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Principal
October 2023

FINANCIAL ACCOUNTABILITY REGIME IS NOW LAW A GUIDE FOR FINANCIAL INSTITUTIONS

FAR AT A GLANCE

Some two years later than anticipated, the Bill passed both Houses on 5 September 2023 and is now law

- Royal Assent received 14 September 2023
- Existing BEAR will transition to FAR
- Applies to Banks from 15 March 2024
- Applies to Insurers & RSE Licensees from 15 March 2025
- Will be jointly administered administered by APRA & ASIC

WHY DO WE NEED FAR?

- FAR is the successor to BEAR, the accountability regime applicable to ADIs and their senior executives from 2018
- Following the Banking Royal Commission 's findings in February 2019, proposals commenced to extend BEAR to Insurers, RSE Licensees and holders of Australian Financial Services Licenses
- In the wake of the Royal Commission, a variation of BEAR has also applied to APRA and ASIC themselves

WHAT IS NOT IN FAR?

- No fines for individual executives
- Doesn't apply to non APRA-regulated AFSL holders - yet!

FAR IS SIMILAR TO BEAR, BUT DIFFERS IN SIGNIFICANT RESPECTS

- Applies to NOHCs as well
- Also includes group entities
- New Prescribed Responsibilities
- Additional information is required for inclusion in the FAR Register
- Key Functions will be set out in Regulator Rules, not merely in APRA guidance
- End-to-end accountability for key functions is no longer mandatory
- Joint accountability doesn't necessarily apply where an accountable person doesn't have end-to-end accountability
- Only Enhanced entities (those above size thresholds) need to prepare and lodge accountability statements and maps
- 2 New accountability obligations – conduct and dealing with the Regulators
- 2 New notifiable events – breach of key personnel obligations and material change of information in the FAR Register

CONTACT

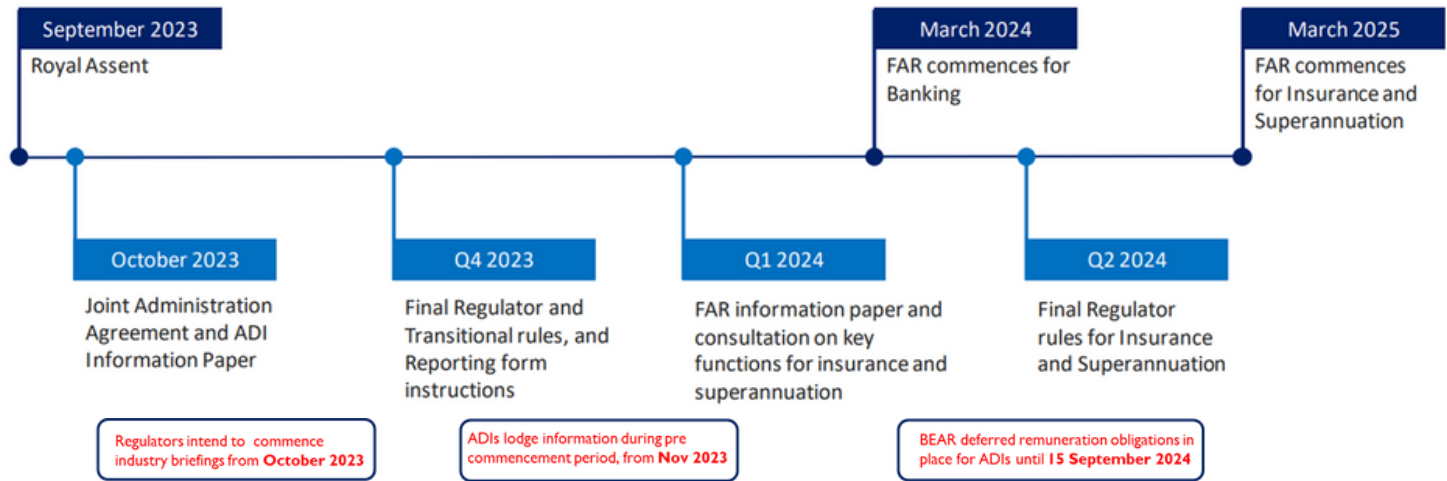


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FAR TIMELINE



Source: FAR Implementation timeline (asic.gov.au)

KEY CONCEPTS

- **Accountable entity:** covers most ADIs, insurers (life/general/PHI) and RSE Trustees, including branches of foreign entities
- **Accountable person:** holds a position in the accountable entity or in another body corporate of which the accountable entity is a subsidiary; or in the case of an RSE licensee—the person holds a position in the accountable entity or in another body corporate of which the accountable entity is a connected entity AND because of that position, the person has actual or effective senior executive responsibility:
 - (i) for management or control of the accountable entity; or
 - (ii) for management or control of a significant or substantial part or aspect of the operations of the accountable entity or the accountable entity's relevant group.
 - Can also have accountable persons in foreign accountable entity
 - Accountable persons of significant related entities are also captured
 - There are some provisions explaining when someone is not an accountable person
- **Core entity:** Entity with total assets under - ADI \$10b, GI \$2b, LI \$4b, PHI \$2b, and RSE Licensees \$10b
- **Enhanced entity:** Entity with total assets in excess of the abovementioned thresholds
- **Key Functions:** activities conducted by an entity for which executives will be accountable, prescribed in the Regulator Rules
- **Minister Rules:** rules by the relevant Federal Government Minister, also prescribe certain position as accountable persons: in case of foreign GIs this includes the senior executive responsible for

conduct of the activities of the branch, the Senior Officer Outside Australia and the Agent In Australia. Many others are also prescribed across all regulated sectors. The Minister Rules are presently in draft, with consultation concluding over a year ago, well before the FAR Bill passed Parliament

- **Prescribed Responsibilities:** responsibilities promulgated by the Minister, for which accountable persons will be responsible
- **Regulator Rules:** rules promulgated by APRA and ASIC, which deal with a number of matters such as size thresholds for Enhanced vs Core entities
- **Significant Related Entities (SREs):** subsidiary which has a material effect on the entity's operations. For RSE Licensees, the entity need only be connected and have a material effect on operations

OBLIGATIONS OF AN ACCOUNTABLE ENTITY

Key personnel obligations:

To ensure that the responsibilities of the accountable persons and its significant related entities cover:

- all parts or aspects of the operations of the accountable entity's relevant group
- for any prescribed accountable persons under the Minister Rules
- ensure that no accountable person of the accountable entity or any of its significant related entities is prohibited from being an accountable person of the accountable entity or significant related entity; and
- to comply with each direction the Regulator gives to the accountable entity



Deferred remuneration obligations

Ensure that, in relation to the variable remuneration of an accountable person:

- (i) the payment of a portion of that variable remuneration is deferred for a period; and
- (ii) the portion deferred is no less than 40%; and
- (iii) that period is at least 4 years; and
- to have a remuneration policy in force that requires that, if the person has failed to comply with one or more of their accountability obligations, the person's variable remuneration is to be reduced by an amount that is proportionate to the failure; and
- to ensure that, if the remuneration policy requires the variable remuneration to be reduced because of that failure, the amount of the reduction is not paid or transferred to the person; and
- to take reasonable steps to ensure that, if variable remuneration may become payable to an accountable person of a significant related entity, the significant related entity complies with other requirements as if the significant related entity were an accountable entity
- The amount of an accountable person's variable remuneration that is required to be deferred is 40% of the accountable person's variable remuneration for the financial year in which the minimum deferral period for the variable remuneration starts

REGULATORY NOTIFICATION OBLIGATIONS

- Includes things like someone becoming/ceasing to be an accountable person, accountable person is suspended or dismissed, an accountable person's remuneration is reduced because of a failure to comply with their accountability obligations and others
- Enhanced entities must also submit:
 - An accountability statement of each of its accountable persons;
 - An accountability map when the requirements apply to the accountable entity; and
 - Notify the regulator of material changes to these

THE OBLIGATIONS OF AN ACCOUNTABLE PERSON ARE TO CONDUCT THE RESPONSIBILITIES OF THEIR POSITION

- (a) by acting with honesty and integrity, and with due skill, care and diligence; and
- (b) by dealing with the Regulator in an open, constructive and cooperative way;
- (c) by taking reasonable steps in conducting those responsibilities 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
- (d) by taking reasonable steps in conducting those responsibilities to prevent matters from arising that would (or would be likely to) result in a material contravention by the accountable entity of any of the following: this Act, Banking Act, various Insurance Acts, credit legislation, and super legislation





REGULATING THE FAR

How will the FAR be regulated?

This is noteworthy because it will be administered jointly by APRA and ASIC.

The regulators have released a high level statement setting out principles for cooperation in regulating FAR: [Financial Accountability Regime - Joint administration agreement between the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission \(asic.gov.au\)](#)

Regulator Rules will be codified to assist in effective administration. Consultation closed on the proposed Regulator Rules in August 2023 however the results of the consultation have not yet been released.

A copy of the consultation package can be found at: [Financial Accountability Regime - Proposed Regulator rules and Transitional rules | APRA](#)

Practical implications include

- Accountable persons register will be maintained on APRA Connect
- Breach reporting will be via APRA Connect

- Regulators expect to share information
- Regulators may decide how to assign responsibilities in areas such as investigation & enforcement

Enforcement and penalty provisions

- Includes fine and prison in some circumstances
- However, there are no civil penalties on accountable persons who fail to observe their Accountability Obligations – but there are for aiding/abetting contravention by an Accountable Entity
- Consequences for breach by accountable persons focus on remuneration and disqualification.
- Regulators have the power to appoint an investigator if they believe there has been a contravention of the Act
- Investigators have quite broad powers to gather information among other things

PFS INSIGHTS

- When considering the size thresholds, take into account expected balance sheet growth and impact of mergers, capital raisings, portfolio transfers or other inorganic growth
- Size thresholds are inconsistent across various obligations – Enhanced ADI for FAR is over \$20bn but Significant Financial Institution ADI for CPS511 is over \$10bn
- For ADIs seeking to register new BEAR Accountable Persons within 2 weeks of 15 March 2024, apply to register them under FAR instead
- Prior to end of December 2023, review any temporary or unforeseen vacancies being filled for up to 90 days and consider whether the vacancy remains temporary or can be filled effective 15 March 2024
- Core entities should consider developing accountability maps & statements for better practice and to ensure they are ready in the event they become an Enhanced Entity. This can occur through growth and/or by merger or acquisition
- CPS511 was effective for SFIs 1 January 2023, and will be effective for non SFIs on 1 January 2024. CPS511 is more stringent in some areas than FAR therefore seek to comply with CPS511 first
- When a non SFI transitions to FAR, the option to defer a % of total remuneration is removed
- When looking at group structures note there is no conventional accounting-style consolidation mechanism in FAR. i.e. in the example above, 3 accountable entities which are all Core are not consolidated to result in Enhanced status

TOP 10 TIPS

1. Start preparing now so you can meet pre implementation expectations
2. Involve your Board, Risk Committee and Remuneration Committee early. FOR ADIs – determine whether you are an Enhanced entity or expect to be on 15 March 2024
3. Guidance on transitioning from BEAR to FAR has been released. **RG 278 ADIs:** [Transitioning to the Financial Accountability Regime | ASIC](#)
4. FOR INSURERS & RSEs - Determine whether you are an Enhanced entity or expect to be on 14 March 2025
5. Understand and map your corporate structure to identify NOHCs & SREs
6. Check your corporate group composition eg if you have an ADI, GI & RSEL and only one of those accountable entities is an Enhanced entity, then all accountable entities are Enhanced
7. Understand and map your business operations, delegations and reporting structures
8. Consider your remuneration frameworks
9. Coordinate your FAR readiness project with your existing CPS511: *Remuneration* obligations and your CPS230: *Operational Resilience* project
10. Build FAR into your Internal Audit Framework: in flight review and a post implementation review over your FAR compliance project, and regular compliance audits

HOW CAN PFS HELP?

ADI'S

- Developing gap analysis & readiness plans
- Mapping key functions/prescribed responsibilities
- Redefining end-to-end responsibilities
- Assessing impact of NOHC
- Identifying SREs & assessing impact

INSURERS AND RSELS

- Developing implementation plans
- Remuneration Framework reviews
- Analysis of group structure
- Mapping key functions/prescribed responsibilities
- Preparing accountability maps & statements
- Preparing pre implementation lodgements

OUR TEAM



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THE PFS DIFFERENCE!

- Tailored fit for purpose solutions – not one size fits all
- We work with BEAR for ADIs, and we have deep expertise in insurers and RSELS - a breadth of experiences that enables you to receive the right advice for your institution
- Many of our team have had executive experience in accountable person roles – we understand your business concerns and people priorities

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