

7 October 2022

Director  
Financial System Division  
Treasury  
Langton Cres  
Parkes ACT 2600  
By email: [FAR@treasury.gov.au](mailto:FAR@treasury.gov.au)

## Financial Accountability Regime Minister Rules 2022

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on Treasury's consultation on the *Financial Accountability Regime Minister Rules 2022* (the **draft rules**).

The ABA supports the consolidation and extension of the Banking Executive Accountability Regime (**BEAR**) into the Financial Accountability Regime (**FAR**), and we welcome the draft rules to strengthen accountability and transparency in the financial system by setting out prescribed responsibilities for directors and senior executives. However, we consider there are some aspects of the draft rules that could be clarified or amended, and we note these below.

### Key recommendations

- 1. The Rules should make clear that certain prescribed senior executive responsibilities are intended to capture the person responsible for the 'development, maintenance and review (rather than execution) of a framework'.**

The [Proposal Paper of July 2021](#) raised 'risk management and control', 'compliance', 'AML', 'dispute resolution', 'client or member remediation', 'breach reporting (and 'claims handling' for general insurers) as additional prescribed responsibilities to identify Accountable Persons (**APs**).

The Proposal Paper made it clear that the relevant AP is intended to capture the individual responsible for the framework that governs these areas, rather than the execution of such frameworks. There is commentary in the Explanatory Statement to the Rules (**ES**) which suggests this remains the intent. This is not however, reflected in the drafting of the Rules. We are concerned that, if not explicitly clarified, it could have the consequence of broadening the responsibility beyond that intended and propose that the rules are clarified to this effect.

We note that accountability for execution of the frameworks would be separately allocated to the various APs performing those activities, who would also be subject to the new obligation to take reasonable steps to comply with applicable financial services laws with respect to breach reporting, remediation, and dispute resolution within their areas of responsibility.

- 2. The Rules (and/or the ES) should allow regulated entities to specify whether a prescribed responsibility assigned to multiple APs is held jointly or severally.**

The ABA supports the flexibility provided under the *Financial Accountability Regime Bill 2022* (FAR bill) to identify more than one AP as holding the same prescribed responsibility. However, given the limited examples provided of "members of the board" and "job-share situations", it appears that this approach is intended to be applied as the exception rather than the rule. In addition, the implications of doing so are unclear due to comments in the ES that appear to be inconsistent with the FAR bill.

Where two or more persons are identified as holding the same prescribed responsibility, section 21(2) of the FAR bill suggests that they will have joint accountability, but the ES suggests that they will have several accountabilities ("each person will be held accountable to the extent of their involvement in and responsibility for any contravention...").

The ABA recommends that regulated entities have the flexibility to specify whether prescribed responsibilities are held jointly or severally. Given the breadth of some of the responsibilities, there is a risk that a strict approach to mandating joint accountability will result in regulated entities changing their organisational structure to achieve fairer outcomes for APs and limiting the optimal organisational structure.

**3. The new responsibility for significant related entities (SREs) under section 5(2)(g) of the Rules should be removed.**

This responsibility goes further than BEAR. Requiring an AP to be identified as responsible for the business activities for each SRE creates complexity for, and does not add any governance benefits to, entities where multiple senior executives support SRE governance. It also has the potential of “cutting across” the functional accountabilities identified under the remaining provisions in section 5(2) of the Rules and assumes the business activities of a SRE are neatly segregated from the accountable entity and sitting solely with one executive.

There is a separate principle-based test capturing APs with management or control responsibilities for SREs under the FAR bill, which we believe is appropriate and sufficient. Duplicating this test does not add any value and our investigations have identified that SRE business activities are absorbed into accountable entity activities and for the most part, spread across multiple APs. Retaining this responsibility as a separate one creates unnecessary duplication and complexity in accountability statements (and potential confusion for APs).

**4. Clarity is required on the prescribed responsibility for the dispute resolution function.**

We further seek to understand the scope of ‘dispute resolution’. ‘Dispute resolution’ covers a range of activities, including complaints handling, internal dispute resolution, external dispute resolution dealings and legal disputes that the bank has including large scale disputes, such as commercial litigation. These are distinct functions (particularly legal disputes), and it may not be appropriate to include these as a single responsibility.

The ABA suggests that the responsibility should focus on customer complaints and their resolution rather than commercial litigation (which would be under the purview of general counsel). There is also a link with the suggestion above on shares responsibility, which could enable a more flexible approach to dispute resolution depending on the function triggered.

Thank you for the opportunity to provide feedback. If you have any queries, please contact [prashant.ramkumar@ausbanking.org.au](mailto:prashant.ramkumar@ausbanking.org.au)

Yours sincerely,



Christine Cupitt  
Chief of Policy and Strategy  
Australian Banking Association