



Look out for the BEAR!!

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What is the BEAR?

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- Registration
 - of nominated directors and senior execs of all ADIs
 - roles and responsibility maps to be provided
 - New powers and penalties for APRA
 - to remove directors and senior execs
 - to impose penalties where ADIs aren't meeting expectations (which are still to be articulated) or aren't appropriately monitoring the suitability of executives
 - Remuneration
 - variable rem to be deferred for at least four years;
 - 40% for executives and 60% for CEOs
 - stronger powers for APRA to require ADIs to review and adjust rem policies

Why did we need the BEAR?

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- “Without a culture supporting appropriate risk taking and the fair treatment of consumers, financial firms will continue to fall short of community expectations” - Financial Systems Inquiry
 - “The major banks have a ‘poor compliance culture’ and have repeatedly failed to protect the interests of consumers. This is a culture that senior executives have created. It is a culture they need to be accountable for” – Coleman Report
 - My insight into the minds of senior bankers
 - inherently honest
 - always operated this way
 - competitors operate this way too
 - regulations largely haven’t changed and regulators haven’t said we’re doing it wrong
 - “hitting the numbers” is imperative.
 - **What’s the problem?!**

Individuals to be covered by BEAR

Descriptor	Function
Oversight functions	
Chair	Responsible for chairing and overseeing the performance of the Board.
Chair of the Risk Committee	Responsible for chairing and overseeing the performance of any committee responsible for the oversight of the risk management systems, policies and procedures.
Chair of the Audit Committee	Responsible for chairing and overseeing the performance of any committee responsible for the oversight of the internal audit system.
Chair of the Remuneration Committee	Responsible for chairing and overseeing the performance of any committee responsible for the oversight of the design and the implementation of the remuneration policies.
Senior Officer Outside Australia	Under the authority of the Board of a foreign ADI, outside Australia and responsible for overseeing the Australian branch operation of a foreign ADI. This function already exists under APRA's prudential standard CPS 510.
Executive functions	
Chief Executive	Under the immediate authority of the Board, responsible for carrying out the management of the conduct of the whole business (or relevant activities).
Chief Finance	Responsible for the management of financial resources and reporting directly to the Board in relation to financial affairs.
Chief Risk	Responsible for overall management of risk controls, including the setting and managing of risk exposures, and reporting directly to the Board in relation to its risk management arrangements.
Chief Operations	Responsible for the management of operations and for reporting directly to the Board on the operations function.
Chief Information	Responsible for the management of information technology and for reporting directly to the Board on the information technology function.
Head of Internal Audit	Responsible for the management of the internal audit function and for reporting directly to the Board on the internal audit function.
Head of a Foreign Bank Branch	Ordinarily resident in Australia and responsible for the conduct of the Australian branch operation of a foreign ADI. This function already exists under APRA's prudential standard CPS 510.

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- Consultation Paper published by Treasury on 13 July
 - consultation closes 3 August 2017
 - ADIs are preparing for what's to come
 - looking closely at the UK's SMR experience (on which BEAR is based)
 - considering implications and determining what "good" looks like
 - determining the best approach to the new accountability mapping requirements

What is the UK's equivalent

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- Approved Persons Regime replaced in March 2016 by:
 - a) Senior Managers Regime
 - covers senior management functions
 - need to **demonstrate** having taken “reasonable steps” to manage risks
 - ensure the business is controlled effectively
 - comply with regulations
 - delegation must be to an appropriate person and your oversight needs to be effective
 - disclosure material information to the regulators
 - b) Certification Regime
 - those staff “capable of causing significant harm to the firm or its customers”
 - c) Rules of conduct
 - apply to almost everyone else in the firm

SM's demonstration of reasonable steps

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- Knowledge & understanding
 - handover, know your risks, capacity & capabilities, maintain knowledge, request regular updates from business units under your control
 - Review & improve
 - reporting, people, controls, challenge, be proactive
 - Organise & control
 - resourcing, succession planning, reporting lines, delegations, governance
 - Resolve & learn
 - take action, support, escalate, action plans, lessons learned, handover
 - Evidence
 - minutes, accountability maps, org charts, handover material, MI, CVs of staff, email records, meeting invites, standing agendas, meeting action logs

UK's experience of SMR

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- Accountability maps and evidencing “reasonable steps” takes a lot of work
 - Some SMRs appoint teams or committees to protect them. Others are comfortable that their governance and senior team are already doing their job, so little change. Most take legal advice before they sign up for their responsibilities
 - Organisational effectiveness improved
 - allowed internal politics to be addressed and bureaucracy removed
 - senior managers know what is happening “under the bonnet” and no longer rely on dashboard reports and the like
 - Regulators are starting to use SMR in enforcement situations e.g. who is responsible?
 - As this is still new, SMs are nervous

UK and Australian regulation – movies are following the same script

- GFC starting point different but issues largely the same since e.g. LIBOR vs BBSW
- The key “actors” have the same scripts as their UK counterparts
 - Politicians – cut and paste of the UK playbook
 - Regulators – becoming more aggressive in language and actions
 - Banks – say conduct issues are not reflective of broader cultural problems
 - Industry association challenged with “making banking better”
- BEAR will deliver a much needed challenge of behaviour from SMs. Issues will be discovered that will be problematic for the individual ADIs and the industry...but in the long term, it’s what is needed to rebuild trust between banks and the communities they serve