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By email

Dear ██████████

Submission on Financial Accountability Regime Regulator rules and Transitional rules

This submission is made by Herbert Smith Freehills (**HSF**) in respect of the draft Financial Accountability Regime Act (Information for register) Regulator Rules 2023 (**Regulator Rules**), draft Financial Accountability Regime (Consequential Amendments) Transitional Rules 2023 (**Transitional Rules**) and the draft descriptions of the key functions (together, the **Consultation Documents**) released for consultation on 20 July 2023.

We have advised and continue to advise numerous ADIs and other APRA-regulated entities on the implementation of the Banking Executive Accountability Regime (**BEAR**) and the Financial Accountability Regime (**FAR**).

We welcome the opportunity to provide our feedback on the Consultation Documents.

1 Executive Summary

We are concerned that several aspects of the Consultation Documents will lead to unintended consequences with respect to the operation of the FAR. In particular, this submission is focussed on the prescribed list of ADI key functions set out in Attachment B titled "ADI Key Functions Descriptions" (**Key Functions**).

HSF makes the following seven submissions, with an explanation of the reason for these submissions contained in the body of this letter:

- 1 The concept of Key Functions should be removed from the proposed Regulator Rules as there is a real risk that its inclusion creates the unintended effect of expanding the list of accountable persons and/or the scope of their responsibilities and is not aligned with the policy intent previously communicated by Treasury, including as reflected in the Explanatory Statement to the exposure draft of the *Financial Accountability Regime Minister Rules 2022* (**Minister Rules**).
- 2 While our recommendation is that the Key Functions information be removed from the registration requirements in Rule 5 of the proposed Regulator Rules, if they are retained, the Key Functions should be amended to make it explicit that they are only intended to cover senior executive responsibility and not the execution, maintenance or primary conduct of the relevant functions.
- 3 The Key Functions information should not be included in the register established under section 40 of the *Financial Accountability Regime Bill 2023* (Cth) (**FAR Bill**) as information of this kind is already captured by the core and enhanced notification obligations of accountable entities. Further guidance about what triggers a material change notification in relation to the Key Functions information will be necessary if this information is retained in the register.



- 4 The Regulators should adopt the approach to key functions taken in implementing the BEAR, at least in respect of ADIs who are subject to the BEAR, including to mitigate against unnecessary regulatory burden.
- 5 The Regulators should issue a joint regulatory guidance note which includes guidance on responsibilities to be allocated in practice to accountable persons and remove the requirement to allocate Key Functions and register accountable persons for each Key Function.
- 6 The Regulators should re-visit the purpose of the Key Functions information and consider whether the information is appropriate in circumstances where accountable entities with enhanced notification obligations are already required to provide comprehensive information of the type sought by the Key Functions list (under the requirements for those entities to prepare and lodge accountability statements and accountability maps). In view of this, one approach open to the Regulators is to retain the prescription of the Key Functions information under Rule 5 of the Regulator Rules, but only for accountable entities that are not subject to enhanced notification requirements and therefore not required to prepare accountability statements and accountability maps.
- 7 The Regulators should clarify how the Regulator Rules, and if retained, the Key Functions document, are intended to be used and relied upon by the Regulators.

2 The Key Functions go beyond what is contemplated by the FAR Bill

The FAR Bill vests power in the Minister to determine the list of prescribed responsibilities that cause a person to be an accountable person in the Minister Rules (section 10(4) of the FAR Bill). Importantly, the draft Minister Rules contemplate that such prescribed responsibilities will be set at the level of 'senior executive responsibility', which is consistent with the policy intent underpinning both the BEAR and the FAR. We are concerned that the introduction of the Key Functions is inconsistent with and goes beyond what is contemplated by Treasury in the FAR Bill and the Minister Rules.

In the early exposure draft of the FAR Bill, released by Treasury on 16 July 2021, it was proposed that the Regulators would have the power to determine accountable persons. Following consultation, this power was removed, and instead this role was allocated to the Minister (see section 10(2)-(4)). In our view, this amendment to the FAR Bill demonstrates Treasury's intent that the scope and number of accountable persons would be a matter for the Minister rather than the Regulators.

In our view, the introduction of prescribed Key Functions (in addition to the prescribed responsibilities that will be set in the Minister Rules) effectively broadens the list of prescribed responsibilities (and potentially the number of accountable persons). We think this effect is retained notwithstanding the Regulators' indication that the Key Functions are not designed to expand the scope of responsibilities under the FAR Bill and the Minister Rules. This is because:

- 1 the number of, and the level of detail prescribed for, Key Functions is far greater than contemplated under the FAR Bill and Minister Rules, and captures activities and functions overseen by employees below the senior executive level;
- 2 the concept of having "overall development, maintenance, oversight, review or execution" for each Key Function is a new concept that is not contemplated in the FAR Bill (nor is it contemplated under the BEAR). As stated above, the concept is materially different to the concept of 'senior executive accountability'; and



- 3 relatedly, the concept of the Key Functions has the effect of cutting across how accountable persons and accountable entities cascade responsibilities to direct reports and other employees within the accountable entity.

Submission 1: The concept of Key Functions should be removed from the proposed Regulator Rules as there is a real risk that its inclusion creates the unintended effect of expanding the list of accountable persons and/or the scope of their responsibilities and is not aligned with the policy intent previously communicated by Treasury, including as reflected in the Explanatory Statement to the consultation draft of the Minister's Rules.

In addition, the Consultation Documents provide that the Key Functions will be allocated to the person with 'primary conduct of or key decision making power' in relation to the 'overall development, maintenance, oversight, review or execution' of a Key Function. This can be contrasted to the BEAR and the draft Minister Rules, which refer to 'senior executive responsibility' for certain prescribed responsibilities. The formulation of the Key Functions in this way risks requiring additional managers or employees that are below 'senior executive' level to be appointed as accountable persons to meet the Regulators' expectations. At the very least, the inconsistent drafting creates unwarranted confusion. This is because, due to the scope of the proposed Key Functions, many individuals with 'primary conduct of' or 'key decision making power' in relation to the Key Functions (or components of the Key Functions) are not senior executives and therefore do not fall within the definition of an accountable person under the FAR. Any intended or unintended change to this approach would be inconsistent with the stated purpose of the FAR, which is an executive accountability regime. Relevantly, the Explanatory Statement to the consultation draft of the Minister's Rules states that:

the prescribed responsibilities are intended to capture senior executive responsibility for management of an activity or function, distinct from a (typically lower level) responsibility for carrying out an executing the activity or function.

By way of example, the Consultation Documents prescribe a Key Function for a person if they have 'primary conduct of, or key decision-making power in relation to, the overall development, maintenance, oversight, review or execution' of 'Capital Management' as follows:

Capital management function including the Internal Capital Adequacy Assessment Process, stress testing, capital buffers and capital instruments.

In the case of a life company, 'senior executive responsibility' for such a function will ordinarily sit with the Chief Financial Officer. However, 'primary conduct', as well as 'maintenance' and 'execution' (among other things) will typically fall to the life company's Appointed Actuary and the actuarial and finance teams that report to the Chief Financial Officer.

Accordingly, the formulation of Key Functions goes considerably beyond the parameters of a senior executive accountability regime.

Submission 2: While our recommendation is that the Key Functions information be removed from the registration requirements in Rule 5 of the proposed Regulator Rules, if they are retained, the Key Functions should be amended to make it explicit that they are only intended to cover senior executive responsibility and not the execution, maintenance or primary conduct of the relevant functions.



3 Material change notification obligations are unclear and unworkable

Section 32(e) of the FAR Bill prescribes that:

a material change occurs to information that relates to an accountable person of the accountable entity, or of a significant related entity of the accountable entity, and is contained in the register established under section 40.

Rules 5(1)(j) and (k) of proposed Regulator Rules seek to include in the register established under section 40 of the FAR Bill Key Function information including:

- each ADI Key Function (if any) of the accountable person; and
- the dates the accountable person assumed, and ceased to have, responsibility for each ADI Key Function referred to in paragraph 5(1)(j) (if applicable).

The definition of “ADI Key Function” is set out in Rule 4 of the proposed Regulator Rules and contains only a list of the names of the Key Functions.

Under the current proposed Rules, accountable entities would be required to notify the Regulators of a material change to the Key Functions information *only* when a Key Function is re-allocated or an accountable person commences or ceases to assume responsibility for a Key Function. As currently drafted, it is difficult to see how anything other than an allocation, removal of an allocation, or re-allocation of a Key Function could be considered a material change. For example, in the absence of further guidance from the Regulators, if the nature of an accountable person’s responsibilities in relation to a particular Key Function changes, this is not likely to trigger a material change notification obligation. Given the broad manner in which the Key Functions are drafted and described in Column 2 of Attachment B, changes in the nature of an accountable person’s responsibilities in relation to a Key Function could occur regularly (and across multiple accountable persons who are allocated the same Key Function).

Additionally, in view of the obligations that accountable entities already have to provide the Regulators with information, namely information relating to:

- who their accountable persons are, including by reference to the prescribed responsibilities in the Minister Rules;
- whether those accountable persons are complying with the accountability obligations; and
- in the case of entities subject to enhanced notification obligations, comprehensive accountability statements and maps,

the practical benefit of prescribing the Key Functions information is unclear.

There is likely to be considerable uncertainty about what triggers a material change in the allocation or removal of a Key Function, as well as what triggers a change in the nature of an accountable persons responsibilities within that allocation. This is particularly relevant to Key Functions such as scam management and training and monitoring of staff representatives that deal with subject matter and activities that clearly fall across multiple business units within a financial services entity.

Submission 3: The Key Functions information should not be included in the register established under section 40 of the FAR Bill as information of this kind is already captured by the core and enhanced notification obligations of accountable entities. Further guidance about what triggers a material change notification in relation to the Key Functions information will be necessary if this information is retained in the register.



4 Implementation of Key Functions by ADIs in the form proposed will undercut progress made by ADIs under the BEAR

The BEAR has applied to ADIs since 2018 / 2019 (depending on the ADI size) and the existing ADIs have well-established BEAR governance and compliance arrangements that have operated since that time. ADIs have worked closely with APRA over several years now to review, implement, embed and mature processes that are curated to each ADI and reflect the various operating practices within those ADIs.

In our view, the BEAR has been operating effectively and the clear purpose and legislative intent of the FAR is to extend the accountability obligations placed on directors and senior executives of ADIs to directors and senior executives of a wider range of regulated financial services entities, for example in the superannuation and insurance sectors.

Our expectation was that the FAR would leverage aspects of the BEAR and that the ADIs would be able to transition to the FAR by making a small number of enhancements aimed at clarifying and improving aspects of the operation of their existing BEAR arrangements. This is supported by the recommendations in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which only referred to “extending” BEAR to other prudentially regulated entities (and not generally to reinventing the regime). In view of this, the Consultation Documents run the risk of creating unintended consequences including forcing ADIs to re-shape their current practices that have been developed together with APRA’s oversight.

With the proposed introduction of Key Functions that are in some parts duplicative, some parts more granular, and in other parts much broader than the list of prescribed responsibilities to be set in the Minister Rules, we expect it will be necessary for ADIs to undertake significant work to comply with the Regulators’ expectations.

Given the short implementation timeframe for the ADIs from when the FAR Bill passes (6 months), it may not be practically possible for ADIs to review and update their existing arrangements to comprehensively allocate the key functions in this timeframe.

Submission 4: The Regulators should adopt the approach to key functions taken in implementing the BEAR, at least in respect of ADIs who are subject to the BEAR, including to mitigate against unnecessary regulatory burden.

5 It would be more appropriate to have regulatory guidance than prescribed Key Functions

Based on our experience, the implementation guidance provided by APRA in October 2018 (‘Information paper – Implementing the BEAR’) was helpful and assisted with the successful implementation of the BEAR regime by ADIs. This guidance outlines the key responsibilities that APRA expected to see allocated to accountable persons within the suite of accountability statements, rather than mandating that ADIs nominate accountable persons to specific key functions in addition to the prescribed responsibilities. Under the BEAR, the responsibilities in APRA’s guidance acted as a guide for what detail the banks should include in accountability statements. Accountable entities are required to notify ASIC of any material change to its accountability statements under the FAR Bill.

We think APRA’s approach to the BEAR has been effective and would be more appropriate than mandating Key Functions information of the type proposed in the Consultation Documents because it recognises that there is no ‘one size, fits all’ approach to operating a prudentially regulated business and implementing the BEAR (or the FAR).



APRA's current approach also recognises that it is a matter for each accountable entity to allocate executive responsibilities to its selected accountable persons, in a manner that suits and is tailored to the business operations of the entity. Such an approach would also, in our view, be more consistent with APRA's existing approach to prudential regulation of APRA-regulated entities, with key aspects of the prudential framework recognising the variation in the size, complexity and operations of APRA-regulated entities. For example, APRA Prudential Standard CPS/SPS 220 *Risk Management* provides that an entity's "risk management framework must provide a structure for identifying and managing each material risk to ensure the institution is being prudently and soundly managed, having regard to the size, business mix and complexity of its operations" (emphasis added).

We submit that providing joint regulatory guidance rather than prescribing the Key Functions would be more consistent with the intention and requirements of the FAR Bill, as well as the practical realities of managing APRA-regulated entities, which vary greatly in size and complexity. We consider that the Key Functions provide useful guidance for APRA-regulated entities when mapping accountabilities, as they provide useful insight into the functions that APRA and ASIC expect to be covered in any management structure. However, by prescribing and mandating the Key Functions, most APRA-regulated entities will be forced to draw impractical distinctions between key personnel and their responsibilities as part of the entity's executive management team.

The provision of joint regulatory guidance will also allow the Regulators to draw together guidance for accountable entities on various aspects of the implementation of the regime (including but not limited to information on any key functions) in a way that is cohesive and comprehensive. Such a position is consistent with that which was adopted in the Information Paper published by APRA and ASIC in July 2021 in respect of the joint administration of the FAR.

Submission 5: The Regulators should issue a joint regulatory guidance note which includes guidance on responsibilities to be allocated in practice to accountable persons and remove the requirement to allocate Key Functions and register accountable persons for each Key Function.

6 **The Key Functions do not reflect the practical reality of how APRA-regulated entities operate**

The proposed Key Functions are far more granular and prescriptive than what we have seen under BEAR or in the draft FAR Bill or in the list of prescribed responsibilities in the draft Minister Rules.

A significant concern we hold is that the Key Functions will be allocated in a way which does not and cannot accurately reflect how ADIs (or other APRA-regulated entities) divide responsibilities and accountabilities in practice.

As the Consultation Documents are currently drafted, accountable entities will be required to allocate at least one accountable person to have 'primary conduct of, or key decision-making power in relation to, the overall development, maintenance, oversight, review or execution' of each Key Function. Based on the draft Regulator Rules, this would only include the "Key Function" outlined in Column 1 of Attachment B (and as set out in the Regulator Rules) but not any detail about the scope of an accountable person's responsibilities in relation to that allocated Key Function.

In practice, it would be rare to have one person responsible for all of these aspects of a Key Function for the following reasons:



- 1 while there will typically be someone accountable for developing risk, governance and other policies and frameworks (e.g., a conduct risk management framework or operational risk management framework), that person is rarely responsible for implementing them throughout an entity or corporate group;
- 2 in many cases, accountability for implementing frameworks and policies within different functions and business units will be allocated to the accountable person of the relevant function or business unit. This means that accountability for implementing frameworks and policies will be divided among multiple accountable persons; and
- 3 requiring a person to be accountable for overall development, maintenance, oversight, review and execution would be inconsistent with the three lines of defence model that is adopted by APRA-regulated entities.

The practical effect of this would be that the Key Functions will be allocated across multiple (if not all) executives who are accountable persons for an accountable entity. In our view, this would make the requirement to register accountable persons for Key Functions redundant as there will be a need to still refer to accountability statements for clarity on who is responsible. Such an approach will result in unnecessary regulatory burden and a more legalistic approach to drafting accountability statements. It would also be inconsistent with the FAR to have all senior executives 'on the hook' for every Key Function as the purpose of the FAR is designed to clarify accountability, including where accountable persons have joint or overlapping accountability for a particular area.

There is also a risk that entities may consider it is necessary to restructure their operating processes to comply with the prescribed Key Functions. In our view, this cannot (and should not be) the intended outcome of having the Key Functions, given the proposed operation of the Minister Rules.

Refer to **Submissions 1, 2, 3 and 4** above.

7 The Key Functions are duplicative and unworkable in view of existing obligations to detail the responsibilities of accountable persons

A number of the Key Functions are unclear, duplicative, or otherwise should be considered 'out of scope'. Examples include the risk management functions, the functions relating to the training and monitoring of representatives and staff, and the scam management function. We have set out responses to selected examples of the Key Functions which we consider to be most unworkable in Attachment 1.

As stated in other parts of our submission, our view is that the introduction of the Regulator Rules and the Key Functions will be inconsistent with the legislative intent of the FAR Bill. Pursuant to section 33 of the FAR Bill, accountable entities that are subject to enhanced notification requirements under section 31(2) of the FAR Bill are already required to prepare an accountability statement which *must*:

- (a) contain a comprehensive statement of:
 - (i) the part or aspect of the operations of the accountable entity, or of the significant related entity, for which the accountable person has actual or effective responsibility for management or control; and
 - (ii) the responsibilities of the accountable person, including any responsibilities to which paragraph 23(1)(a) or subsection 23(3) applies, as the case requires; and



- (iii) the matters (if any) prescribed by the Regulator rules; and
- (b) include a statement by the accountable person declaring that:
 - (i) the content of the accountability statement is accurate; and
 - (ii) the accountable person understands their accountability obligations under section 21.

Section 34 of the FAR Bill also imposes an obligation to prepare detailed accountability maps which supplements the information provided in the accountability statements and allows the Regulators to assess how accountable entities have allocated various responsibilities.

The effect of the introducing the Key Functions information is that the Regulators are essentially seeking much of the same information accountable entities subject to the enhanced notification requirements are already providing to the Regulators.

Given their broad formulation, it is difficult to see how the Key Functions can provide the Regulators with any useful data on accountability or assist the Regulators in assessing whether accountable persons or accountable entities are complying with their obligations under the FAR Bill. In our view, there is a real risk the dual notification obligations (both changes to accountability statements and Key Functions) will impede the Regulators' ability to enforce the regime effectively and efficiently.

To this end, we expect an impact of the Consultation Documents will be that accountable entities will be required to undertake significant, costly, and time intensive reviews to their existing approaches to accountability which risks undercutting the ongoing operation of the BEAR and the effective transition to the FAR.

Submission 6: The Regulators should re-visit the purpose of the Key Functions information and consider whether the information is appropriate in circumstances where accountable entities with enhanced notification obligations are already required to provide comprehensive information of the type sought by the Key Functions list (under the requirements for those entities to prepare and lodge accountability statements and accountability maps). In view of this, one approach open to the Regulators is to retain the prescription of the Key Functions information under Rule 5 of the Regulator Rules, but only for accountable entities that are not subject to enhanced notification requirements and therefore not required to prepare accountability statements and accountability maps.

8 Regulator Expectation regarding Key Functions

There is a lack of clarity around the Regulators' expectations regarding the Key Functions and how the Regulators will use the Key Function information registered by accountable entities. There is no requirement in the FAR Bill itself for accountable entities to allocate Key Functions. Instead, the key personnel obligations in section 23(1) of the FAR Bill require that an accountable entity to ensure that the responsibilities of the accountable persons cover:

- all parts or aspects of the operations of the accountable entity's relevant group; and
- each of the prescribed responsibilities and positions set in the Minister Rules.

It is also unclear how the introduction of prescribed Key Functions interacts with the legislation itself and how the Regulators will use this information. The Regulator Rules do not address this issue.



As raised above, there is a real (and significant) risk that the Key Functions will simply add another lay of regulation and complexity beyond what was intended by Treasury, with limited benefits in practice.

It is also not clear whether the proposed key functions and the Regulators' intention to "assess whether accountable entities are adequately assigning accountability across all operational areas to their accountable persons" is likely to activate the power for APRA or ASIC to direct entities to reallocate responsibilities to different or new accountable persons (see s 65 of the FAR Bill). In our view, such statements regarding the operation of material changes to the FAR should be appropriately documented either in legislation or in formal regulatory guidance. In the current circumstances, we expect significant legal uncertainty to arise with respect to how the Key Functions interact with accountable persons' and accountable entities' obligations under the FAR Bill. This is especially the case where section 22 of the FAR Bill already provides guidance on what constitutes the taking of 'reasonable steps' under the regime including "having appropriate governance, control and risk management in relation to [a] matter" and "having safeguards against inappropriate delegations of responsibility in relation to [a] matter".

Submission 7: The Regulators should clarify how the Regulator Rules and if retained, the Key Functions document, are intended to be used and relied upon by the Regulators.

9 Impacts of introduction of additional registration requirements

The draft Regulator Rules propose to require a significant amount of information to be registered about accountable persons, particularly when compared with BEAR.

We are concerned about the increased burden that the adoption of the Consultation Documents would have from an implementation and administrative perspective and we query whether any regulatory benefit outweighs this burden.

As an example, the amount of additional data that accountable entities will need to capture about their accountable persons (for example, a direct phone number) and the requirements to update the regulator where there are any changes to persons holding Key Functions will place a heavy and unnecessary administrative burden on the teams with responsibility for ongoing FAR compliance within each accountable entity. It is possible that resources will be diverted from ensuring substantive compliance with the FAR requirements in order to meet the increasing administrative conditions associated with the regime.

Additionally, as stated above, the introduction of the Key Functions will require ADIs to revisit their existing arrangements and significantly uplift their accountability statements in a way which moves beyond what is intended by the FAR Bill and the Minister Rules). An additional risk is that ADIs take an overly conservative, technical and legalistic approach in drafting accountability statements which we expect will impact the regulators' ability to enforce the regime from both a prudential and conduct perspective.

The increased work expected of accountable entities to develop new processes and internal control, conducting mapping of accountability across the Key Function and uplift accountability statements, should the Consultation Documents be adopted, is likely to make it difficult for those entities to meet the implementation timetable for the FAR.

We understand that the Regulators have recently communicated that they will limit the amount of public information available on the register, which has addressed concerns regarding privacy of personal information registered with the regulators, however we recommend that the Regulators confirm this in writing prior to implementation of the Regulator Rules.



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We are grateful for the opportunity to make this submission and would be happy to discuss this further. If you have any questions about our submission, please do not hesitate to contact us.

Yours sincerely

HERBERT SMITH FREEHILLS



Comments on specific ADI key functions descriptions

Column 1	Column 2	Column 3
Key function	An accountable person holds the key function in Column 1 if they have primary conduct of, or key decision-making power in relation to, the overall development, maintenance, oversight, review or execution of one or more aspects of the relevant key function as described in this Column 2	HSF Response
1. Capital Management	Capital management function including the Internal Capital Adequacy Assessment Process, stress testing, capital buffers and capital instruments.	For most APRA-regulated entities, 'senior executive responsibility' for such a function will ordinarily sit with the Chief Financial Officer. However, 'primary conduct', as well as 'maintenance' and 'execution' (among other things) will typically fall to the entity's Appointed Actuary and the actuarial and finance teams that report to the Chief Financial Officer.
2. Conduct risk management	Management of conduct risk including the identification and monitoring of the risk of inappropriate, unethical or unlawful behaviour on the part of the accountable entity's management or employees.	It is widely recognised in the Australian market, including by APRA, that a 'three lines of defence' model can provide an effective framework for risk management (see for example, APRA Prudential Practice Guide CPG 22 <i>Risk Management</i>). The formulation of this Key Function requires an accountable person to have primary conduct of key aspects of an APRA-regulated entity's risk management function. Given the 'three lines of defence' model, there is unlikely to be a single



Column 1	Column 2	Column 3
Key function	An accountable person holds the key function in Column 1 if they have primary conduct of, or key decision-making power in relation to, the overall development, maintenance, oversight, review or execution of one or more aspects of the relevant key function as described in this Column 2	HSF Response
		person responsible for the primary conduct of risk management. Again, consistent with the intent behind a senior executive accountability regime, such a function will typically be overseen by an entity's Chief Risk Officer or Chief Governance Officer, or similar.
3. Monitoring representatives and staff—financial or credit products/services.	Monitoring staff and representatives (including authorised representatives and credit representatives) authorised to provide financial or credit products/ services on behalf of a licensee.	It is unclear why this function is separated from the overarching risk and compliance functions of an APRA-regulated entity, as contemplated under the draft Minister Rules.
4. Product design and distribution obligations	Oversight of the various activities involved in complying with the product design and distribution obligations. Note: The product design and distribution obligations and product origination key functions are related but may be distinguished as follows—The product design and distribution obligations involve ongoing monitoring of products, and their design and distribution processes, throughout the lifecycle of the product; the product origination obligations are concerned with specific obligations at the time the consumer acquires the product.	In addition to the fact that the primary conduct of such activities will ordinarily occur at a level below 'senior executive responsibility', the allocation of responsibility for such a function will rarely sit with a single accountable person. Rather, responsibility will be divided among different persons based on business units and operations. For example, the responsibility in the context of a life company will often be divided between retail and group product lines, as well as direct and intermediated product lines. Similarly, for a general insurer or a retail bank, responsibilities will ordinarily be divided based on



Column 1	Column 2	Column 3
Key function	An accountable person holds the key function in Column 1 if they have primary conduct of, or key decision-making power in relation to, the overall development, maintenance, oversight, review or execution of one or more aspects of the relevant key function as described in this Column 2	HSF Response
		business units, such as retail and SME/business product lines.
5. Product origination	Oversight of product origination obligations that relate to financial products or credit contracts/consumer leases— including obligations relating to disclosure, contract formation, representations and responsible lending.	As above.
6. Scam management	Oversight of the entity's policies, procedures and practices designed to prevent and mitigate consumer loss from scams, and to respond to scams and consumers who have been the subject of scams.	<p>The primary conduct of such activities will ordinarily occur at a level below 'senior executive responsibility' and the allocation of responsibility for such a function will rarely sit with a single accountable person. Rather, responsibility will be divided among different persons based on business units and operations. Further, the management of scams, among others, is an area which is currently undergoing significant industry and regulatory attention such that ADIs and other APRA-regulated are responding to new and developing regulatory guidance and maturing operating processes.</p> <p>Adopting a prescriptive approach to these types of functions, which are evolving, may not reflect actual and ongoing practice.</p>



Column 1	Column 2	Column 3
Key function	An accountable person holds the key function in Column 1 if they have primary conduct of, or key decision-making power in relation to, the overall development, maintenance, oversight, review or execution of one or more aspects of the relevant key function as described in this Column 2	HSF Response
7. Training of relevant staff and representatives— financial products/services/credit activities	Training of staff and representatives relevant to the provision of a financial service or engaging in a credit activity— including training on mandatory continuous education on a product/service.	It is unclear why this function is separated from the overarching risk and compliance functions of an APRA-regulated entity, as contemplated under the draft Minister Rules.
