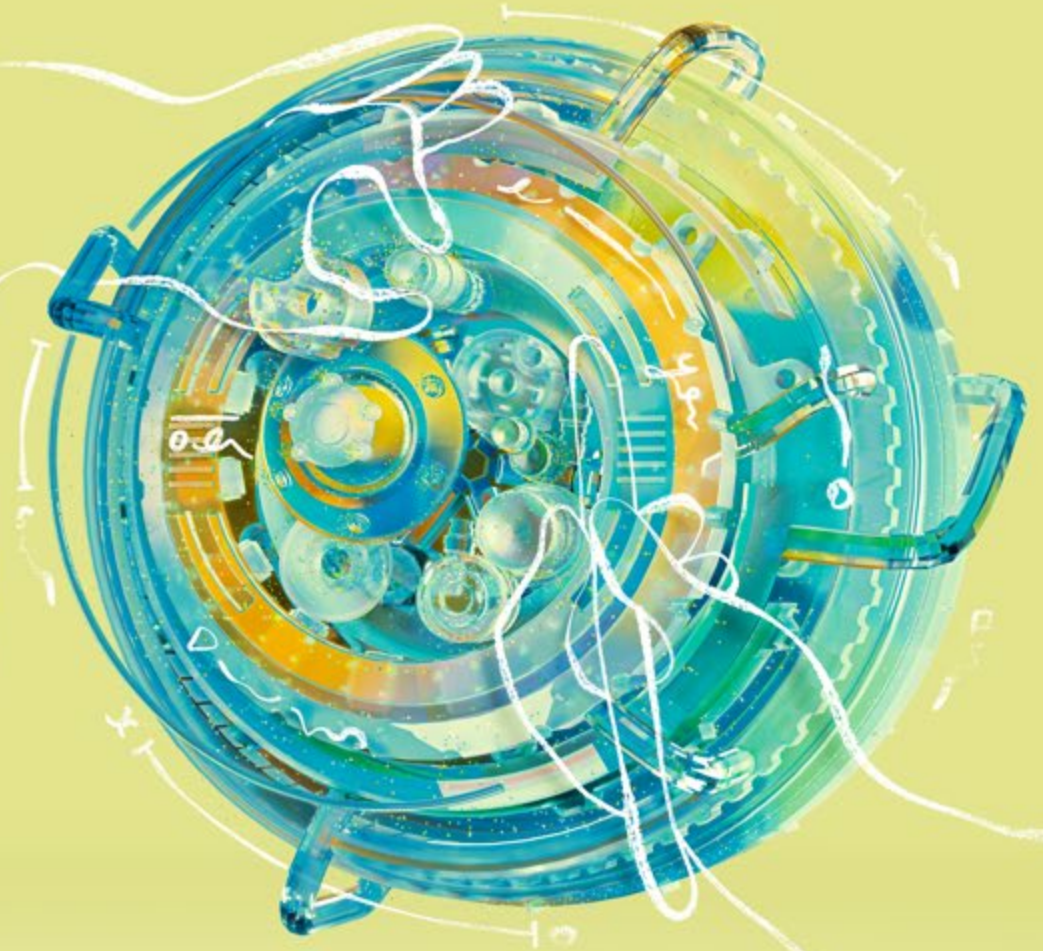


September 2023

# Financial Accountability Regime

At-a-glance

**Deloitte.**



# Extending BEAR

Where FAR came from...

“There is no reason in principle or in practice to confine the reach of accountability provisions of the kind set out in the BEAR to the banking sector.

Obviously, enactment of the BEAR has introduced an additional form of accountability for senior banking executives. But the BEAR is not a substitute for proper processes within entities for identifying who is accountable for risk and how they are to account for it and be held accountable”

Commissioner Hayne  
Royal Commission Final Report  
February 2019

# So FAR

## Background and context

### **The Banking Executive Accountability Regime (BEAR) applies to Authorised Deposit-taking Institutions (ADIs) in Australia. It was introduced to increase transparency and accountability.**

Following recommendations in Hayne's Final Report, the government announced it would extend the application of the BEAR to all APRA-regulated entities and be co-regulated by APRA and ASIC.

The Financial Accountability Regime (FAR) Bill 2023 passed through both chambers of Parliament on 5 September 2023 with no material changes to the legislation as compared to its 2022 and 2021 counterparts.

FAR is designed to improve risk and governance cultures of Australia's financial institutions by imposing a strengthened responsibility and accountability framework for those institutions and the directors and most senior and influential executives of those institutions.

*Explanatory memorandum to the FAR Bill 2023*



### **Implementing FAR**

FAR will be a single regime and will supersede the BEAR. As currently drafted, the commencement date is as follows:

- **For ADIs and NOHCs:** Go-live is proposed to be 6 months after Act commencement (March 2024); and
- **For other APRA regulated entities:** Go-live is proposed to be 18 months after the commencement of the Act (March 2025).



### **Draft Regulator Rules and Transitional Rules**

On 20 July 2023, APRA and ASIC (the Regulators) released drafted Regulator Rules and Transitional Rules for consultation. We suggest entities:

- Review your list of accountable persons and allocate the key functions accordingly
- Review and update accountability statements. Whilst many of the key functions responsibilities should already be captured, there may be a need to create new areas of responsibility or provide more detail.
- Consider explicitly listing the key functions an individual holds within the accountability statement.
- Review the data items required for inclusion in the register to make sure the data is available.

### The journey so far

- Sep 2017 ● BEAR draft legislation released
- Feb 2018 ● BEAR becomes law
- Jul 2018 ● BEAR starts for large ADIs
- Feb 2019 ● Extension of BEAR recommended and accepted by Government
- Jul 2019 ● BEAR starts for small and medium ADIs
- Aug 2019 ● Treasury implementation roadmap released (proposed for end of 2020)
- Jan 2020 ● FAR proposal paper released
- May 2020 ● Treasurer extends timetable
- Jul 2021 ● FAR draft legislation released for consultation
- Oct 2021 ● *Financial Accountability Regime Bill 2021* introduced
- Sep 2022 ● *Financial Accountability Regime Bill 2022* and *Financial Accountability Regime Minister Rules 2022* introduced to House
- Oct 2022 ● FAR Bill introduced to Senate but not discussed
- Nov 2022 ● Civil penalties for individuals debated, but not agreed
- Mar 2023 ● *Financial Accountability Regime Bill 2023* introduced to the House
- Jul 2023 ● Draft Regulator Rules/Transitional Rules released
- Sep 2023 ● *Financial Accountability Regime Bill 2023* passes

# How FAR?

## Entities covered under FAR

**FAR is intended to increase the transparency and accountability of financial services entities and improve risk culture and governance for both prudential and conduct purposes.**

Beyond all ADIs that are already subject to the BEAR, the FAR will be extended first to all other APRA-regulated entities, and then to entities solely regulated by ASIC.

### Which entities will be subject to FAR?



Authorised Deposit-Taking Institutions (ADIs)



General and Life Insurers



Private Health Insurers



Registrable Superannuation Entity (RSE) licensees



Licensed Non-Operating Holding Companies (NOHCs)

The responsible Minister will have the power to **exempt a particular accountable entity or class of entities** from the obligations under FAR. It is expected that this power will only be used in exceptional cases.

### How are entities classified?

Entities will be classified into two categories that replace the small, medium and large classification of ADIs under BEAR as follows:



**Core Notification Entities** will be subject to all the obligations under FAR except requirement to submit accountability statements and maps to the Regulators



**Enhanced Notification Entities** will be subject to all the obligations under FAR. An entity will be classified as 'enhanced' based on the following asset calculation:

Entity	Total assets
ADIs	>\$10bn
General Insurance	>\$2bn
Life Insurance	>\$4bn
Private Health Insurance	>\$2bn
RSE licensees*	>\$10bn

Where an accountable entity within a Corporate Group meets the **enhanced threshold** all other accountable entities within that Group (including any licensed NOHCs) will need to comply with the enhanced notification obligations irrespective of whether they meet the enhanced threshold.

\* Refers to the combined total assets of all RSEs under the trusteeship of a given RSE Licensee.

# How FAR?

## Individuals covered under FAR

Directors and senior executives of in-scope entities will be Accountable Persons (APs) if they meet one of two tests:

Has a **prescribed responsibility** or position

O R

Meets the **general principle** test

A person is expected to be an AP if they hold a position in or relating to the entity, with any of the following responsibilities relating to the entity. The following is an indicative list of those prescribed responsibilities, and roles that are commonly captured. For non-director roles, an individual would be captured if they have senior executive responsibility for the area.

### This covers senior executives with the following responsibilities:

<b>Directors</b> ...oversight of the accountable entity as a member of the board of that accountable entity.	<b>CEO</b> ...management or control of the accountable entity's business activities.	<b>CFO</b> ...management or control of the accountable entity's financial resources.	<b>CIO/ CTO</b> ...management of the accountable entity's information management (including IT systems)	<b>CHRO/ Head of Human Resources</b> ...management of the accountable entity's human resources function.
<b>CRO</b> ...management of the accountable entity's overall risk controls or overall risk management arrangements.	<b>Compliance</b> ...management of the accountable entity's compliance function. NB: May be CRO.	<b>AML</b> ...management of the accountable entity's anti-money laundering function. NB: May be CRO.	<b>COO</b> ...management or control of the accountable entity's operations.	<b>Head of Internal Audit</b> ...management of the accountable entity's internal audit function.
<b>Complaints</b> ...management of the accountable entity's dispute resolution function (internal and/ or external).	<b>Remediation</b> ...management of the accountable entity's client or member remediation programs (including hardship arrangements).	<b>Breach Reporting</b> ...management of the accountable entity's breach reporting.	<b>Significant related entity</b> ...management or control of the business activities of a significant related entity of the accountable entity.	<b>KEY:</b> <input type="checkbox"/> Existing BEAR prescribed responsibility <input checked="" type="checkbox"/> New proposed FAR prescribed responsibility

### Capturing directors and senior executives with responsibility for major business areas or SREs:

A person is an AP of an entity or an SRE if they:

1. Hold a key position or responsibility, such as a director or senior executive, in the regulated entity, subsidiary or connected entity; **and**
2. 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 or aspect of the operations of the entity or the entity's group of significant related entities.

### Other prescribed responsibilities that may apply to:

- **Insurance senior executives:** Management of (1) actuarial function (2) claims handling function.
- **RSE licensees senior executives:** Management of (1) member administration operations (2) investment function (3) financial advice service (4) insurance offerings.
- **NOHC of a life company senior executives:** (1) Management or control of (a) business activities (b) financial resources (c) business activities of a significant related entity of the accountable entity (2) Management of (a) overall risk controls or overall risk management arrangements (b) internal audit function.



# How FAR?

## Accountable Person obligations

An individual who is an Accountable Person needs to comply with Accountability Obligations in conducting the responsibilities of their position as an Accountable Persons. These responsibilities are outlined in Accountability Statements.

OBLIGATION	OBLIGATION STANDARD	What are Reasonable Steps?
IN CONDUCTING YOUR RESPONSIBILITIES, YOU MUST:	WHAT IS THE EXPECTED STANDARD?	
Act with: <ol style="list-style-type: none"> <li>1 a) honesty and integrity; and</li> <li>b) due skill, care and diligence.</li> </ol>	For the requirement to act with honesty and integrity, you will need to meet these obligations outright. Acting with due skill, care and diligence involves a standard of 'reasonableness'.	<p>The actions, behaviours and supporting frameworks that an entity or Accountable Person has in place to support compliance with BEAR/FAR are referred to as their "reasonable steps".</p> <p>In essence, reasonable steps are what is done to perform a role with appropriate care and expertise, including to prevent, detect and fix problems.</p> <p>Some guidance on what may be "reasonable steps", includes:</p> <ul style="list-style-type: none"> <li>• appropriate governance, control and risk management;</li> <li>• safeguards against inappropriate delegations of responsibility;</li> <li>• appropriate procedures for identifying and remediating problems that arise or may arise in relation to a matter;</li> <li>• appropriate action to ensure compliance; and</li> <li>• appropriate action in response to non-compliance or suspected non-compliance.</li> </ul>
<ol style="list-style-type: none"> <li>2 Deal with APRA and ASIC in an open, constructive and co-operative way.</li> </ol>	You will need to meet this obligation outright.  However, this obligation does not alter the legal position with respect to legal professional privilege.	
<ol style="list-style-type: none"> <li>3 Take <i>reasonable steps</i> to prevent matters from arising that would (or would likely) adversely affect the prudential standing or prudential reputation of the accountable entity</li> </ol>	You will need to take reasonable steps to meet this obligation.  A large part of an AP's Reasonable Steps is how they perform their roles every day, as well as in unusual situations, and at its heart it is about assessing and uplifting the governance, risk management and general approach to delivering on the accountabilities each AP has.	
<ol style="list-style-type: none"> <li>4 Take <i>reasonable steps</i> to prevent matters from arising that would (or would likely) result in a material contravention by the entity of any of the specified laws in Section 21(1)(d) of the Act</li> </ol>	You will need to take reasonable steps to meet this obligation. Not only in your every day, but also in unusual situations.  This requirement reinforces a need for APs to be confident they understand the obligations relevant to their area of responsibility and the measures taken by the entity to comply.	

# How FAR?

## Accountable Entity obligations

An Accountable Entity will be required to comply with the following four sets of obligations to comply with FAR.

### ACCOUNTABILITY OBLIGATIONS

In conducting its responsibilities, the organisation must take **reasonable steps** to:

1. Conduct its business with honesty, integrity, due skill, care and diligence;
2. Deal with ASIC and APRA in an open, constructive and co-operative way;
3. Prevent matters from arising that would (or would be likely to) adversely affect prudential standing or prudential reputation of the entity;
4. Ensure APs meet their accountability obligations (outlined on the previous page); and
5. Ensure significant related entities meet accountability obligations as if subject to FAR (as relevant).

### DEFERRED REMUNERATION OBLIGATIONS

The organisation must:

1. Defer 40% of an AP's variable remuneration for a minimum of four years, where:
  - Variable remuneration is a feature of the AP's remuneration structure; and
  - 40% of the AP's variable remuneration is greater than \$50,000 AUD.
2. Establish Remuneration Policies and other arrangements to support the deferral and reduction in remuneration in the event there is a breach.

**Variable remuneration** is the amount of an AP's remuneration not guaranteed as it is conditional on achievement of pre-determined objectives (for example, bonus and incentive payments).

Entities subject to CPS 511 need to comply with the heightened requirements. FAR will not limit the Regulator's imposing requirements.

### NOTIFICATION OBLIGATIONS

Entities must notify the Regulators of certain events relating to their FAR environment, and ensure they appoint the right people into the right roles. The organisation must:

1. Notify APRA and ASIC of the following events:
  - Where a person ceases to be an AP;
  - Becomes aware of an entity or AP breach;
  - An AP is dismissed or suspended; and
  - Where an AP's variable remuneration is reduced due to failure to comply with AP accountability obligations.
2. Submit accountability statements and a map to APRA and ASIC prior to the commencement of FAR;
3. There are reasonable grounds to believe it has failed to comply with its accountability or key personnel obligations, or an AP has failed to comply with their accountability obligations.
4. Submit an updated accountability map upon any material changes (or re-submit annually if immaterial changes occur);
5. Update accountability statements upon any changes in accountability.

### KEY PERSONNEL OBLIGATIONS

The organisation must:

1. Ensure that the responsibilities of APs cover all aspects of the operations of the entity and its SREs;
2. Ensure that none of the APs are prohibited under the FAR;
3. Comply with any APRA and ASIC directions to reallocate responsibilities; and
4. Take reasonable steps to ensure that each of the organisation's SREs that are not a FAR entity comply with obligations 2 and 3 above.

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

The period that an individual may temporarily fill the position of an AP if they are not registered will be 90 days. A person acting in a temporary role will still be an AP during this period (although will not be subject to the deferred remuneration obligations).

# How FAR?

## Statements, maps, penalties and powers

**Accountability statements and maps must be submitted to APRA and ASIC. An accountability statement is prepared for each AP (including Directors), and details all the areas for which that person is accountable.**

The accountability statements need to be comprehensive, and Accountable Entities need to ensure that the statements reflect:

- The part of or aspect of the entity's or the SRE's operations for which each person has actual or effective responsibility for management or control; and
- The responsibilities of the person, including each of the prescribed responsibilities.

An accountability map relates to the organisation, and must show lines of reporting and responsibility within an entity.

### Changes to maps and statements

Where there is a **material change** to an accountability statement or map, the Regulators will need to be notified within 30 days of the change occurring. Where there **are immaterial changes**, entities will be required to submit updates on an annual basis.

### What is a material change?

Whilst the Bill does not provide guidance on what is 'material', the FAR Proposal Paper suggests this could include changes to the accountabilities of an AP. For example, a change in accountabilities of an AP may be deemed a 'material change'.

An 'immaterial change' may include a change made to a policy name that is reflected in accountability statements (where the policy otherwise remains unchanged). Further guidance on what is meant by 'material changes' is expected to be released by the Regulators prior to the commencement of FAR.

### Multiple accountability statements?

Importantly, where an AP holds multiple prescribed responsibilities and/or positions across multiple accountable entities within the same group, only one accountability statement will be required to be prepared for each individual.

## Regulator and Minister Powers

**Examination powers:** The Regulators have additional examination powers to assist in conducting investigations. They will be able to require a person to provide all reasonable assistance in connection with an investigation, or to be examined under oath or affirmation.

**Disqualification powers:** The Regulators can remove and disqualify a person from being or acting as an AP, for a period it considers appropriate. To do this, they need to be satisfied the person has not complied with their accountability obligations, and the disqualification is justified having regard to the seriousness of the non-compliance.

**Exemptions and relief:** The Minister has power to exempt an entity (or class of entities) from the application of FAR (this also exempts APs of that entity).

## Penalties for entities and individuals

**Penalties for entities:** Maximum penalty is the greater of: \$15.65m (50,000 penalty units); benefit derived or detriment avoided x 3; or 10% annual turnover (capped at \$782.5m (2.5m penalty units)).

**Penalties for individuals:** Maximum penalty for ancillary contravention of Entity FAR obligations is the greater of: \$1.565m (5,000 penalty units); or benefit derived or detriment avoided x 3. No civil penalties will be imposed on individuals for contravention of their accountability obligations.

**Indemnifying entities/ individuals:** Apart from legal costs, in general terms, entities and APs cannot be indemnified or obtain insurance to cover consequences of breaching the FAR provisions.



# Go FAR

## Implementation and timing

For ADIs and their NOHCs, there is now less than 6 months to transition over to the new and changed requirements under FAR, and extend to any relevant entities not previously captured. We recommend starting now in order to be appropriately prepared for March 2024, and to overcome some of the nuances that weren't contemplated under BEAR.

For all other APRA-regulated entities, experience tells us that the sooner you get started – the better. Ideally the organisation is operating in a FAR-ready state in advance of March 2025. There are a number of “no regrets” activities that can be commenced, including mapping accountabilities, understanding where the greys, gaps and overlaps exist, considering an approach to reasonable steps, and reviewing any remuneration arrangements in place.

### We recommend the following.

Briefing the board and executives



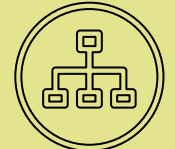
Identifying & mapping entities and APs



Testing greys, gaps & overlaps



Engaging with AP representatives



Drafting statements & map



Establishing working groups



Assessing reasonable steps



Reviewing policies & processes



### Get in touch



**Rosalyn Teskey**  
Partner  
(03) 9671 6473  
[rteskey@deloitte.com.au](mailto:rteskey@deloitte.com.au)



**Sarah Russo**  
Partner  
(07) 3308 7554  
[sarahrusso@deloitte.com.au](mailto:sarahrusso@deloitte.com.au)



**Caroline Hodkinson**  
Partner  
(02) 8260 4954  
[chodkinson@deloitte.com](mailto:chodkinson@deloitte.com)

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