



17 August 2023

██████████
General Manager, Governance, Culture, Remuneration & Accountability
Australian Prudential Regulation Authority

By Email: far@apra.gov.au

Dear ██████████

The Financial Accountability Regime – Consultation on the Regulator Rules and Transitional Rules

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on the Regulator Rules and Transitional Rules for the Financial Accountability Regime (**FAR**), and support APRA and ASIC in building clarity in relation to the operational areas for which Accountable Persons (**APs**) are responsible.

Our submission makes the following three key points, which are elaborated in the **Appendix**:

- The ABA recommends the release of a single guidance note or information paper, which would consolidate the Regulator Rules, Transitional Rules, Key Functions Document, and any relevant additional information contained in the Consultation Letter.
- Accountability statements are intended to articulate the scope of accountability for APs of ADIs in a way that satisfies the requirements in the legislation. It is unnecessarily duplicative and administratively burdensome to add to this obligation by also requiring entities to include Key Function prescribed information in the register.
- Further clarification is required in relation to the types of changes that will constitute a “material” change for purposes of the FAR (thereby triggering the notification obligation).

The Appendix provides further recommendations regarding the individual Key Functions themselves, and Implementation. ABA members welcome the opportunity to meet with the Regulators to discuss this submission.

Yours sincerely

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Policy Director

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.



Appendix: Detailed Comments

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1. Commentary on the Key Functions

Overall Views

Authorised deposit-taking Institutions (**ADIs**) welcome the opportunity to support APRA and ASIC (the **Regulators**) in building clarity in relation to the operational areas for which Accountable Persons (**APs**) are responsible. This submission makes the following key points with respect to the *Financial Accountability Regime Act* (Information for register) *Regulator Rules 2023* (the **Regulator Rules**):

- The formal status of the document titled “ADI Key Functions Descriptions” is unclear,¹ and it is not referred to in the Regulator Rules. The ABA recommends the release of a guidance note or information paper, similar to the earlier Information Paper on “Implementing the Banking Executive Accountability Regime” (**BEAR**).² This would consolidate information on the Key Functions contained in the Regulator Rules, Transitional Rules, ADI Key Functions document and the additional information contained in the consultation letter. This would support an approach (similar to that implemented for BEAR) whereby direction on the content of Accountability Statements is provided via guidance rather than rules. As discussed below, we view Accountability Statements as the most effective mechanism to identify accountabilities. In addition, a single and streamlined “source of truth” would be consistent with the stated aims of APRA’s ongoing *Modernising the Prudential Architecture* project.
- Accountability Statements are intended to articulate the scope of accountability for APs of ADIs in a way that satisfies the requirements in the legislation. It is unnecessarily duplicative and administratively burdensome to add to this obligation by also requiring entities to include Key Functions in the register. We view Accountability Statements as the most effective mechanism to identify accountabilities relevant to Key Functions and the application of the Key Function prescribed information may introduce ambiguity and dilute the importance of these statements.
- Accountability Statements provided by ADIs that meet the enhanced notification threshold will already provide sufficient detail for the Regulators to determine where responsibility for the Key Functions lies. For those entities that meet the enhanced notification threshold, the duplication could result in a lack of clarity and will cause operational complexity for the Regulators and the ADIs. For other entities, we request that the Regulators consider the proportionate impact of the additional regulatory burden.
- The distinction between Key Functions (Regulator Rules) and Prescribed Responsibilities (Minister Rules) requires further clarification. A number of the Key Functions (for example hardship processes,

¹ <https://www.apra.gov.au/sites/default/files/2023-07/Draft%20-%20Regulator%20Rules.pdf>

² <https://www.apra.gov.au/banking-executive-accountability-regime>



technology management and risk management) are duplicate and overlap with Prescribed Responsibilities. Refer to Key Recommendations below for further details.

- Further clarification is required in relation to the types of changes that will constitute a “material” change for purposes of the Finance Accountability Regime (FAR) Act (thereby triggering the notification obligation). The Regulators’ guidance set out in the consultation letter suggests that the allocation or removal of a Key Function will be considered a material change for these purposes. However, further guidance was provided by the Regulators during the webinar on 8 August 2023, suggesting that changes impacting the *nature* of responsibilities held in relation to a Key Function may also be considered a material change (even where they do not result in Key Functions being assigned to, or removed from, individual APs). We suggest that not all changes relevant to Key Functions should require notification to the Regulators, particularly where such changes impact responsibilities that are not sufficiently material to be captured in Accountability Statements. We recommend that specific guidance be provided to articulate the relevant materiality threshold.
- A core premise of the FAR is individual accountability. Some members have advised that recent engagements with the Regulators in relation to Significant Related Entities (SREs) discussed positions that minimise joint accountability in favour of clear single points of accountability. The Key Functions potentially obscure accountability as a result of the broad definition set out at section 4 of the Regulator Rules. Certain Key Functions would require the ADI to nominate several (if not all) APs for *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*.
- We have previously submitted our concerns about aspects of the FAR proposal that may reach unnecessarily far into the organisation construct.³ Some of the Key Functions (detailed below) replicate our earlier concerns.

Key Recommendations

This submission makes the following recommendations:

Section	Recommendation
Formalisation	<p>We reiterate our point above that the formal status of the document titled “ADI Key Functions Descriptions” is unclear, and it is not referred to in the Regulator Rules.</p> <p>The ABA recommends the release of a guidance note or information paper, similar to the earlier Information Paper on “Implementing the BEAR”. This would consolidate information on the Key Functions contained in the Regulator Rules, Transitional Rules, ADI Key Functions document and the additional information contained in the consultation letter. This would support an approach (similar to that implemented for BEAR) whereby direction on the content of Accountability Statements is provided via guidance rather than rules. As discussed below, we view Accountability Statements as the most effective mechanism to identify accountabilities. In addition, a single and streamlined “source of truth” would be consistent with the stated aims of APRA’s ongoing Modernising the Prudential Architecture project.</p>
Key Function descriptions	<p>The nomination of APs responsible for Key Functions should be confined to APs that have primary accountability for management or control of Key Functions such that it does not capture a large number of APs.</p> <p>In defining the responsibilities that render an executive an AP, the Minister Rules generally refer to “management” or “control”. Several sections in the Minister Rules explicitly state that “<i>a person does not have senior executive responsibility for management of an activity of function merely because the person is carrying out the activity or function</i>”. Column 2 of the Key Function Guidance Document by contrast</p>

³ [Submission Financial Accountability Regime Exposure - Australian Banking Association \(ausbanking.org.au\)](https://ausbanking.org.au)



Section	Recommendation	
Key Function descriptions (cont.)	<p>refers to “conduct”, “execution” and “review”. Employees of ADIs who are primarily responsible for the conduct and execution of Key Functions may not be APs.</p> <p>The ABA <i>recommends</i> that:</p> <ul style="list-style-type: none"> • The description be revised so that Key Functions attach at the management or oversight level. • In the alternative (ie. if Key Functions continue to apply to multiple APs), it be expressly stated in the Regulator Rules that allocating multiple APs to a Key Function does not automatically impose joint accountability or liability (stating this in the covering letter accompanying the consultation materials is insufficient) and that several accountability / liability will apply where multiple APs are responsible for distinct parts of a Key Function. 	
Key Functions	<p>Technology Management Data Management</p>	<p>Information management (including information technology systems) is already a Prescribed Responsibility in the Minister Rules. Based on the ADI Key Functions under BEAR this is understood by the industry to include responsibilities for IT strategy, IT frameworks, information security, disaster recovery, data quality and management (and all associated responsibilities given the BEAR guidance was not exhaustive). Although ADIs typically have an executive responsible for its data management framework or technology management framework, aspects of the description provided in Column 2 for these Key Functions are undertaken by several executive APs, spread across the three lines of defence model.</p> <p>The ABA <i>recommends</i> these Key Functions be removed given the degree of overlap with Prescribed Responsibilities.</p>
	<p>Hardship Processes</p>	<p>The Minister Rules already include a Prescribed Responsibility that covers hardship. APs have overall accountability for the relevant prescribed/general responsibilities but this Key Function is elevating a process to a very high level.</p> <p>The ABA <i>recommends</i> this Key Function be removed given the degree of overlap with the prescribed responsibility or otherwise be clarified to apply only at the framework/policy setting level.</p>
	<p>Financial Services Regulatory Engagement</p>	<p>ADIs have nominated to ASIC and APRA responsible individual persons as primary contacts and with whom they deal with on an ongoing basis. It does not appear necessary to supplement this with a requirement for further information under the Regulator Rules. There is also potential overlap with the prescribed responsibility for breach reporting in the Minister Rules.</p> <p>The ABA <i>recommends</i> this Key Function be removed or clarified.</p>



Section	Recommendation	
Key Functions (cont.)	Product Design and Distribution Obligations Product Origination	<p>Products are created across an organisation, and end-to-end responsibility cannot be assigned to a single person. For example, a typical loan product would have people who: develop the product, price the product, review the terms and conditions, people who sell the product, have credit responsibility, and so on. Responsibilities related to these Key Functions are likely to be held by a large number of APs. Attributing Key Functions to many APs is unlikely to provide the Regulators with useful information in relation to the allocation of accountabilities. The required level of granularity should already be contained in the Accountability Statements.</p> <p>The ABA recommends this Key Function should be removed given the previous consultation with respect to end-to-end accountability. Product Origination and Design and Distribution Obligations were excluded from FAR by their non-inclusion in the Minister Rules. The inclusion of the Key Function is not consistent with Treasury's intention.</p>
	Scam Management	<p>As with other Key Functions, the proposed definition of Scam Management is broad and, for many ADIs, may currently capture a range of APs.</p> <p>The regulatory landscape for Scam Management is evolving. ABA has received interim authorisation from the ACCC to work on an industry standard for scams. The Australian Government has also raised the prospect of mandatory Codes under legislation.</p> <p>The ABA recommends that Scam Management be introduced once the evolving regulatory landscape has been clarified.</p>
	Credit Risk Management Market Risk Management Operational Risk Management Conduct Risk Management	<p>Although ADIs typically have a position of Chief Risk Officer (who will generally be assigned the existing prescribed responsibility in relation to risk management), aspects of the description provided for these risks are undertaken by a large number of APs across the three lines of defence model.</p> <p>Further, there is inconsistency in the way that these risk 'functions' have been described. The 'Column 2' descriptions refer to "credit risk management function" and "market risk management function" but then to "management of conduct risk" and "operational risk management". Use of the word 'function' inconsistently is also observed across other descriptions.</p> <p>The ABA recommends this Key Function be removed given the degree of overlap with prescribed responsibilities.</p>



Section	Recommendation	
Key Functions (cont.)	Risk Culture	<p>Although ADIs typically have a position of Chief Risk Officer, oversight and review of risk culture is not a discrete function but rather a shared responsibility which is common to senior executives across the organisation, including all APs for most ADIs.</p> <p>The ABA recommends this Key Function be removed given the degree of overlap with prescribed responsibilities.</p>
	Capital Management Funding Management	<p>These Key Functions would typically be already covered by the prescribed responsibility for the management of an accountable entity's financial resources.</p> <p>The ABA recommends these Key Functions be removed given the degree of overlap with prescribed responsibilities.</p>
	Monitoring representatives and staff - financial or credit products/services Training of relevant staff and representatives - financial products /services /credit activities	<p>These Key Functions would typically be already covered by the Prescribed Responsibility that covers compliance. Given the three lines of defence model, aspects of the description provided for these Key Functions are undertaken by a large number of APs when applying the compliance framework across the entity.</p> <p>The ABA recommends these Key Functions be removed given the degree of overlap with prescribed responsibilities.</p>
Application of the Key Functions	<p>The ABA recommends the Regulators clarify that:</p> <ul style="list-style-type: none"> • Key Functions will not be allocated to Company Directors; • Only Key Functions which are applicable to a Non-operating Holding Company need be allocated to its APs; and • Key Functions will not be separately allocated to SREs. 	
Material change relating to Key Functions	<p>The ABA recommends the Regulators:</p> <ul style="list-style-type: none"> • Clarify what types of changes in relation to a Key Function will be considered a material change that triggers the notification obligation; and • Include this information in the Regulator Rules. 	



2. Implementation

Register of Accountable Persons

We request clarification on why the “Personal Identification details” in Part 2 of the Regulator Rules is necessary for inclusion in the Register. Under Australian Privacy Principle 3 within the *Privacy Act 1988* (Cth) (the **Privacy Act**), an agency must not collect personal information unless the information is reasonably necessary for, or directly related to, one or more of the entity’s functions or activities.

In particular, it is unclear why it is reasonably necessary for the Regulators to collect the information:

- Place of Birth
- Country of Birth (Transitional Rules)
- State of Birth (Transitional Rules)

Such information was not required under the BEAR and could raise concerns with respect to information security management. Members request that the Regulators provide further information as to the intended use of this information and why existing information provided under the BEAR (full name and date of birth) are not sufficient for data matching purposes.

As is the case under the BEAR, we would prefer retaining the flexibility to provide indirect contact numbers for certain APs. For example, if Company Directors were retained within scope, this would be the Company Secretary.

We also request clarification on why it is necessary for the Register to include additional details on reporting lines. For certain entities, this will overlap significantly with the requirement under s31(2)(c) of the FAR Bill to give to the Regulator an accountability map and under s34(b) of the [Act] that that accountability map include details of the reporting lines of the entities’ APs. It is also unclear how the Register might reflect cases of dual, matrix or other reporting lines.

Finally, we request further formal clarification regarding the information intended to be made public on the Register of APs, particularly in relation to the handling of *personal identification details* as the publication of such information could lead to a breach of the *Privacy Act*.

Timelines

The FAR will apply to authorised deposit-taking institutions (ADIs) 6 months and to insurance and superannuation entities 18 months following Royal Assent.

We understand that the regulators have sought to include superannuation and insurance entities as SREs of ADIs. This would introduce inconsistencies in how insurance and superannuation is treated under the scheme. We recommend that the treatment of superannuation and insurance SREs be consistent with the transitional timings established under legislation for those sectors.

Subject to any legislative constraints, we recommend the Regulators provide an additional six months for compliance with the Regulator Rules, to adequately address implementation challenges and data accuracy.

Consultation

ABA members welcome the opportunity to meet with the Regulators to discuss this submission.

- ENDS -