



Insurance Council
of Australia

17 August 2023

██████████
General Manager
GCRA, APRA

By email: far@apra.gov.au

Dear ██████████

Financial Accountability Regime (FAR) consultation on the Regulator Rules and Transitional Rules

The Insurance Council of Australia (ICA) welcomes the opportunity to provide feedback on this consultation. This feedback is limited to the Draft Regulator Rules (Rules) and the supporting detail about the ADI Key Functions (Key Functions) (Attachments A and B of the consultation papers).

The feedback provided focusses on how the requirements of the FAR, Regulator Rules and ADI Key Functions could be better designed to provide a simpler and more effective regime structure.

Our key observation is that the Regulator Rules approach to Key Functions confuses the existing design of the FAR by introducing an additional categorisation methodology for responsibilities and imposes an extra reporting burden on Accountable Entities, as explained below.

Misalignment between Key Functions information/reporting and Accountability Statements

The requirement in paragraph 5(1)(j) and 5(1)(k) of the Rules to provide Key Functions information are at odds with the existing design of the FAR. Section 33 of the FAR Bill 2023 requires a comprehensive statement of the responsibilities of the Accountable Person (AP). At no time has there been a requirement to categorise these responsibilities in terms of Key Functions.

By requiring the provision of Key Functions information for each AP, we are concerned that Accountable Entities will be required to review and categorise every line-item responsibility included in every Accountability Statement (AS) by Key Function (ie. the descriptors in Attachment B). This categorisation will be necessary to be able to prove the allocation of the Key Function to the relevant AP and then report to APRA or ASIC (the Regulator/s). We query whether the work and effort required by FAR implementation teams to provide this summary view has any value or merit.

The ICA is of the view that the objectives of the FAR can and will be achieved by adopting a less prescriptive approach similar to that used with the introduction of BEAR.

Under BEAR Key Functions for ADIs were issued as guidance for implementing the BEAR, and this guidance was used to assist the regulators assess whether an entity was assigning accountability for core prudential functions to the APs.

By comparison, what is being proposed under FAR has moved away from using guidance to assign responsibilities to a more prescriptive model. The use of AS and mapping is the most efficient and effective way to identify AP responsibilities and allocation of key functions to APs is apparent and identifiable from the contents of the AS.

The ICA request that a more principles-based approach be adopted whereby there is provision of guidance on key functions from regulators to insurers and other FAR regulated entities. This guidance would then be used by insurers to map and identify appropriate responsibilities for inclusion in ASs.

Unnecessary application to Enhanced Entities

The ICA notes that under the FAR only Accountable Entities that meet the Enhanced Notification Threshold (ENT) are required to register ASs with the Regulators. We understand that this may result in Regulator uncertainty as to the allocation of Key Functions to APs in Core Entities. However, this should not lead to any requirement for Enhanced Entities to incur an extra burden in their FAR participation which would result from the proposed Key Function data collection.

Therefore, for the purpose of reducing duplication and administrative burden the ICA request that only non-enhanced entities be required to provide and maintain the Key Function data in the Register, and that, for enhanced entities, responsibilities linked to key functions (based on the principles-based approach noted above) should be set out alone in their ASs.

Information reporting duplication

The ICA notes there is an overlap in the information required in CPS 520 and the Regulator Rules, noting that all APs are likely to also be Responsible Persons.

Change to an AP's information will require notifications across both regimes. For entities with a group structure, this will translate into multiple notifications for individuals who act on behalf of multiple entities.

To further reduce duplication, administrative and resourcing costs of the FAR, the ICA requests the Regulator Rules and reporting requirements be revised to leverage and utilise information already provided to APRA through existing reporting requirements.

For example, the requirement in the Draft Regulator Rules regarding reporting lines (Part 2, paragraph 5(1)(m)) might trigger multiple updates in some circumstances, such as when there is a change in the CEO (and therefore a change to the information for all the APs that report to that CEO). If retained, the word 'person' in Part 2, paragraph 5(1)(m) should be replaced with '*accountable person position*'; linking to the role rather than the incumbent person may mitigate this.

Any similar opportunities to simplify compliance notifications across related regimes would support ongoing implementation. This could include consolidating the APRA Connect lodgement process under CPS 520 where the position is also an AP position under FAR.

Request for further guidance

We note the Regulators' position that there can be multiple APs assigned to a single Key Function. It was discussed during the webinar that AP's individual responsibilities, as they relate to that key function, would not be included in the AP register. We feel that greater consultation on this lodgement form would be valuable so that Accountable Entities could test and provide feedback on any proposed screens.

There is concern that, because the AP register does not contain the responsibilities of the AP within a Key Function (ie. it doesn't depict their involvement in the value chain), it may be used to unduly prejudice all APs who are assigned the same Key Function. For example, using the Regulators' example on slide 13, if there were three APs assigned the key function of "data management" and the failure of the accountability obligations lies firmly in the Chief Data Officer, then by looking at the register alone, it may mistakenly assign liability to all three APs for any given incident. On that basis, we believe it is more accurate and efficient, with respect to entities subject to the enhanced notification

requirements, to remove the key function from the Register and have them addressed entirely in the AS.

Request that the draft Insurer Key Functions list be released as soon as possible

The ICA notes APRA and ASIC's intention to delay consultation on draft Insurer Key Functions until after the passage of the FAR Bill. Given the potential impact on insurers' implementation activities, much of which is well underway, we would seek to have this consultation brought forward.

If you have any queries in relation to this submission please contact [REDACTED], Senior Policy Manager, Regulatory Policy at [REDACTED] or on [REDACTED].

We look forward to the ongoing consultation with both APRA and ASIC.

Kind regards,

[REDACTED]

Andrew Hall

Executive Director and CEO.