

25 August 2023

██████████
General Manager
Governance, Culture, Remuneration and Accountability
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001

By email: far@apra.gov.au

Dear ██████████

The Financial Accountability Regime—Consultation on the Regulator rules and Transitional rules

1. The Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to provide a submission in relation to the consultation drafts of the:
 - (a) *Financial Accountability Regime Act (Information for register) Regulator Rules 2023 (Cth)* (the **Regulator Rules**);
 - (b) *ADI Key Functions descriptions*; and
 - (c) *Financial Accountability Regime (Consequential Amendments) Transitional Rules 2023 (Cth)* (the **Transitional Rules**).

These were released by the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission (collectively, the **Regulators**) on 20 July 2023.

2. The Committee appreciates the opportunity to be involved in the consultation process. The Committee also wishes to thank the Regulators for granting a short extension of time within which to prepare this submission.

Comments relating to the consultation documents

3. The Committee endorses an approach that maintains an appropriate equilibrium between the need to improve corporate culture within prudentially regulated providers of financial services (which is the genesis of the Financial Accountability Regime set out in the Financial Accountability Regime Bill 2023 (**FAR**)), and the regulatory burden on the entities that are subject to the FAR on the other hand.
4. The Committee considers that the Regulator Rules appear to expand, or at least conflate, the concept of who an “accountable person” is for the purposes of the FAR. For example, they appear to suggest that middle managers will be responsible for some aspects, and thus caught as accountable persons. The Committee is of the view that the identification of accountable persons is properly the domain of the FAR Ministerial Rules rather than the Regulator Rules.

5. The ADI Key Function descriptions, as the Committee reads them, are meant to be a non-exhaustive list of functions within a prudentially regulated institution, responsibility for which could be held by an accountable person. If this is the intention, the Committee submits that this should be made clearer on the face of the document.
6. The Committee further submits that the Regulators should engage in extensive consultation with the general insurance, life insurance and superannuation industries. The difficulties faced by these industry sectors are likely to be different to those faced by the banking sector in a number of respects.

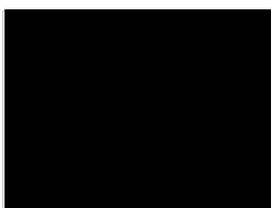
General observations

7. The Committee notes the significant amount of contemporaneous regulatory reform that prudentially regulated entities have faced in the wake of the Hayne Royal Commission, and the associated resourcing challenges, which have been exacerbated by recent labour supply shortages.
8. In the context of implementing CPS 511, CPS 190, CPS 230 and other major interlocking reforms with the FAR, the Committee considers that it is important that sufficient policy and practical guidance is given to prudentially regulated financial services industry participants.
9. The Committee believes that the time, cost, and effort involved in the FAR implementation will be very significant for the affected prudentially regulated entities, having regard to the costs associated with implementing the Senior Managers and Certification Regime in the United Kingdom. The Committee further notes that these costs will likely significantly exceed the costs associated with implementing the Banking Executive Accountability Regime reforms.
10. For example, for each stated responsibility for an accountable person in their accountability statement, organisations will naturally utilise their people, risk, and compliance functions to confirm at an evidentiary level that those responsibilities are being met in practice (i.e., as opposed to accountable persons simply assuming this personal risk without supporting verification).

Follow-up communication

11. The Committee notes that the FAR has not yet passed the Senate. The Committee looks forward to making a contribution to future consultation processes if and when the FAR has been passed.
12. If the Regulators have any questions, or would like to further discuss with any matters raised in this submission, please do not hesitate to contact [REDACTED], Chair of the Committee ([REDACTED]).

Yours faithfully



[REDACTED]
Chairman
Business Law Section