

FAR BACKGROUND. JOURNEY AND CONTEXT

Following recommendations in Hayne’s Final Report, the government announced it would extend the application of the Banking Executive Accountability Regime (BEAR). The Financial Accountability Regime (FAR) will replace BEAR, extending the accountability and responsibility framework to all APRA-regulated entities, and will be co-regulated by APRA and ASIC.

IMPLEMENTING THE FAR

The FAR legislation is being prepared for introduction and passage in the 2021 spring sittings of Parliament. Following this:

- For ADIs and NOHCs: Go-live is proposed to be the later of 1 July 2022, or 6 months after the commencement of the Act;
- For other APRA regulated entities: Go-live is proposed to be the later of 1 July 2023, or 18 months after the commencement of the Act.

TRANSITIONAL ARRANGEMENTS

Arrangements will be made to ensure that ADIs that are already regulated under the BEAR will be transitioned to FAR simply, where possible. For example, an accountable person already registered with APRA under BEAR will not have to be re-registered to satisfy the FAR requirements.

ENTITIES SOLELY REGULATED BY ASIC

Separate to the Royal Commission’s recommendations, the Government has also committed to expanding FAR to entities solely regulated by ASIC (e.g. AFSL / ACL holders). Those entities are not covered by the FAR Exposure Draft Legislation and the Government is expected to consult on this following implementation of FAR by APRA regulated entities.

FAR. WHAT YOU NEED TO KNOW

1. WHAT ENTITIES ARE COVERED BY FAR?

In addition to ADIs that are already subject to the BEAR, the FAR will be extended to **all other APRA regulated entities**.

- General and life insurance licensees
- Private health insurance licensees
- Registrable superannuation entity licensees
- Licensed non-operating holding companies

2. HOW ARE ENTITIES CLASSIFIED?

Entities will be classified as either core notification entities or enhanced notification entities.

An entity will be classified as enhanced based on the following asset calculation:

- | | |
|---------------------------|-----------------------|
| o ADIs | Total assets > \$10b |
| o General insurance | Total assets > \$2b |
| o Life insurance | Total assets > \$4b |
| o Private health insurers | Total assets > \$2b |
| o RSE licensees | Total assets > \$10b* |

*Refers to combined total assets of all RSEs under the trusteeship of a given RSE licensee

Where an entity within a corporate group structure meets the enhanced notification threshold, all other accountable entities will need to comply with the enhanced notification obligations.

There is no definition of ‘total assets’ within FAR and it is unclear what happens if an entity moves from a core notification entity to an enhanced notification entity.

3. WHICH INDIVIDUALS ARE COVERED BY FAR?

Individuals who are caught are known as Accountable Persons (APs). This is determined by a two-part test – based on key responsibilities and those who oversee significant parts of the entity/group.

1. Have a prescribed responsibility

A person is expected to be an AP if they hold a position in or relating to the entity, such as: Board director, CEO, direct report of the CEO, independent roles (e.g. Head of Internal Audit).

2. Meet the general principle test

The general principle test captures senior executives with responsibility for major business areas or subsidiaries. A person is an AP of an entity if they:

- Hold a senior executive position in the regulated entity, subsidiary or a connected entity, and
- Due to their position, have actual or effective senior executive responsibility for management or control of:
 - the entity, or
 - for a significant or substantial part of aspect of the operations of the entity or the entity’s group of significant related entities

4. WHAT REQUIREMENTS APPLY TO FAR ENTITIES?

- **Enhanced notification** entities will be subject to all the obligations under FAR.
- Entities caught by FAR **must** meet four types of obligations:
 - o Accountability Obligations
 - o Key Personnel Obligations
 - o Deferred Remuneration Obligations
 - o Notification Obligations
- **Core notification** entities will be subject to all the obligations under FAR except the requirement to submit **accountability maps and statements** to APRA and ASIC.
- The FAR entity is required to ensure that each of its **significant related entities**, complies with all of the above obligations as if these related entities were subject to FAR.

Entities subject to the incoming CPS 511 Remuneration Prudential Standard will need to comply with the heightened requirements under this standard. FAR will not limit the regulator’s ability to impose additional requirements on remuneration.

The notification requirements under FAR will co-exist with existing breach reporting requirements. Any notification submitted to APRA or ASIC will be shared in cases of dual-regulated entities.

5. WHAT REQUIREMENTS APPLY TO ACCOUNTABLE PERSONS?

- Must be registered with APRA / ASIC.
- Must meet Accountability Obligations, including:
 - o conduct all responsibilities and duties with integrity, honesty and with due skill care, and diligence;
 - o deal with ASIC and APRA in an open, constructive and co-operative way;
 - o take reasonable steps to prevent matters from arising that would (or would be likely to) adversely affect the prudential standing or prudential reputation of the accountable entity; and
 - o take reasonable steps to ensure that the entity complies with the specified laws in Section 19 (1) of the Draft legislation*.

*Specified laws, includes but not limited to: the Banking Act 1959, credit legislation, the Insurance Act 1973, the Superannuation Industry (Supervision) Act 1993 and the “financial services law” as defined in the Corporations Act 2001. See ED Section 19 (1) (d) for full listing of specified laws.

6. WHAT PENALTIES APPLY FOR CONTRAVENTION OF FAR OBLIGATIONS?

ENTITIES: Maximum penalty is the greater of:

- o \$11.1m (50,000 penalty units);
- o benefit derived or detriment avoided x 3; or
- o 10% annual turnover (capped at \$555m (2.5m penalty units)).

INDIVIDUALS: No civil penalties will be imposed on individuals for contravention of the accountability obligations. However, the regulators will have the power to disqualify an AP or require a FAR entity to reallocate an AP’s responsibilities. This is in addition to the deferred remuneration obligations that a FAR entity may be required to apply in the event of a breach.

FAR INSIGHTS. THINGS TO KEEP IN MIND

We recognise that organisations will have a lot of questions regarding FAR, the following are some key points to keep in mind when implementing FAR within your organisation:

- 1 **Core entities** will still need to register their APs and so, in practice, may still need to prepare statements and maps in order to ensure clarity of accountabilities for those registered APs, as well as across the group.
- 2 For **Trustees**, the shift to significant related entities may result in a broader application of FAR. Depending on the RSE's operating structure and control relationships a wider variety of entities may be captured. For **other entities**, FAR will simplify the approach to significant related entities by narrowing those caught to material and substantial subsidiaries.
- 3 The **product responsibility** is very broad and there are few organisations that are structured in a way where joint accountability here won't exist. This will no doubt impact current ways of working and relationships at the executive level. Organisations will need to think through how joint accountability will work in practice and what additional support APs may need.
- 4 There is still **some overlap / grey between the prescribed responsibilities** which will need to be clarified (product v. complaints, product v. remediation, remediation v. hardship) and may result in **joint accountability**.
- 5 The **regulators must be notified** where an AP ceases to be an AP, is dismissed or suspended, has their variable remuneration reduced due to failure to comply with the accountability obligations, has breached the accountability obligations or where a material change to the information contained in the register of APs occurs. The regulators must also be notified if an accountable entity has breached its obligations. **Processes will need to be put in place** to identify and control these breaches, and provide the necessary notifications within the required timeframes.

TYPE OF SUPPORT WE CAN PROVIDE

We recognise that each organisation has different models, scale of complexity and budgets. As a result we can be as flexible as you need in our support, across program implementation, review and transitional and post-implementation support offerings.

TYPE 1: TEMPLATES AND GUIDANCE

- To support your implementation of FAR, we can provide you with the relevant documentation templates and facilitate a series of workshops to support your FAR implementation program.
- This level of support assumes that you mainly seek guidance from us, and will have a central project team with strong resourcing to drive the program, and support APs in their preparation and transition to FAR

TYPE 2: TEST AND CHALLENGE

- To support your implementation of FAR, we can test, challenge and provide feedback through all stages of your FAR implementation.
- This level of support assumes that you seek more specific support from us in the testing and review of documentation and approach on a regular basis, and will have a central project team with strong resourcing to drive the program, and support APs in their preparation and transition to FAR.

TYPE 3: DETAILED SUPPORT AND ADVICE

- To support your implementation of FAR, we can provide you with in-depth support using our experience and insights from other BEAR / FAR works as well as providing on the group support to help progress your program.
- This level of support assumes that we will work closely with you, and may deliver an entire stream or deliverable within your program. You would still need a project team, supported by us, and representatives from the APs' teams

TYPE 4: POST-IMPLEMENTATION SUPPORT

- To support your post-implementation review of BEAR / FAR, we can provide internal audit support, by way of:
 - i. providing SME support to your organisation's internal audit team; or
 - ii. through deployment of a team to conduct an internal audit on your behalf.
- We can also support through provision of 'health checks' or external reviews focused on aspects of the regime such as clarity of accountabilities, review of approach to taking and evidencing reasonable steps, and wider ongoing compliance, governance and risk reviews.
- We can assist with onboarding new APs through facilitation or co-facilitation of training and transition labs, and handover meetings.
- We can also provide outsourced support (manage service) to augment your internal FAR office, whereby we can provide ongoing ad hoc support and advice to APs, AP representatives and nominated key FAR personnel, trainings and briefings, and regular reviews and refreshes of accountability statements and maps.

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