

Financial Accountability Regime

Senate Economics Legislation Committee Report

CONTEXT

On the 28 October 2021, the Financial Accountability Regime (FAR) Bill was introduced in the House of Representatives. Just shy of 4 weeks later, the Senate referred the Bill to the Senate Economics Legislation Committee (the Committee) for inquiry and report by 15 February 2022 (the Report). In response to the proposal, the Committee received 33 submissions from interested parties.

This page sets out some of the key areas that were raised as part of the consultation process and addressed through the Report. Overall, the Committee accepted the broad support for FAR, and was satisfied that it delivered the intent in strengthening accountability and transparency.

The recommendation from the Committee is that the Bill be passed.

DESIGN OF THE REGIME

SUBMISSIONS

Respondents questioned the Government's decision to establish a new regime under FAR, rather than extending BEAR. There were concerns that efficiency benefits that may have been gained for banks already captured under BEAR were not gained.

SCOPE OF THE REGIME

SUBMISSIONS

Respondents raised concerns that the applicability of FAR may have unintended consequences for related entities that are not within the policy intent of the draft legislation. That is, FAR will encapsulate organisations outside of the financial services sector, as well as non-regulated parent companies.

COMPLIANCE OBLIGATIONS

SUBMISSIONS

Respondents noted that the obligation on individuals to comply with several specified laws was redundant and arduous, given that accountable entities themselves are already required to comply with these laws by virtue of the underlying laws themselves, and overseeing the entity's compliance already formed part of the accountable person's managerial role.

RESPONSE

APRA noted that the design of FAR had considered feedback from the industry in relation to BEAR and sought to reduce the regulatory burden. Treasury also clarified that containing provisions to a single Act supported accessibility and efficiency considerations.

RESPONSE

Treasury attributed the degree of uncertainty to the breadth of the regime. It acknowledged the diverse range of structures, and the need to keep the regime neutral and the application general.

RESPONSE

ASIC noted that the pivotal word was 'reasonable', and the expectation was not to be on the shop floor looking over every activity, but from managing the process at a vantage point. APRA further clarified that existing laws address conduct, whereas FAR provides clarity on accountability and responsibility.

OUTCOME

The Committee did not note any specific outcomes in relation to the design of the regime. Given the overall recommendation to pass the Bill, the response from APRA and Treasury is considered to have prevailed as the appropriate outcome.

OUTCOME

The Committee did not note any specific outcomes in relation to the scope of the regime. Given the overall recommendation to pass the Bill, the response from Treasury is considered to have applied in these circumstances.

OUTCOME

The Committee did not note any specific outcomes in relation to duplication of compliance obligations. Given the overall recommendation to pass the Bill, the response from ASIC and APRA is considered to have applied in these circumstances.

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TIMELINE



DEFERRED REMUNERATION

SUBMISSIONS

Respondents suggested that there was misalignment between the remuneration requirements under FAR and CPS 511, and that the proposed obligations were insufficient. Suggestions included aligning the applicability of remuneration requirements to the enhanced disclosure thresholds, as well as aligning timings for reward arrangements across requirements.

JOINT ADMINISTRATION

SUBMISSIONS

Respondents raised concerns that elements of FAR were not contained in the legislation. In particular, the joint relation arrangements between APRA and ASIC, the breadth and concept of accountable persons and prescribed ministerial rules, regulations and guidance materials. Suggestions from respondents included:

- Further details on engaging with ASIC and APRA, and information as to how they would be coordinating efforts (e.g. only one regulator pursuing an action).
- Practical guidance on key areas of interpretation such as ‘reasonable steps’ and dealing with regulators in a ‘cooperative manner’.
- Industry participation in the testing of a single portal used to submit information to the regulators.
- Consultation process completed in relation to the Minister Rules prior to passage of the Bill.

RESPONSE

APRA clarified that overall, FAR and CPS 511 were consistent. The regulator noted that CPS 511 is broader and focused on a wide range of remuneration practices (including applying beyond FAR accountable persons). It is APRA’s view that while CPS 511 adopts a higher standard, it was drafted with FAR in mind.

RESPONSE

APRA advised that a detailed public Joint Administration Agreement (“JAA”) is being drafted by the regulators. This will set out the principles of cooperation, oversight of arrangements, exercising of powers, industry communication, information sharing, and enforcement and investigation.

APRA further noted that providing detailed guidance to the industry runs the risk of taking a one-size-fits-all approach where this does not exist. The regulator was of the view that the determination as to what ‘reasonable steps’ constitutes should be up to each individual and organisations to determine.

OUTCOME

The Committee did not note any specific outcomes in relation to deferred remuneration requirements. Given the overall recommendation to pass the Bill, the response from APRA is considered to have applied in these circumstances.

OUTCOME

The Committee did not note any specific outcomes in relation to approach to joint administration. Given the overall recommendation to pass the Bill, the response from APRA is considered to have applied in these circumstances.

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CONCLUSION

With the only recommendation being that the bill passes, much of the industry (particularly those that responded) may be left feeling disappointed. However, it has provided organisations with an opportunity to more effectively prepare for go-live.

The ceremonial baton has now been handed back to the Government for passage through both Houses of Parliament. Given there are only two collective (House of Representatives and Senate) sitting days between now and when the election will likely be called in May, the coming weeks and months will be pivotal in understanding how FAR off the regime really is.

OTHER MATTERS

CIVIL PENALTIES

Respondents from consumer groups voiced concerns in relation to the absence of individual civil penalties resulting in misconduct due to the lack of personal liability. Certain industry groups disagreed with this view on the basis that there are already significant personal consequences in place under the regime, including loss of variable remuneration and disqualification. No response was noted.

COMMENCEMENT

Respondents raised concerns regarding the commencement of FAR. Some suggested ADIs should have nine months after commencement, and others proposing that the regime should be effective no earlier than six months after all elements of the regime are finalised (e.g., ministerial rules, regulations, guidance).

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