



PwC's summary of the

Financial Accountability Regime “FAR”

September
2023

Overview and timing



Overview

The FAR is the government's response to recommendations made by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry to extend the Banking Executive Accountability Regime (BEAR) to strengthen the responsibility and accountability of the directors and most senior and influential executives of financial institutions.

The FAR follows many of the provisions of its predecessor, the BEAR.

On 16 July 2021, Treasury released the consultation package which included the Exposure Draft and Explanatory Memorandum for the implementation of the Financial Accountability Regime (FAR). On 8 March, Treasury released the FAR Bill 2023. The new bill does not have any significant changes from the bill introduced in 2021.



Timing

The commencement date of the FAR Bill is the day after the Bill has received Royal Assent. Proposed implementation dates:

- **Authorised deposit-taking institutions (ADIs) and their non-operating holding companies (NOHCs)** is **6 months after** the commencement date and any new entrants beyond that from the time they become an ADI or authorised non operating holding company.
- **Insurers, their licensed NOHCs and registrable superannuation entity (RSE)** licensee is **18 months after** commencement of the FAR Bill and to any new entrants beyond that, from the time they become licensed.

This means **March 2024** for ADIs and **March 2025** for insurers and RSE licensees.

Timeline to the implementation of the FAR

January 2020	February 2020	March 2020	July 2021	August 2021	October 2021	November 2021	September 2022	March 2023	September 2023	March 2024	March 2025
Initial FAR consultation paper released	Industry consultations	APRA announces suspension of FAR due to COVID-19	Treasury releases the FAR Exposure Draft consultation	Consultation on the FAR Exposure Draft	FAR Bill introduced into the House of Representatives	FAR Bill referred to the Economics Legislation Committee	FAR Bill reintroduced into Parliament and consultation sought on Minister Rules	2023 Bill reintroduced on 8 March	2023 Bill passed on 5 September	Expected FAR implementation for ADIs	Expected FAR implementation for insurers, NOHCs and RSEs.

Overview of the Financial Accountability Regime

The Financial Accountability Regime (FAR) is the government's response to recommendations made by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. An extension of the Banking Executive Accountability Regime (BEAR), FAR aims to strengthen the responsibility and accountability of the directors and most senior and influential executives of financial institutions. The FAR follows many of the provisions of its predecessor, BEAR.

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Entities caught under the FAR

The following entities are captured under the FAR:

- ADIs and their non-operating holding companies (NOHCs)
- General insurers and their NOHCs
- Life insurers and their NOHCs
- Private health insurers
- RSE licensees
- Australian branches of foreign accountable entities

The FAR introduces the term “**significant related entities**” (SREs), which, for ADIs and insurers, are subsidiaries which have a material and substantial effect over the accountable entity or its business. For RSE licensees, SREs are “connected entities” under the definition in the Superannuation Industry (Supervision) Act 1993.

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Timeframes

Consultations:

- Draft 2022 Bill was introduced into Parliament on 8 September 2022 and was referred to the Senate Economics Legislation Committee 28 Sept 2022.
- The Government sought stakeholder views by **7 October 2022** on the Minister Rules for the FAR, in particular on the prescribed responsibilities.
- The Senate ELC report was released on 24 October 2022.
- Draft Regulator and Transitional rules were released on **20 July 2023**.
- The 2023 Bill was passed on **5 September 2023**.

Implementation:

- For insurers and RSEs, the implementation date is 18 months following Royal Assent **March 2025**
- **For ADIs it is March 2024.**

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Joint administration by APRA and ASIC

- FAR will be governed by both **APRA and ASIC**.
- ASIC will only administer the FAR for accountable entities that hold an **Australian Financial Services License (AFSL)** or are **Australian credit licensees (ACL)**.
- The regulators are expected to release regulatory guidance on how they will jointly administer the FAR following passing of the Bill.
- All Accountable Persons (APs), which include certain **senior executives and Board members, are required to be registered with APRA and/or ASIC**. APRA and ASIC need to be advised prior to any future senior appointments.

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Obligations

There are **heightened obligations** for both the organisation and APs. APs obligations include:

- Act with **honesty and integrity**, and with **due skill, care and diligence**.
- Deal with APRA and ASIC in an **open, constructive and co-operative** way.
- **Take reasonable steps** to prevent matters arising that **would negatively impact the organisation's 'prudential standing'** or '**prudential reputation'**.
- **Take reasonable steps** in conducting their responsibilities to ensure the **accountable entity complies with certain laws relating to the financial sector**.

Overview of the Financial Accountability Regime (cont'd)

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? Who is an AP?

- The FAR Bill (and the associated Minister rules) provides a list of **prescribed responsibilities** for all accountable entities including ADIs, insurers, RSE licensees, NOHCs and Australian branches of foreign entities. An individual is an Accountable Person if they hold a position in the accountable entity and have a role relating to a prescribed responsibility **or** have met the general principle test.
- An individual can be an AP under the **general principle** where they have actual or effective senior executive responsibility for a part or aspect of the entity's operations.
- Entities need to **allocate the particular responsibilities to their AP population**.
- The particular responsibilities form the basis for drafting the **accountability map and individual accountability statements**.

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Accountability statements and mapping

- Notification obligations regarding an entity's accountability statements and map differs per entity type. The classification is split between core compliance entities and enhanced compliance entities, with the thresholds found in the Minister rules.
- **Core compliance entities** will be required to **identify their Accountable Persons and register them with APRA and ASIC**, however will not be required to submit their accountability statements and map to the regulators.
- In addition to the obligations imposed on core compliance entities, **enhanced compliance entities** will be required to submit a copy of their **accountability statements and map** to ASIC and APRA.

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APRA powers over remuneration policy & deferral

- Under the FAR, all APRA regulated entities are required to defer **40% of variable remuneration** for at least **4 years** if the amount that would be deferred under the FAR is greater than A\$50,000.
- All APRA regulated entities will be required to have **remuneration policies that allow for a reduction in variable remuneration** if an AP breaches their FAR obligations.
- **Regulators will have the power to publish on the internet** any key information kept in the AP register (incl. Responsibilities, previous disqualifications of an AP etc).
- **Regulators will have powers to give entities directions**, including to make changes to business practices and organisational changes, if they have 'reasonable grounds' to believe FAR has been breached.

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Penalties and indemnification

- Maximum penalties for an entity under FAR will be the greater of:
 - **50,000** penalty units (currently \$15.65m);
 - **3x** the benefit derived or detriment avoided; or
 - **10%** annual turnover of the body corporate, to a max of **2.5m** penalty units (currently \$782.5m).
- **It is possible for a financial penalty to be imposed on an individual** if they are found to, or have attempted to, contravene a civil penalty provision.
- A significant related entity of an accountable entity is **prohibited from indemnifying the entity** against the consequences of breaching the FAR.
- However, there is no restriction applied to the indemnification of or payment of insurance premiums relating to APs. **Therefore it is important to review D&O cover for Accountable Persons.**

Things you can do now

Many accountable entities have started to prepare for the implementation of the FAR. Areas for consideration are:



Move now, get ahead

Have you considered what the FAR will mean for your organisation? Experience from implementing the BEAR suggests the effort should not be underestimated. A great start is APRA's Information Paper on its BEAR post-implementation review.



Multidisciplinary project team

Establish a multidisciplinary team to support the implementation of the FAR. Consider representation from People and Culture, Risk and Compliance, Legal, Company Secretary and the business. Define clear roles and responsibilities.



FAR objectives

What does the organisation want to get out of the FAR? The FAR can be used as more than a compliance exercise with broader business benefits including driving a culture of accountability across the business. This is also an opportunity to consider your implementation of broader regulatory change initiatives, such as CPS 230 and incorporate them.



FAR readiness

Have you considered the organisation's readiness? Experience from the BEAR highlighted that ADIs weren't ready. Review key artefacts including organisational and legal entity structures, governance frameworks and executive job descriptions.



Identify accountable entities and persons

Have you reviewed your enterprise-wide legal corporate structure to identify all accountable entities? Have you considered who your Accountable Person population could be? This could be beyond the Directors and Executive level.



Accountability Statements and Maps

Draft Accountability Statements and an Accountability Map to utilise the benefits of FAR - including clarifying accountability, roles and responsibilities. Scenario workshops are effective to explore hand-offs.



Reasonable steps framework

Develop a reasonable steps framework which supports Accountable Persons in the discharge of their accountability obligations and identify gaps to remediate, through the review key policies, processes, frameworks and charters.



Consider remuneration consequences

Does the Board have remuneration adjustment 'tools' to properly hold Accountable Persons to account? Has the Board established frameworks and processes that result in proportionate, timely and consistent financial consequences where warranted?



Communicate effectively

How are you engaging and setting expectations with your key stakeholders to support the FAR? The FAR is a personal regime. Have you considered what support APs will need throughout the implementation to get comfortable?



Managing risk through controls

Have you considered how you will monitor and obtain assurance over the design and operating effectiveness of key controls that mitigate risks that you are responsible for?

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