation review should be undertaken before substantial changes are made to the regime.

## Coordination between ASIC and APRA

Clear and effective coordination between ASIC and APRA 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.

Such coordination is also consistent with recommendations 6.9 and 6.10 that promote greater cooperation between ASIC and APRA.

The ABA understands that stakeholders will be consulted on the exposure draft legislation in the coming months. The ABA would welcome the opportunity to discuss the recommendations and possible implementation plans with the Treasury. Please contact Karen O'Brien on 02 8298 0421 or karen.obrien@ausbanking.org.au

Signed by,

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## 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.

Australian Banking Association

# ABA response to the consultation paper on the implementation of the Financial Accountability Regime

## 1. Introduction

The Final Report of the Royal Commission made 76 recommendations designed at improving consumer outcomes, increasing accountability and transparency, and improving culture and governance within the financial services industry. Of these, recommendations 3.9, 4.12, 6.6, 6.7, and 6.8 relate to extending provisions modelled on the Banking Executive Accountability Regime (BEAR) to Australian Prudential Regulation Authority (APRA) regulated financial services institutions and that this new regime be jointly administered by APRA and the Australian Securities and investments Commission (ASIC).

The ABA welcomes reforms that strengthen accountability and transparency in the financial system and strongly supports these recommendations of the Royal Commission. Australia's banks support enhanced responsibility and accountability of APRA regulated entities and support the Financial Accountability Regime's (FAR) stated policy intent to establish clear standards of conduct by imposing a strengthened responsibility and accountability framework for directors and the most senior executives. By setting out accountability obligations and providing guidance on them, the FAR will enhance the obligations of APRA regulated entities, improve risk culture and governance, and will reinforce the standards of conduct expected of institutions by the community.

This submission outlines areas requiring greater clarity and makes recommendations on the design of the FAR, to ensure the recommendations of the Royal Commission are implemented and that the FAR meets its stated objectives.

## 2. Entity accountability

### 2.1 Group accountability

The ABA supports the FAR enabling clear identification of accountability at senior executive level.

The intention of the FAR is to strengthen the responsibility and accountability framework of APRA regulated entities. The FAR is intended to capture those senior executives with actual, or effective, management or control of an entity. The consultation paper is unclear as to how the FAR is intended to apply to diversified entities with multiple arms (i.e. banks, registrable superannuation entities (RSEs), and/or insurers) in their structure.

The ABA considers each arm/subsidiary of the diversified entity as a separate FAR entity. Such an approach could result in Accountable Persons (AP) being appointed at the individual entity level, and could create overlaps in accountability, particularly for ADIs who have already nominated APs with responsibility for these arms/subsidiaries under the BEAR at a Group level. Implementing the FAR in this layered way could have the unintended consequence of causing confusion as to who is accountable for what within each entity. It could also impose a significant compliance burden on ADIs through the need to change their governance structures, and undermine the purpose and effectiveness of the FAR.

Furthermore, accountability under the FAR should reflect actual governance practices and the group structure of diversified institutions. Ultimate responsibility for management and direction of the group will rest with its most senior executives. Given this, the FAR should not require mid-level managers of subsidiaries to be included as accountable persons.

**ABA recommendation 1**

***The ABA recommends that the FAR provide flexibility for institutions to appoint accountable persons on a Group-wide basis rather than on an individual entity basis, if this approach is more suitable to the size and nature of that institution. This will better align with the stated***

***objectives of the FAR to clarify accountability, and this flexible approach to implementation of the FAR recognises that each organisation has a unique organizational structure.***

## 2.2 Substantial subsidiary

The ABA notes the inclusion of the concept of substantial subsidiary in the consultation paper. We understand that this is intended to simplify the regime by introducing a materiality-like threshold. Given the ambiguous nature of the reference to 'substantial subsidiary', we ask that substantial subsidiary be clearly defined in the legislation.

The ABA also notes that the consultation paper remains silent on how the FAR will interact with other similar international regimes. Dual regulation under two varying regimes for diversified entities would could create uncertainty and undermines the effectiveness of the regime. The ABA suggests that this be clarified in the legislation or the explanatory memorandum.

**ABA recommendation 2**

***The ABA recommends clearly defining the substantial subsidiary requirement, and that guidance is given on how the FAR will interact with other regimes.***

# 3. Responsibilities under the FAR

## 3.1 Particular responsibilities

The consultation paper provides an indicative list (Attachment B) of responsibilities that both APRA and ASIC may prescribe under the FAR. The paper notes that guidance will be issued to emphasise the critical expected functions within each responsibility that relate to prudential and conduct obligations set out under the FAR.

Many of the new particular responsibilities represent a move away from centralised support roles and functions, to roles associated with front line activities (e.g. end -to-end product responsibility). Considering this, the identification of a single AP for many of the new particular responsibilities will be challenging given the complex organisational structure of large entities, particularly as many of these responsibilities apply to multiple products and divisions.

Examples of the ABA's concerns include:

- remediation is captured as a separate responsibility in 1(m) of Attachment B, but would also be included under 1(n), the responsibility for end-to-end management of a given product or product group.
- the responsibility of one AP for the end-to-end management of a given product or product group is impractical. The development, design, delivery and maintenance of the product covers tasks that are performed by a variety of teams within the entity and by shared group services. These concerns have been previously raised in the ABA's submission to APRA's consultation on product responsibility under BEAR.
- it could also be difficult to distinguish accountability between the product and service responsibility.
- responsibility for breach reporting and dispute resolution are not necessarily centralised and it will be difficult to have one nominated AP for either of those responsibilities.
- responsibility for incentives, being staff incentives and customer loyalty programs, are distinct and separate business functions. For example, staff incentives are internal whereas customer loyalty programs are external.

APRA considered how joint accountability could be implemented when it consulted on the addition of a particular responsibility under BEAR for end-to-end product management.

In our submission, the ABA considered that joint accountability should:

- apply so that individuals are held to account for governance of the product (or product group) cycle within their purview.
- not artificially attribute responsibility to individuals where they do not have control over a stage in the product cycle.
- not effectively duplicate responsibility so that holders of the new responsibility would share accountability with holders of existing responsibilities under BEAR; and
- not result in one accountable person, who had taken reasonable steps to discharge their duties under the Banking Act, being held responsible for the failures of another accountable person who had primary responsibility for the relevant stage in the product cycle.

Given this, the ABA asks that Treasury consider how multiple persons can be held accountable, but not jointly accountable, due to their functions. The boundaries of these responsibilities would be included in the APs accountability statement. This policy option would allow the challenges outlined above to be overcome more easily in larger organisations while providing certainty for APs and regulators.

In addition, the ABA considers that greater regulatory certainty could be provided to the industry if the responsibilities were listed in the legislation rather than left to the purview of regulators. As in the case of BEAR, the ABA recommends the responsibilities of accountable persons be listed in legislation.

**ABA recommendation 3**

***ABA recommends that the Exposure Draft legislation allow for multiple accountable persons to be nominated for a particular responsibility (but not jointly accountable) with the boundaries of their responsibility to be reflected in their accountability statement.***

***The particular responsibilities should be listed in legislation as is the case with BEAR.***

## 3.2 Review of particular responsibilities

The ABA notes that under the FAR an accountable person will be defined using a principle-based element and a prescriptive element. For the prescriptive element, APRA and ASIC will prescribe a list of particular responsibilities. As noted earlier, the ABA does not support giving regulators power to prescribe a list of responsibilities.

However, if the FAR does allow regulator prescription of particular responsibilities, then safeguards should be established to ensure that the responsibilities prescribed are aligned with the stated objectives of the FAR. Given this, the ABA recommends an independent review of prescribed responsibilities under the FAR on a regular basis, so as to ensure that the regime remains focused on accountability at senior executive levels in FAR-regulated entities.

**ABA recommendation 4**

***Particular responsibilities prescribed by regulators should be subject to regular independent review by the soon-to-be created regulatory oversight body[1], to ensure the regime remains focused on accountability at senior executive levels in FAR-regulated entities.***

## 3.3 New licensing obligation

The consultation paper proposes a new licensing obligation (Obligation 5) on nominated APs. Obligation 5 requires APs "to take reasonable steps in conducting their responsibilities as an accountable person to ensure that the entity complies with its licensing obligations".

The ABA is unclear what licensing obligations Obligation 5 is referring but assumes that it refers to Australian Financial Services Licences (AFSLs) and the general obligations of Australian Credit Licence (ACL) holders.

[1]The Government agreed to create an independently-chaired oversight body to report on the performance of ASIC and APRA in response to Royal Commission recommendation 6.14 see https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf

While the ABA fully supports the intention behind Obligation 5, the obligation is duplicative. The ABA considers that the existing obligations on APs under BEAR are broad enough to capture significant licensing breaches.

From the perspective of breach reporting under the FAR, the ABA is concerned that Obligation 5 is not subject to any materiality threshold (such as a prudential overlay). Without this, APs could potentially be exposed to disproportionate penalties for minor licensing breaches. This would have the unintended consequence of creating a new category of directors' and officers' duties that would only apply to FAR-regulated entities.

**ABA recommendation 5**

***Obligation 5 "to take reasonable steps in conducting their responsibilities as an accountable person to ensure that the entity complies with its licensing obligations" should not be an accountable person obligation, as it duplicates existing obligations on APs.***

# 4. Remuneration structures

The ABA considers that remuneration deferral has been, and will continue to be, a significant feature of the accountability regime and is regarded as an effective deterrent against breaches. The ABA welcomes the proposals to seek a simpler common test for deferred remuneration. However, the remuneration deferral in the FAR is inconsistent with APRA's recent consultation on CPS511.

Under FAR, Treasury proposes 40 per cent deferral of an AP's variable remuneration for four years. Under the BEAR, the deferral is also four years.

However, APRA has put forward the following in draft CPS 511:

- For CEO – deferral of 60 per cent of variable remuneration for at least seven years, pro-rata vesting after four years,
- For Senior Managers and Highly Paid Material Risk-Takers – 40 per cent of variable remuneration for at least six years, pro-rata vesting after four years.

Alignment between the different instruments is important to reflect consistent objectives of the regulator and enable efficient implementation and operation of the FAR and other APRA standards.

**ABA recommendation 6**

**Treasury should consult with APRA to achieve consistency across the specific requirements on deferral periods between the FAR and the prudential standards (CPS 511).**

# 5. Accountability maps and statements

The ABA notes that Treasury's consultation paper states that joint FAR administration by APRA and ASIC will require submission of accountability maps and statements to both regulators. Dual regulated entities will only need to submit to one regulator with the expectation that the accountability map will be shared across regulators to reduce compliance costs.

The ABA appreciates the extension of timeframes to register individuals filling temporary vacancies, from 28 days to 90 days. This is a welcome change that will allow entities to properly notify regulators, and ultimately improve the operations of the FAR. The ABA also welcomes the changing the notification requirement from 14 to 30 days for any material changes to the accountability maps or statements. This will further increase the efficiency of the FAR requirements.

The ABA considers that the effectiveness of accountability maps and statements could be further improved by the FAR providing further guidance on core entities and the definition of total assets to understand how the classification will work.

**ABA recommendation 7**

***FAR should provide further guidance on core entities and the definition of total assets to understand how the classification will work***

## 5.1 Materiality threshold

We understand that updated accountability maps and statements will only need to be provided to the regulators upon material changes to these documents. This is intended to reduce the administrative burden associated with map and statement changes. While we recognise that a material change definition will be provided in the regulatory guidance, we note that from the industry's experience with the BEAR, in some cases APRA has required consultation on any change regardless of materiality.

Given this, it would be useful for the legislation to give direction to regulators on the definition of materiality. While the term 'material' is used widely in legislation, the ABA would suggest working with industry and regulators to define the meaning of material in this case.

**ABA recommendation 8**

***This materiality threshold could be difficult to define, and we recommend that the regulators engage and consult with industry in determining this definition.***

## 5.2 Changes to accountability maps and statements

The consultation paper outlines the joint powers of APRA and ASIC; however, it does not consider whether accountability map and statement requirements will change with the introduction of ASIC as a joint administrator of the regime.

The ABA would value further information and direction on how the introduction of ASIC as a regulator will change requirements. The ABA looks forward to being consulted on any future changes to the format or expected content of accountability maps and statements. Consultation with industry will ensure that the changes can be implemented effectively by FAR regulated entities and achieve their policy objective.

**ABA recommendation 9**

***Any future changes to format or content of accountability maps and statements should be open to industry consultation.***

## 5.3 Core compliance entity requirements

The ABA notes that the FAR will only require enhanced compliance entities to submit accountability maps and statements. The ABA welcomes this change which the consultation paper notes is intended to reduce regulatory burden for smaller entities.

The ABA would also appreciate if Treasury could use the draft legislation to clarify whether core compliance entities are expected to maintain internal accountability statements and maps despite not being required to submit these to regulators. In addition, further clarification on how the accountability obligations will interact when an enhanced compliance entity has a core compliance entity as a subsidiary would be helpful. We would encourage this to be clarified in the legislation.

**ABA recommendation 10**

***The legislation should include the criteria for an enhanced entity and core entity. Guidance on the responsibilities of core entities to maintain accountability statements and maps would be very helpful.***

# 6. Penalties for entities and individuals

The ABA notes that the proposed FAR introduces large maximum penalties on entities for contravening their obligations. These penalties are intended to align with the penalties imposed under the *Corporations Act 2001*, *Australian Securities and Investment Commission Act 2001*, *National Consumer Credit Protection Act 2009*, and *Insurance and Contracts Act 1984*. The FAR consultation is also proposing civil penalties on individuals who breach their accountability obligations.

The key issues for the ABA in relation to penalties are:

- The interaction with other regimes
- The introduction of new individual civil penalties.

Each of these is discussed below.

## 6.1 Interaction with other regimes

The ABA notes that there are multiple avenues for APRA and ASIC to impose penalties and it remains unclear from the consultation paper how these will align with the new penalty civil regime under the FAR. The ABA seeks guidance on how these penalties are intended to interact with existing legislative regimes that have similar avenues of enforcement, for example section 912A of the *Corporations Act 2001.*

It would be inappropriate for both regulators to separately pursue a civil penalty for the same breach. The legislation should clarify which regulator will act in particular circumstances and ensure that only one regulator pursues enforcement action on a particular breach. To ensure clarity on this issue, we would suggest the explanatory material include examples of when a civil penalty would apply and how the regulators would administer this.

**ABA recommendation 11**

***The legislation should clarify which regulator will act in particular circumstances and ensure that only one regulator pursues enforcement action on a particular breach.***

***The explanatory material should include examples of when a civil penalty would apply and how the regulators would administer this.***

## 6.2 Individual civil penalties

The ABA does not support the introduction of individual civil penalties under the FAR for the following reasons:

- The BEAR regime does not include civil penalties
- The Royal Commission did not recommend civil penalties under the BEAR; and
- Any decision to include new civil penalty provisions should only be considered after the effectiveness of the current BEAR regime is assessed. BEAR was implemented across all ADIs from July 2019.

This proposal seems to have originated in the report of the APRA Enforcement Strategy Review[2]. The review recommended that such a measure be ‘considered’ in the extension of the BEAR. The rationale offered for this in the review is as follows:

> *“The Review notes that a breach of an accountability obligation by an accountable person is not enforceable by civil penalty under the current regime. The Review recommends consideration be given to introducing a civil penalty provision for contraventions of accountability obligations by accountable persons, when implementing the extension of the BEAR. This would widen the range of APRA’s tools to enforce a contravention against accountable persons in circumstances where disqualification is an excessive outcome. It would also assist APRA in reinforcing individual accountability. The PRA, in comparison, has the power to impose penalties on individuals, which the Review understands has proved an effective enforcement tool.”*

In our view, there are important factors that the Enforcement Strategy Review overlooked in making this recommendation. The ABA believes that the potential for disqualification, together with the restrictions on remuneration under the current BEAR create effective incentives to improve conduct and ensure adequate sanctions for not meeting requisite standards. The BEAR was designed to sanction culpable

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[2]APRA (29 March 2019),*Enforcement strategy review: Final Report* accessed at:
https://www.apra.gov.au/sites/default/files/apra_enforcement_strategy_review_-_final_report_web.pdf

accountable persons through disqualification and remuneration impacts. As acknowledged in APRA's Enforcement Strategy Review, disqualification is a very significant sanction

Moreover, there is no evidence at this stage to suggest that the current BEAR enforcement options are ineffective. The BEAR regime has only recently been implemented for the largest banks from 1 July 2018 and all other ADIs from 1 July 2019[3]. The recent implementation means that APRA have not finished their implementation review of the BEAR to ensure consistent compliance; and a post implementation review has not been carried out. Given this, the BEAR has not been in place long enough to assess its impact on overall organisational culture and behaviours, which should be a key consideration in deciding whether individual civil penalties are appropriate.

The ABA recommends that individual penalties not be considered until a post implementation review (PIR) is undertaken to determine the effectiveness of the current BEAR regime. The purpose of a PIR is to assess whether the regulation remains appropriate, and how effective and efficient it has been in meeting its objectives. Feedback from ADIs subject to the BEAR suggests that the regime has been an effective tool for clarifying senior executive accountabilities and improving governance and risk management practices. The potential consequences of enforcement action under BEAR and subsequent reputational damage is already significant. As acknowledged in the Enforcement Strategy Review, disqualification is a very significant sanction.

Under the current legislation, section 37KC requires the Minister to review the operation of BEAR three years after commencement.[4] The ABA considers that three years is the minimum time required to assess the impacts of the current BEAR to determine whether additional penalties are required..

**ABA recommendation 12**

**Individual civil penalties should not be introduced under the FAR regime until a post-implementation review is undertaken which demonstrates a need for new penalties.**

## 6.3 APRA's non-objections power

Treasury's consultation paper notes that a non-objections power will be available to APRA under the FAR. This non-objection power was a recommendation of the APRA Capability Review conducted by Professor Graeme Samuel AC and can be used by APRA when an entity applies to register an individual as an AP. This power would build on and strengthen registration arrangements, and would complement APRA's existing disqualification powers, which are available where an individual already occupies a board or certain senior executive role. Providing APRA with a non-objections power will also align the regulator with its international counterparts.

Any decision to remove or disqualify a person made by APRA is a serious decision and has the potential to significantly impact an individual's career. Clear guidance should be provided regarding the circumstances in which such a decision may be made. To ensure clarity, the ABA recommends that the circumstances and threshold for potential exercise of this power be clear in the legislation and the regulatory guidance. A process demonstrating procedural fairness should occur with fair notice and access to relevant material. This process should allow the individual in question the opportunity to respond to any issues raised by APRA. The process could also allow for the entity to withdraw the AP application.

Treasury's consultation paper does not detail whether the use of this non-objections power is intended to be made public, this should be clarified.

The consultation paper is unclear as to whether this non-objections power would apply to an AP who accepts a temporary vacancy. It also notes that the power applies to both appointments and *re-appointments* of APs. The ABA requests that the legislation, or regulatory guidance clarifies how APRA intends to object to re-appointments.

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[3] APRA 17 October 2018, *APRA sets out BEAR expectations,* accessed at https://www.apra.gov.au/news-and-publications/apra-sets-out-bear-expectations

[4] Department of Prime Minister and Cabinet (2016), *Post implementation reviews guidance note,* accessed at https://www.pmc.gov.au/sites/default/files/publications/017_Post-implementation_reviews_2.pdf

**ABA recommendation 13**

**APRA should consult on and issue clear guidance on its enforcement policy for exercise of the veto power. This process should provide clarity on how and when the veto power will be used; whether its exercise will be made public and how it would apply to temporary vacancies.**

**ABA recommendation 14**

**The circumstances and threshold for potential exercise of this power be clear in the legislation and the regulatory guidance. A process demonstrating procedural fairness should occur with fair notice and access to relevant material.**

# 7. Dual administration of the regime

With the introduction of ASIC as a joint administrator of the FAR, the industry seeks clarity on how joint administration will operate in practice. Key to the effective implementation of the FAR will be the consistency in approach and expectations set by both APRA and ASIC. Any divergence from this will risk causing confusion and uncertainty across all regulated entities. The ABA acknowledges that the practical operations of dual administration will be set out in regulatory guidance, to detail how the regulators intend to operate in any given scenario. A clear governance framework will need be to be established that outlines how the regulators will consult and what restrictions apply in relation to their approach to dual administration.

To avoid any duplication and increased regulatory burden through joint administration, the ABA suggests that the Government consider the approach taken to the SMCR in the UK. With joint administration by the Financial Conduct Authority and the Prudential Regulation Authority, the UK regime has reduced the burden on entities captured and streamlined the regulator entity interaction by ensuring that it is done through a single a point of contact, the Financial Conduct Authority. We see this as an important aspect of effective administration of the FAR and recommend the adoption of a single regulator coordination and submission point.

**ABA recommendation 15**

***FAR should adopt a single regulator coordination and submission point***

# 8. ADI transition

The consultation paper notes that transitional arrangements will apply to ADIs to ensure that obligations met under the BEAR, and which will be the same under the FAR, will be taken to have been met. The ABA questions how the Treasury can conclude that the BEAR requirements have been met given APRA has not yet completed its implementation review as noted in its Supervisory 2020 priorities[5]. Any transition period needs to await the outcomes of APRA's BEAR implementation review and allow appropriate time for these outcomes to be implemented. As noted above, many ADIs have only recently implemented BEAR in July 2019.

The ABA considers that insights from the BEAR implementation experience can benefit the implementation plan for FAR. BEAR was more complex to implement for both the regulator and the entity than originally anticipated. It required a staged transition where larger ADIs were first to implement the regime with smaller entities implementing later. Given this, further consultation is recommended on any proposed transition and implementation plan. The ABA recommends at least a 12-month implementation timeframe after the FAR legislation receives Royal Assent.

The ABA also recommends that the FAR should reflect the internationally accepted practice of allowing foreign ADI branches to be governed by the law in the jurisdiction in which they mainly operate. As noted earlier, not following this accepted practice is likely to introduce complexity as to which regime should apply and whether senior executives in foreign jurisdictions can be subject to the FAR.

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[5] APRA January 2020, *APRA Supervisory Priorities 2020,* accessed at https://www.apra.gov.au/sites/default/files/2020-01/APRA%202020%20Supervision%20Priorities.pdf

**ABA recommendation 16**

***The transitional arrangements should be developed in consultation with industry.***

***The proposed transitional arrangements need to allow for: the outcomes of the APRA supervisory review of BEAR to be implemented, a staggered implementation for smaller entities and allow at least a 12-month implementation period from Royal Assent.***

***Foreign branch ADIs should be governed by the law of their corporate headquartered jurisdiction.***