

22 April 2024

██████████  
General Manager - GCRA  
Australian Prudential Regulation Authority  
12/1 Martin Place Sydney NSW 2000

Via email: far@apra.gov.au

Dear ██████████,

**Re: Consultation on the draft amendment instrument and the key function descriptions for insurance and superannuation entities, Financial Accountability Regime**

The Council of Australian Life Insurers (CALI) is the trusted voice of life insurance in Australia. We support Australians to make informed choices about their future and help them live in a healthy, confident, and secure way on their best and worst days.

Our mission is to ensure Australians view life insurance and the industry as accessible, understandable, and trusted. We do this by supporting our members to deliver the protection and certainty Australians need on their worst day.

**CALI's position**

CALI is grateful for the opportunity to provide views on the draft amendment instrument and the proposed Insurance Key Functions List (the list) for superannuation and insurance entities as part of the Financial Accountability Regime. CALI understands that accountable entities are not required to undertake each key function or to assign each key function from the list to an accountable person, and that allocation of all applicable key functions is unlikely to result in compliance with the requirements set by the Regulators.

However, we note that some of the functions and their descriptions in the current draft of the list are better suited to requirements for Authorised Deposit-Taking Institutions (ADIs). In Attachment A we have provided comments on the list, which CALI believes would benefit from being more specific for the life insurance industry. Making these changes would provide a more accurate representation of the operations and functions of life insurers.

Comments have been grouped under the headings 'amendments to the list', 'additions to the list', and 'suggest not including in the list'. Please note, the comments are intended to only reflect the operational reality of life insurers. CALI understands from guidance issued by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) that the Key Functions List is intended to be non-exhaustive. We also recognise that it may be the case that the Insurance Key Functions List is drafted to cover parties beyond life insurers and therefore acknowledge that it may not be feasible to take on board all the comments.

However, we believe having an Insurance Key Functions List that more closely reflects core business areas of life insurance will help contribute to consistency of reporting across the life insurance industry, as well as make allocating key functions to an accountable person a clearer process.

## Key points

The key points raised in Attachment A are:

- There are some key functions on the list that are more appropriate for ADIs, and therefore might require amending and/or removing to better reflect the life insurance industry.
- Some key functions, such as claims management, are key business areas for life insurers and should be considered as being included on the list.

Thank you for the opportunity to contribute to this consultation. I look forward to continued engagement as the Government progresses this important reform. Please contact [REDACTED] at [REDACTED].

Yours sincerely,

[REDACTED]

[REDACTED]  
Chief Executive Officer

## Attachment A – Detailed submission

### 1) Amendments to the list

Below are some areas life insurers would welcome consideration to amending the list to better reflect the operations and functionalities of life insurers. Predominantly where currently the language and terminology used in the list is more appropriate to ADIs. These are:

- *Product origination*: This should exclude credit contract/consumer leases, as this is not applicable to life insurers.
- *Training and monitoring of relevant representatives and staff*. Life insurers feel this key function should ideally exclude credit ADI-related terminology.

Other proposed amendments include:

- *Financial and regulatory reporting*. We recommend that this be split into two separate key functions. In several organisations in life insurance, financial reporting and other regulatory reporting are often carried out in separate areas. For example, claims reporting, fit and proper reporting, dispute resolution and breach reporting are functions often independent of financial reporting. To better reflect life insurers operations, we propose splitting out financial and regulatory reporting to be two separate key functions.
- *Responsible lending*. Changes to wording to better reflect the disclosure and duty to take reasonable care due to the carve out by the Class Orders for the National Consumer Credit Protection Act (NCCP).
- *Insurance risk management*. Currently this is very focused on pricing. There are a range of other risks that insurers need to manage, and these could be reflected in the description. Otherwise, it may be beneficial to retitle this key function to better reflect the description, for example 'Product and pricing'.
- *Conduct risk management*. The current language implies this key function is focused on individual behaviour of management and employees (i.e. focus from a code of conduct perspective). If this is the sole intent, it would be beneficial for the language to reflect this more explicitly.

Further, where there is a relevant prudential guide relating to that key function, the definition should ideally refer to and align with definitions in that guide e.g. Operational Risk Management (CPS230) Recovery and exit planning (CPS190) and resolution planning (CPS900).

### 2) Additions to the list

CALI understands that the intention is not to repeat the Prescribed Responsibilities and Positions in the Ministers' Rules in the key functions list. However, there are some potential areas of overlap between the Prescribed Responsibilities and the key functions. For example, the prescribed *risk controls or risk management* responsibilities would appear to overlap with the key functions 'conduct risk management', 'operational risk management', 'reinsurance risk management' and to some extent 'insurance risk management'.

Life insurers would therefore welcome the inclusion of *Claims Management* or *Claims assessment and payment* as a key function to better reflect the operations of life insurers, as this is a key area of the life insurance business. The description of the key function should cover policies, procedures, and practices to respond to customer claims, including the management and administration of claims handling processes.

It may also be appropriate to make provisions for financial crimes/anti-money laundering. One possibility could be to expand *Operational Risk Management* by extending the wording to explicitly mention financial crimes.

Additionally, it may be relevant to establish 'complaints and disputes' as a separate key function, instead of under the *Members outcomes* key function. Doing so better recognises the requirements of the insurer in the scenario where complaints are formally joined to the life insurer by AFCA as part of the External Dispute Resolution.

### 3) Suggest not to include in the list

There are some functions in the current draft of the list that are more appropriate to ADIs. CALI understands that the identification and allocation of accountable persons for each key function isn't mandatory, and that inclusion of some of the less relevant key functions on the list may be intentional to ensure broader coverage beyond life insurers. However, updating the list so it only includes key functions relevant to the insurance sector will help ensure the list resonates with life insurers and helps avoid confusion when it comes to compliance. We have therefore provided views below on which functions might not be as relevant to life insurers.

In the context of life insurance, there are some key functions not relevant to the industry. We would recommend they are removed from the list of insurance key functions. These are:

- *Collections and enforcement (of debt relating to a financial product or service, credit contract or consumer lease)*. This is an area that is significant in the ADI sector but not as applicable for a life insurer. In the context of life insurance, where there are loans against policies, they are all secured and therefore there is no debt collection from a credit perspective under the NCCP, which is a result of the ASIC Class Orders limiting the amount of the loan against the surrender value of the policy. As a result, collection of debt is viewed as a minor activity for life insurers and would generally not be considered a key function that is significant enough in the life insurance industry to be allocated to a responsible person.
- *Scam Management*. We acknowledge the importance of protecting Australians from scams and fully welcome the critical effort of the Australian Government in tackling harmful scams. This key function is recognised as an important aspect in the prevention of fraud more broadly. However, in the context of the life insurance industry, it doesn't have the same significance and isn't as established in the life insurance sector as it is for ADIs. If this is only intended for scams targeting customers, it might be better reflected in the key function *Technology management*.