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# Financial Accountability Regime – List of prescribed responsibilities and positions

Policy Proposal Paper

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# Consultation Process

## Request for feedback and comments

Interested parties are invited to comment on the issues raised in this policy proposal paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect confidentiality of your submission.

View Treasury's [Submission Guidelines](#) for further information.

## Closing date for submissions: 13 August 2021

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# Financial Accountability Regime – List of prescribed responsibilities and positions

## Introduction

### Background

In January 2020, the Government released a proposal paper on the Financial Accountability Regime (FAR) outlining its proposed approach to implementing recommendations 3.9, 4.12, 6.6, 6.7 and 6.8 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission).

The FAR will extend the clear standards of conduct established by the Banking Executive Accountability Regime (BEAR) for directors and the most senior and influential executives in authorised deposit-taking institutions (ADIs) to all APRA-regulated entities. The key differences between the BEAR and the FAR is that the FAR will have both a prudential and conduct focus and that it will be jointly administered by the Australian Prudential Regulation Authority (APRA) and Australian Securities and Investments Commissions (ASIC).

This paper provides guidance on prescribed responsibilities and positions and should be read in conjunction with the FAR exposure draft and explanatory materials.

### Accountable persons

A key objective of the FAR is to put in place a strengthened responsibility and accountability framework for directors and the most senior and influential executives of APRA-regulated entities (accountable entities). The most senior and influential executives are those executives who have ultimate accountability for certain parts or aspects of the accountable entity or its significant related entities.

The FAR has extended the list of particular responsibilities under the BEAR to emphasise the importance of managing non-financial risks and reflect the application of the FAR to all APRA-regulated industries. The extended list is not intended to capture middle or lower management who may only have day-to-day responsibility for certain parts or aspects of the accountable entity or its significant related entities. Additionally, the FAR has replaced the concept of particular responsibilities with prescribed responsibilities and positions to emphasise that certain responsibilities do associate with certain positions in an accountable entity.

Similar to the BEAR, an accountable person will be defined using a principles-based element and a prescriptive element. Under the principles-based element, a person is an accountable person of an accountable entity or a significant related entity of an accountable entity if the person is in a senior executive position with actual or effective management or control of the accountable entity, or the management or control of a substantial part of the operations of the accountable entity or its significant related entities. The head of a significant business division would be expected to meet the definition under this principles-based element.

Under the prescriptive element, a person is an accountable person of an accountable entity if the person holds one or more of the prescribed responsibilities or positions as set out in the rules made by the Minister.

The FAR does not preclude a person that meets the definition of the principles-based elements from holding one or more of the prescribed responsibilities or positions and vice versa.

## Prescribed responsibilities and positions

### Allocation of prescribed responsibilities and positions

Similar to the BEAR, the obligation to identify all of its accountable persons in accordance with the FAR requirements rests with the accountable entity. Specifically, accountable entities are responsible for ensuring that it assigns all management and control responsibilities within the accountable entity and those of its group to accountable persons. The nature, size and complexity of an accountable entity and its group will affect the number of responsibilities covered and the number of accountable persons registered to cover those responsibilities.

In administering the FAR, APRA and ASIC (the regulators) will not prescribe or mandate who should be registered to hold certain prescribed responsibilities or positions albeit the regulators may request further information on certain applications for registration. Additionally, the regulators would have the power to direct an accountable entity to reallocate responsibilities if the regulators view that the current allocation of responsibilities could give rise to a prudential risk or risk of significant and systemic non-compliance with a law specified in the FAR exposure draft.

The allocation of prescribed responsibilities or positions must be consistent with the accountable entity's existing governance frameworks and structure of the group to which the accountable entity belongs. The FAR will not prescribe or mandate any specific governance frameworks. However, as part of the FAR implementation, it is not unexpected that some accountable entities may identify weaknesses in their governance frameworks and make certain refinements accordingly.

Accountable entities will be required to register all members of the Board as accountable persons. However, it will be open to the accountable entity to register the most appropriate senior executives to hold all other prescribed responsibilities and positions. Those senior executives do not have to be located within or be employed by the accountable entity or its significant related entities. They can be senior executives from other parts of the group, to the extent that such registrations meet the requirements of the FAR and align with the accountable entity's governance frameworks. For example, a senior executive of an ADI can hold one or more of the prescribed responsibilities and/or positions of a life insurance subsidiary of that ADI.

Similar to the BEAR, the FAR will permit a senior executive to hold multiple prescribed responsibilities and/or positions within an accountable entity. An accountable entity does not have to register a separate individual to hold each of the relevant prescribed responsibilities or positions. For example, the Chief Risk Officer (CRO) of an accountable entity can hold the prescribed responsibilities in relation to risk, compliance and anti-money laundering of that accountable entity. It is possible that a small accountable entity would only need to register all members of its Board and a small number of senior executives to cover all prescribed responsibilities and positions.

Further, the FAR will permit a senior executive to hold multiple prescribed responsibilities and/or positions across multiple accountable entities within the same group. That is, accountable entities within the same group do not have to register a separate set of individuals to hold each of the relevant prescribed responsibilities or positions. For example, the Group CRO can hold the prescribed responsibility in relation to risk for the ADI and general insurer within the same group.

### End-to-end product responsibility

In July 2019, APRA released a consultation letter outlining its approach to implementing an end-to-end product responsibility under the BEAR as per recommendation 1.17 of the Royal Commission. The work and outcomes of this consultation has now been subsumed into the FAR.

The proposed operations of the end-to-end product responsibility outlined below have taken into consideration concerns raised with APRA during its July 2019 consultation.

## Nature of end-to-end product responsibility

One of the issues identified by the Royal Commission is the lack of clear end-to-end accountability for product management which led to adverse customer experiences and outcomes. As such, recommendation 1.17 is about strengthening the governance arrangements that aim to ensure that the product value chain is managed in a holistic manner rather than disaggregated into its stages.

Accordingly, a senior executive supported by robust governance arrangements targeted at proactive and holistic management of the product value chain would be the key to meeting this prescribed responsibility. It is important that such governance arrangements would enable the accountable person to form a view on the adequacy of the support functions around products. This should be the case even if the function is outsourced to other parts of the group (such as information technology) or to a third party.

Based on the above, it is not necessary for an individual holding the end-to-end product responsibility to have the technical expertise on every stage of the product value chain. It is not expected that accountable entities would need to decentralise any of their support functions and move them within the end-to-end product responsibility.

## Scope of accountability

Given the aim of end-to-end product responsibility is to ensure that the product value chain is managed in a holistic manner, a broad interpretation of what is within the scope of end-to-end product responsibility is retained, including:

- all steps in the design, delivery and maintenance of all products and services offered to customers;
- customer remediation;
- linkages to IT systems and data quality;
- outsourcing; and
- incentive arrangements of frontline staff.

## Coverage of products

In accordance with recommendation 1.17 of the Royal Commission, the end-to-end product responsibility proposes to cover a broad range of products and services offered by accountable entities. At this stage, only very limited exclusion is proposed, e.g. road-side assistance services offered by some insurers.

## Joint accountability

Where multiple accountable persons are registered to hold the end-to-end product responsibility, they will not be held jointly accountable to the extent that they are not holding that responsibility for the same product or service.

Conversely, where an accountable entity registers multiple individuals with each individual being accountable for some but not all stages of the product value chain for the same product or service, these individuals will be held jointly accountable for the end-to-end product responsibility in relation to that product or service.

## List of prescribed responsibilities and positions

The full list of prescribed responsibilities and positions that would be set out in the rules determined by the Minister would comprise five sub-lists, namely the list of prescribed responsibilities and positions for:

- all locally incorporated ADIs, insurers, and registrable superannuation entity (RSE) licensees;
- all locally incorporated insurers (in addition to the first sub-list above);
- all locally incorporated RSE licensees (in addition to the first sub-list above);
- all Australian branches of foreign accountable entities; and
- all authorised/registered non-operating holding companies (NOHCs).

See Attachment A for the full list of prescribed responsibilities and positions.

### Next steps

The Government will formally consult on the list of prescribed responsibilities and positions prior to the list being determined in the rules by the Minister.



## Attachment A – Full list of prescribed responsibilities and positions

Table 1 – Prescribed responsibilities and positions for all locally incorporated accountable entities other than authorised/registered NOHCs

Prescribed responsibilities and positions	Individual(s) intended to be captured
Responsibility for oversight of the accountable entity as a member of the Board of the accountable entity.	All members of the Board of the accountable entity.
Senior executive responsibility for management or control of the business activities of the accountable entity, including allocating to accountable persons responsibility for all parts or aspects of the accountable entity and its significant related entities and reporting directly to the Board of the accountable entity.	The senior executive responsible for carrying out the management of all business activities of the accountable entity and its significant related entities; most likely the Chief Executive Officer or similar.
Senior executive responsibility for management of the accountable entity's financial resources.	The senior executive responsible for the management of the accountable entity's financial resources; most likely the Chief Financial Officer or similar.
Senior executive responsibility for management of the accountable entity's overall risk controls and/or overall risk management arrangements.	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's overall risk controls and/or overall risk management arrangements; most likely the Chief Risk Officer or similar.
Senior executive responsibility for management of the accountable entity's operations.	The senior executive responsible for the management of the accountable entity's operations; most likely the Chief Operations Officer or similar.
Senior executive responsibility for management of the accountable entity's information management, including information technology systems.	The senior executive responsible for the management of the accountable entity's information management, including information technology systems; most likely the Chief Information or Technology Officer or similar.
Senior executive responsibility for management of the accountable entity's internal audit function.	The senior executive responsible for the management of the accountable entity's internal audit function; most likely Head of Internal Audit or similar.
Senior executive responsibility for management of the accountable entity's compliance function.	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's compliance function.
Senior executive responsibility for management of the accountable entity's human resources function.	The senior executive responsible for the management of the accountable entity's human

<b>Prescribed responsibilities and positions</b>	<b>Individual(s) intended to be captured</b>
	resources function; most likely Head of Human Resources or similar.
Senior executive responsibility for management of the accountable entity's anti-money laundering function.	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's anti-money laundering function.
Senior executive responsibility for management of the accountable entity's end-to-end product responsibility.	The senior executive(s) responsible for the management of the accountable entity's end-to-end product responsibility; likely to the Chief Executive Officer of a small accountable entity or Head of a business division of a larger more complex accountable entity.
Senior executive responsibility for management of the accountable entity's dispute resolution function (internal and external).	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's dispute resolution function (internal and external).
Senior executive responsibility for management of the accountable entity's client or member remediation programs (encompassing hardship considerations where relevant).	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's client or member remediation programs (encompassing hardship considerations where relevant).
Senior executive responsibility for management of the accountable entity's breach reporting.	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's breach reporting function.

**Table 2 – Prescribed responsibilities and positions for all locally incorporated insurers in addition to Table 1**

<b>Prescribed responsibilities and positions</b>	<b>Individual(s) intended to be captured</b>
Senior executive responsibility for management of the accountable entity's actuarial function.	The senior executive responsible for the management of the accountable entity's actuarial function.
Senior executive responsibility for management of the accountable entity's claims handling function.	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's claims handling function.

Table 3 – Prescribed responsibilities and positions for all locally incorporated RSE licensees in addition to Table 1

Prescribed responsibilities and positions	Individual(s) intended to be captured
Senior executive responsibility for management of the accountable entity's member administration operations.	The senior executive responsible for the management of the accountable entity's member administration operations.
Senior executive responsibility for management of the accountable entity's investment function.	The senior executive responsible for the management of the accountable entity's investment function.
Senior executive responsibility for management of the accountable entity's financial advice service (if any).	The senior executive responsible for the management of the accountable entity's financial advice service (if any).
Senior executive responsibility for management of the accountable entity's insurance offerings.	The senior executive responsible for the management of the accountable entity's insurance offerings.

Table 4 – Prescribed responsibilities and positions for all Australian branches of foreign accountable entities

Prescribed responsibilities and positions	Individual(s) intended to be captured
Senior executive responsibility for the conduct of all the activities of an Australian branch of the foreign ADI, Category C insurer or Eligible Foreign Life Insurance Company (EFLIC).	The senior executive responsible for the conduct of all the activities of an Australian branch of the foreign ADI, Category C insurer or Eligible Foreign Life Insurance Company (EFLIC); most likely the Head of Branch or Country or similar.
The Senior Officer Outside Australia for an Australian branch of the foreign ADI or Category C insurer.	The Senior Officer Outside Australia as defined under <i>Prudential Standard CPS 510 Governance</i> .
Responsibility for oversight of an EFLIC as a member of the Compliance Committee.	All members of the Compliance Committee of an EFLIC as defined under <i>Prudential Standard CPS 510 Governance</i> .
Agent in Australia of a Category C insurer.	Agent in Australia of a Category C insurer as defined under <i>Prudential Standard CPS 510 Governance</i> .

Table 5 – Prescribed responsibilities and positions for all authorised/registered NOHCs

Prescribed responsibilities and positions	Individual(s) intended to be captured
Responsibility for oversight of the accountable entity as a member of the Board of the accountable entity.	All members of the Board of the accountable entity.

Prescribed responsibilities and positions	Individual(s) intended to be captured
Senior executive responsibility for management or control of the business activities of the accountable entity, including allocating to accountable persons responsibility for all parts or aspects of the accountable entity and its significant related entities and reporting directly to the Board of the accountable entity.	The senior executive responsible for carrying out the management of all business activities of the accountable entity and its significant related entities; most likely the Chief Executive Officer or similar.
Senior executive responsibility for management of the accountable entity's financial resources.	The senior executive responsible for the management of the accountable entity's financial resources; most likely the Chief Financial Officer or similar.
Senior executive responsibility for management of the accountable entity's overall risk controls and/or overall risk management arrangements.	The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's overall risk controls and/or overall risk management arrangements; most likely the Chief Risk Officer or similar.
Senior executive responsibility for management of the accountable entity's internal audit function.	The senior executive responsible for the management of the accountable entity's internal audit function; most likely Head of Internal Audit or similar.