



7 October 2022

Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

FINANCIAL ACCOUNTABILITY REGIME BILL 2022

Dear Secretary

APRA welcomes the opportunity to assist the Senate Economics Legislation Committee's Inquiry into the Financial Accountability Regime Bill 2022 (the FAR Bill 2022).

Given the similarities between the FAR Bill 2022 and the 2021 version of the Bill, this submission largely replicates APRA's previous submission to the Committee about APRA's experience with the Banking Executive Accountability Regime (BEAR). We have also provided an update on work jointly undertaken by APRA and ASIC (the Regulators) in anticipation of the FAR Bill 2022 becoming law.

APRA's experience with the Banking Executive Accountability Regime (BEAR)

The BEAR, set out in Part IIAA of the *Banking Act 1959*, establishes certain obligations for authorised deposit-taking institutions (ADIs) and their senior executives and directors. The BEAR was designed to improve the risk and governance cultures of ADIs by imposing a strengthened responsibility and accountability framework for those institutions, and their directors and the most senior and influential executives (accountable persons).

The BEAR commenced on 1 July 2018 for large ADIs and 1 July 2019 for all other ADIs. Large ADIs were defined as those that had total assets of more than \$100 billion. There were four large ADIs at the time: Australia and New Zealand Banking Group Limited (ANZ), Commonwealth Bank of Australia (CBA), National Australia Bank Limited (NAB) and Westpac Banking Corporation (WBC).

APRA worked closely with all ADIs from early 2018 to mid-2019 to assist them prepare for the BEAR implementation. For ADIs, preparation involved documenting key individual accountabilities across their whole operations.

Since then, the BEAR has been a key regulatory lever for APRA to drive action from ADIs through the identified accountable persons and to transform governance, risk culture, remuneration and accountability outcomes across the banking industry. APRA primarily aims to use the BEAR in its day-to-day supervision, to influence preventative or remedial action to be taken by an ADI and its accountable persons well before there is a threat to the ADI's financial viability. An example of where this has proven particularly effective is identifying who the relevant accountable person is for specific action items in agreed remediation plans.

In late 2019 and early 2020, APRA reviewed the implementation of the BEAR at ANZ, CBA and NAB.¹ The main objective of this review was to assess how effectively these three ADIs had implemented the BEAR. An information paper summarising the observations and outcomes of the

¹ WBC was not included in the review due to an ongoing investigation into potential breaches of the *Banking Act 1959* at the time.

review was published in December 2020.² The review found that all three large ADIs had designed adequate frameworks to administer the BEAR, although the overall maturity of the approaches to implement the BEAR differed between them.

APRA also found that implementation of the BEAR has helped to clarify and enhance individual accountability at ADIs, benefitting their boards and senior executives, as well as APRA as the prudential regulator. In particular, the BEAR had helped in:

- improving clarity, understanding and transparency of individual accountability within ADIs;
- reinforcing the need for accountable persons to take remedial or preventative action to deliver on their obligations before an event goes wrong or a risk crystallises;
- generating more challenging and engaging board oversight as the BEAR has made it easier for directors to ask sharper questions directly to the relevant accountable person and to more comprehensively question actions taken to address any concerns held by the Board; and
- facilitating more targeted engagement between APRA and ADIs to achieve better prudential outcomes.

APRA supports the introduction of the FAR

Given the positive outcomes from the BEAR, APRA supported recommendations³ from the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* to broaden the regime to all APRA-regulated entities. This will extend the coverage of an accountability regime from around 143 ADIs under the BEAR to approximately 435 entities under the FAR.⁴ APRA anticipates similar benefits in the insurance and superannuation industries to those identified above from the BEAR.

More generally, APRA is supportive of the objective of the FAR to 'improve the risk and governance cultures of Australia's financial institutions by imposing a strengthened responsibility and accountability framework for those institutions and the directors and the most senior and influential executives (accountable persons) of those institutions'.⁵ This objective aligns with APRA's prudential framework, which is predicated on Board and management accountability for identifying and managing the risks faced by regulated institutions.

APRA has considered the relationship between the 2022 FAR Bill and specific provisions of APRA's prudential framework. In particular, APRA has considered whether there is a conflict between the 2022 FAR Bill's minimum requirement for the deferral of variable remuneration for Accountable Persons and the requirements set out in *Prudential Standard CPS 511 Remuneration* (CPS 511). The 2022 FAR Bill applies minimum deferral obligations for Accountable Persons to all entities covered by the regime, regardless of the size of the entity. Under CPS 511, longer deferral obligations are required for material risk takers (including Accountable Persons) employed by entities classified as significant financial institutions (SFIs⁶). These requirements extend, but do not

² APRA 2020, [Implementation of the Banking Executive Accountability Regime \(BEAR\)](#), 11 December 2020.

³ Recommendations 3.9, 4.12, 6.6, 6.7 and 6.8.

⁴ Based on June 2021 data.

⁵ Explanatory memorandum to the FAR Bill 2022, 1.7.

⁶ A significant financial institution means an APRA-regulated entity that has total assets in excess of minimum thresholds or has been determined as such by APRA having regard to matters such as complexity in its operations or remuneration practices, or its membership of a group. These institutions have the potential to materially impact the financial system.

conflict with, the 2022 FAR Bill. Further, APRA drafted CPS 511 to align with terminology used in the 2022 FAR Bill to avoid conflicting obligations.

APRA notes that the design of the FAR has taken account of feedback from industry that has led to some changes relative to the BEAR that should reduce regulatory burden for industry while retaining the core goal of improving accountability. Examples include extending the period for entities to submit notifications for certain events from 14 to 30 days and clarifying that only material changes to accountability statements and maps need to be notified to the Regulators.

Preparation for the commencement of the FAR



The FAR is to be jointly administered by the Regulators. This will require coordination and cooperation to ensure the FAR's objectives are achieved efficiently and without imposing unnecessary regulatory burden. The Regulators are wholly committed to achieving this objective.

To this end, the Regulators have been working together closely to develop a joint administration framework and infrastructure for the FAR:

- A public Joint Administration Agreement (JAA) that will set out high-level principles of cooperation and arrangements between the Regulators. The JAA will address matters such as oversight of the arrangements, use of powers, industry communication, information sharing, and enforcement and investigations.
- The Regulators will ensure they maintain:
 - clearly defined roles and responsibilities, supported by agreed processes and procedures;
 - appropriately resourced administration teams for ongoing coordination and interaction;
 - training and support to supervisors of both Regulators to ensure consistent regulatory approaches; and
 - a single point of contact for entity queries and issues.
- Industry communication and guidance will also be published to support industry with the implementation of, and ongoing compliance with, the FAR.

The Regulators have established a single point of contact for engagement with entities in relation to the FAR. Additionally, 'APRA Connect', APRA's new data collection system, will be used as a single portal to avoid the need for entities to report to APRA and ASIC separately. For example, entities will be able to lodge accountability statements through APRA Connect. Using APRA Connect for the FAR is also anticipated to provide significant benefits for entities when compared to the BEAR, which relies on less automated systems.

Yours sincerely,

Redacted



Brandon Khoo
Executive Director
Cross-Industry Insights and Data Division