

24 August 2023

Stuart Bingham
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By email: far@apra.gov.au



Dear Stuart

Thank you for the opportunity to provide a response to the consultation on the draft Regulator and Transitional rules for the Financial Accountability Regime (FAR).

FINSIA – the Financial Services Institute of Australasia – is the leading professional body in the financial services industry in Australia and New Zealand, with a membership base of more than 10,000 members across the two markets. Our members operate in a range of sectors across the financial services industry including banking, institutional markets, funds management, securities and financial advice. Our purpose, since 1886, has been to support the financial services industry by driving the highest levels of professionalism for the betterment of our community through consistent standards of competency and conduct.

FINSIA's response considers the 'key functions' set out in the draft Regulator Rules as part of the materials concerning the proposed Financial Accountability Regime, released by APRA and ASIC on 20 July 2023 (and further explained in the accompanying materials).

Proposal for inclusion of key functions in FAR register

There is a concern the key functions extend beyond what was contemplated in the operation of section 10 of the Financial Accountability Regime Bill. Specifically, section 10 sets out the circumstances in which a person will be an accountable person. For example, the person must have a position in an accountable entity and *have a responsibility prescribed by the Minister in the Minister rules*. These responsibilities have previously been the subject of consultation and are expressly reserved to the Minister.

The proposed list of 'key functions' that must be assigned to an accountable person and recorded in the FAR register - if there is not an accountable person determined under section 10 of the FAR Bill who would otherwise be responsible for one of these 'key functions', the Regulator Rules would have the effect of expanding the list of responsibilities for which persons will be accountable, beyond the list in the Minister rules.

This expansion of responsibilities beyond the list in the Minister rules may result in an allocation of responsibilities away from the most appropriate person. For example, functions that are the responsibility of a general counsel who is not an accountable person may be allocated away from them to an accountable person.

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In practice, the operation of the proposed Regulator Rules would not be consistent with the assertion in the consultation materials that “*the concept of key functions does not expand the definition or scope of responsibilities of accountable persons under the Minister rules and s10 of the FAR Bill*” and is not consistent with the legislative regime.

We therefore feel the information to be included in the FAR register for each accountable person should only include the responsibilities for which they are accountable under s10 of the FAR Bill – and should not be extended any further. An additional concern regarding the introduction of the ‘key functions’ is they do not seem to be subject to the discipline of any legislative review process.

Concerns with specific key functions

Some of the listed key functions have previously been the subject of extensive discussion with Treasury and were withdrawn. If the ‘key functions’ are implemented as proposed, there are specific concerns regarding the following key functions:

- **Product design and distribution obligations and Product origination:** Following previous consultation, these functions were removed from the original FAR proposal and would not be functions for which an accountable person should be responsible. As there is already a comprehensive regime to regulate design and distribution obligations, including the identification of ‘regulated persons’ under that regime we question why they would also be added to the responsibilities of accountable persons.
- **Financial and regulatory reporting:** Given there is already a comprehensive regulatory regime for accountability for financial and regulatory reporting, including individual accountabilities, it does not seem necessary to add functional obligations for what is already a core responsibility.
- **Financial services regulatory engagement:** We question why this function has been specifically included. An accountable person will already have a statutory obligation to “*deal with the Regulator in an open, constructive and cooperative way*” (s21(1)(b)) and regulators have multiple points of engagement with accountable entities.
- **Monitoring representatives and staff – financial or credit products/services; Training of relevant staff and representatives—financial products/services/credit activities:** Every accountable person will have a statutory obligation to “*take reasonable steps in conducting [their] responsibilities to prevent matters from arising that would (or would be likely to) result in a material contravention [of relevant financial services laws]*”. The inclusion of this key function would therefore result in unnecessary duplication.
- **Collections and enforcement; Hardship processes; Scam management:** According to paragraph 1.7 of the Explanatory Memorandum for the current FAR Bill, the FAR regime is designed to impose a strengthened responsibility and accountability framework on “*the directors and the most senior and influential executives (accountable persons) [of accountable entities]*”. These functions do not fit within the primary responsibilities of anyone who would otherwise be an accountable person.

Practical concerns

It would seem the regulations require duplication of information that would have already been provided in the Accountability Map (reporting lines) and Accountability Statements (responsibilities). When not read as a whole there is the potential for confusion.

Regarding the dual regulatory model, there is a need to provide further clarity around the jurisdiction of regulation.

Closing

We trust that you find the points made above helpful in your deliberations as part of this consultation. We look forward to continuing to provide input to you over coming weeks and months. If you have any specific questions in respect of the views set out in this submission, please contact me or Kylie Blundell on +61 2 9275 7900.

Yours sincerely



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