



Financial Accountability Regime (FAR)

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Key Messages

- The Financial Accountability Regime Bill 2022 (FAR Bill) has been reintroduced into Parliament in essentially the same form as it was introduced in the previous parliament. The Bill was passed by the House of Representatives on 28 September 2022 and is currently before the Senate (earliest expected passage is now end of November). On 24 October 2022, the Senate Economics Legislation Committee indicated its support for the Bill and recommended that it be passed.
- The consultation on the draft Minister Rules was conducted from 12 September 2022 to 7 October 2022. The Minister Rules prescribe particular responsibilities and positions which cause a person to be subject to the FAR. The FAR Bill indicates that while responsibilities can be held jointly where this occurs accountable persons are responsible to the same extent as if they were solely responsible. The Minister Rules also prescribe the enhanced notification threshold which is the total asset size above which an entity is required to comply with additional notification obligations (submission of accountability statements, maps and changes to these).
- The FAR is a strengthened and broadened accountability regime for regulated entities that seeks to improve accountability standards, drive reform in operating culture and reinforce the standards of conduct expected by the Australian community. ASIC is working with APRA to ensure the regime is administered in a way that is smoothly coordinated between the two regulators and avoids duplication, whilst achieving the goals of the reform.
- A single portal, "APRA Connect" will be used for industry lodgements for FAR, such as registrations, notifications and lodgements of accountability maps and statements. The regulators have also established a single point of contact for industry to raise queries or requests with the regulators.
- The FAR obligations will commence 6 months after the FAR Act receives Royal Assent for authorised deposit-taking institutions (ADIs) and 18 months after Royal Assent for superannuation and insurance entities.
- Following the Royal Assent, the regulators will provide guidance and engage with industry to communicate what is required to meet the new requirements of the regime.

Background

- The current Banking Executive Accountability Regime (BEAR), administered by APRA, is limited to ADIs and to addressing conduct of a systemic and prudential nature.

- The Royal Commission recommended the regime:
 - be extended to non-authorised holding companies (NOHCs) of ADIs, to insurance entities, their NOHCs and superannuation entities;
 - have a specific conduct focus; and
 - be jointly administered by APRA and ASIC.
- The FAR Bill was previously introduced on 28 October 2021 before it lapsed on 11 April 2022. On 15 February 2022, the Senate Economics Legislation Committee indicated its support for the bill and recommended that it be passed.

Key elements of the regime in the Bill

- FAR will apply to APRA-regulated entities (approximately 430 entities), including ADIs, general and life insurers, private health insurers, registrable superannuation entity (RSE) licensees and APRA-licensed non-operating holding companies. A majority of ADIs, insurers and RSEs hold an AFS licence or credit licence – the FAR will be jointly administered by APRA and ASIC for these entities.
- Individuals with specified functions will need to be registered as ‘accountable persons’ and required to take reasonable steps to ensure the entity complies with both prudential and conduct obligations. The entity in turn will need to map out the roles and responsibilities of accountable persons across the firm. Based on the draft Minister Rules, the specified functions will include management of the accountable entity’s breach reporting and client or member remediation programs. Larger entities will be required to submit accountability maps and statements to the regulators. For example, the draft Minister Rules indicate that ADIs with a total asset size equal to or exceeding \$10 billion will be enhanced entities.
- Individuals and entities will have obligations to act with honesty and integrity, due skill, care and diligence and deal with ASIC and APRA in an open, constructive and cooperative way. With entities, this will be prefaced by a reasonable steps’ requirement.
- As with the BEAR, the FAR will maintain a requirement for a proportion of remuneration of accountable persons to be deferred (40% of variable remuneration and subject to forfeiture if obligations are not met).

Stakeholder and media interest

- The FAR Bill does not include civil penalties for individuals, which were originally proposed in Treasury’s January 2020 consultation paper. Choice and other consumer groups called for this aspect of the regime to be reinstated. The Minister for Financial Services reconsidered the issue but decided against reinstating civil penalties for individuals. Civil penalty action may however be brought against entities and the regulators do have the power to disqualify accountable persons.

- The Senate Economics Legislation Committee in its report released on 24 October 2022 noted that on balance, accountability measures contained in the Bill, such as the existence of banning powers and deferred remuneration arrangements, will complement existing penalties for entities and accountable persons contained in the Corporations Act to effectively guide behaviour. The Australian Greens have proposed an amendment to the Bill which is currently before the Senate to introduce civil penalties for individuals. Industry and the Law Council of Australia also raised the concern that the FAR duplicates existing laws and obligations (including directors' duties), raising compliance costs, increasing complexity and directing the focus of senior executives away from important issues. ASIC noted at previous Senate Economics Legislation Committee hearings in January 2022 that the critical element is the requirement to take reasonable steps in carrying out their management roles. It does not make them responsible for anything that goes wrong regardless of the cause, nor require them to be immersed in the detail of all activities.

Other jurisdictions

- The UK Senior Managers and Certification Regime covers prudential and conduct issues and applies to thousands of financial services firms, including firms regulated solely by the Financial Conduct Authority. The UK's conduct rules, and certification regime, apply to a wider range of financial services personnel than the BEAR/FAR. Ireland and New Zealand have indicated they will introduce executive accountability regimes to cover prudential and conduct matters.

ASIC Action

- The regime will require significant interaction and cooperation between APRA and ASIC.
- ASIC and APRA have workshopped and continue to engage extensively to streamline the process for regulated entities and to align the agencies' supervisory and enforcement approaches.
- ASIC and APRA intend releasing a package of materials for the industry to assist them in meeting the new FAR requirements for ADIs including the Information Paper, Joint Administration Agreement, accountability statements guidance and template, and a letter and description of key functions to accompany the release of the Regulator Rules and Transitional Rules for consultation.
- ASIC and APRA have, and will continue to engage with industry to help entities prepare for the administrative and operational requirements of implementing the FAR.
- Ahead of commencement, ADIs will be expected to participate in pre-commencement activities in preparation for the FAR, to make the transition as smooth as possible. This provides entities with the opportunity to receive feedback from the regulators on draft submissions in preparation for making formal submissions under the new regime. There will be a similar pre-commencement process for superannuation and insurance entities prior to their registration process.