

EXPLANATORY STATEMENT

Financial Accountability Regime Act 2023

Financial Accountability Regime (Minister) Rules 2024

Subsection 104(1) of the *Financial Accountability Regime Act 2023* (the Act) provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 10(2) of the Act provides that an individual is an accountable person if the person holds a position in, or relating to an accountable entity, and because of that position has a responsibility that is prescribed by the Minister rules. Paragraph 10(4)(a) of the Act provides that the Minister rules may prescribe such responsibilities.

Subsection 10(3) of the Act provides that an individual is an accountable person if the person holds a position in an accountable entity that is prescribed by the Minister rules. Paragraph 10(4)(b) of the Act provides that the Minister rules may prescribe such positions.

Subsection 31(3) of the Act provides that the Minister rules may set out how to determine when an accountable entity meets the enhanced notification threshold.

Subsection 54(7) of the Act describes when a statement made in an examination is prima facie evidence, namely when it is signed by the person or is authenticated in a manner specified in the Minister rules.

On 4 February 2019, the Financial Services Royal Commission released its Final Report on Misconduct in the Banking, Superannuation and Financial Services Industry. The Final Report included recommendations to extend the Banking Executive Accountability Regime to other Australian Prudential Regulation Authority (APRA) regulated industries, to improve their operating culture and increase transparency and accountability.

The Act implements the recommendations of the Financial Services Royal Commission by establishing the Financial Accountability Regime, which introduces a new accountability regime for institutions and their senior executives in the banking, insurance, and superannuation sectors. The Financial Accountability Regime will be jointly regulated by APRA and the Australian Securities Investments Commission (ASIC).

The Act sets obligations for institutions ('accountable entities', which fall under section 9 of the Act) and their senior executives ('accountable persons', who fall under section 10 of the Act, supplemented by the Minister rules) in regulated sectors to foster a culture of accountability and transparency. Obligations of accountable entities include notification of key business information to APRA or ASIC (the 'Regulator' under section 8 of the Act). Accountable entities with assets above a

certain threshold have enhanced notification obligations to give the Regulator more detailed information about the entity's personnel and structure.

The *Financial Accountability Regime (Minister) Rules 2024* (the Rules) support the establishment of the Financial Accountability Regime by:

- prescribing responsibilities and positions which cause an individual to be an accountable person of an accountable entity, and therefore subject to the Financial Accountability Regime;
- prescribing when an accountable entity meets the enhanced notification threshold based on total assets reported to APRA; and
- prescribing the manner in which a written record of an examination of a person can be authenticated and is admissible as prima facie evidence of the statements it records.

Consultation on exposure draft legislation establishing the Financial Accountability Regime was undertaken in July to August 2021 and September 2021, including provisions enabling the Rules. Consultation on exposure draft Rules was undertaken from 12 September to 7 October 2022.

The Final Report on Misconduct in the Banking, Superannuation and Financial Services Industry has been certified as being informed by a process and analysis equivalent to a Regulation Impact Statement (now known as an Impact Analysis) for the purposes of the Government decision to implement this reform. The Financial Services Royal Commission Final Report can be accessed through the Australian Parliament House website.¹

Details of the Rules are set out in [Attachment A](#).

A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*. The Rules are subject to disallowance and sunseting in accordance with the *Legislation Act 2003*.

The Rules commence on 15 March 2024.

¹<https://parlinfoaph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publicatio ns%2Ftabledpapers%2Fbc83795c-b7fa-4b42-a93b-fa012cffffc2%22>

Details of the *Financial Accountability Regime (Minister) Rules 2024*

Part 1 – Preliminary

Part 1 of the *Financial Accountability Regime (Minister) Rules 2024* (the Rules) provides fundamental information on the Rules, including the name, commencement date, authority by which the Rules are made, and relevant definitions.

Section 1 – Name

This section provides that the name of the instrument is the *Financial Accountability Regime (Minister) Rules 2024*.

Section 2 – Commencement

This section provides that the Rules commence on 15 March 2024. This date is six months after the day the *Financial Accountability Regime Act 2023* (the Act) commenced, to align with application of the Act to the banking industry (see paragraph 9(2)(a) of the Act).

Section 3 – Authority

This section provides that the Rules are made under the *Financial Accountability Regime Act 2023*.

Section 4 – Definitions

This section sets out the definitions which are used in the Rules. The definitions of *final report*, *relevant final report*, *Reporting Standard*, and *total assets value* contain cross-references to relevant sections in Part 3 of the Rules.

An explanatory note is included to remind readers that a number of expressions used in the Rules are defined in the Act, including but not limited to:

- accountable entity;
- ADI (short for authorised deposit taking institution, such as a bank);
- authorised NOHC (NOHC is short for non-operating holding company); and
- RSE licensee (RSE is short for registrable superannuation entity).

Part 2 – Accountable persons—prescribed responsibilities and positions

The Financial Accountability Regime aims to improve the operating culture and to increase transparency and accountability of accountable entities in the banking, insurance and superannuation industries. As the conduct of a business is ultimately determined by its directors and its most senior and influential executives, these persons are accountable under the Financial Accountability Regime.

Part 2 of the Rules prescribes responsibilities and positions which cause a person to be an accountable person of an accountable entity, with obligations under the Financial Accountability Regime that relate to both conduct and prudential matters.

A person with a senior executive role or responsibility for management of specified activities or functions of the accountable entity, rather than someone merely carrying out those activities or functions, is the intended focus of the Rules.

Words describing the prescribed responsibilities such as ‘activities’ and ‘functions’ have their ordinary meaning and are intended to cover all core matters of business such as operations, arrangements, and programs.

There are a number of prescribed responsibilities and positions which apply across all regulated sectors (sections 5 and 6), as well as additional responsibilities prescribed for each sector or particular types of accountable entity (sections 7 to 11).

One person may have multiple prescribed responsibilities and positions. Similarly, one prescribed responsibility or position may capture multiple individuals, such as the position of member of the board of directors, or in a job-share situation where each person is responsible for one part of the overall responsibility. Where two or more people have the same responsibility or position, each person will be held accountable to the extent of their involvement in and responsibility for any contravention, as if the position or responsibility were solely theirs (subsection 21(2) of the Act).

Section 5 – Prescribed responsibilities for accountable entities other than foreign accountable entities and NOHCs—all sectors

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity in the banking, insurance, and superannuation sectors, for the purposes of section 10(2)(b) of the Act.

This section only applies in relation to an accountable entity that is an ADI, general insurer, life company, private health insurer or an RSE licensee. It does not apply in relation to accountable entities that are foreign accountable entities or NOHCs; refer instead to sections 9 to 11.

Subsection 5(2) prescribes 12 responsibilities that cover senior executives with responsibility for management (and in some cases control) of specified activities and functions relating to the accountable entity. These prescribed responsibilities are modelled on specific responsibilities listed in section 37BA(3) of the *Banking Act 1959*, to support a smooth transition from the Banking Executive Accountability Regime to the Financial Accountability Regime. The nature of a person’s responsibility determines whether a person is an accountable person under this section. A person’s position or title is not relevant to determining whether a person has a prescribed responsibility.

Senior executive responsibility for management or control of the business activities of the accountable entity and any significant related entities of the accountable entity is prescribed by paragraph 5(2)(a).

A ‘significant related entity’ is defined in sections 8 and 12 of the Act, and may include a subsidiary of the accountable entity for banking and insurance entities and a connected entity of the accountable entity for RSE licensees. The definition of an RSE licensee’s significant related entity draws on ‘connected entities’ rather than ‘subsidiaries’, reflecting the different regulatory framework and associated corporate structures in the superannuation industry.

This prescribed responsibility covers management or control of any significant related entities of the accountable entity in recognition of the impact the business activities of a significant related entity can have on an accountable entity’s prudential reputation and public standing.

Note that this prescribed responsibility is ‘relating to the accountable entity’, even though the responsibility includes management and control of a significant related entity of the accountable entity (if any). As such, this rule is made for the purpose of subsection 10(2) of the Act (accountable persons of accountable entities), rather than subsection 10(6) of the Act (accountable persons of significant related entities).

Note also that there is a distinction between an accountable entity and an Australian branch of a foreign accountable entity. Section 5 prescribes responsibilities which make a person an accountable person of an Australian accountable entity. See section 9 for responsibilities which make a person an accountable person of a foreign accountable entity.

The reference to ‘business activities’ is intended to capture persons such as the Chief Executive Officer (or equivalent) of an accountable entity. Such persons may have overall responsibility for business activities as well as specific responsibilities such as allocating responsibility for all parts or aspects of the accountable entity and of its significant related entities to accountable persons, and reporting to the board of directors. This prescribed responsibility broadly aligns with the responsibility specified by paragraph 37BA(3)(b) of the *Banking Act 1959*.

Paragraph 5(2)(b) prescribes two senior executive responsibilities for management or control of the accountable entity’s financial resources or of its operations. This is intended to capture, for example, the Chief Financial Officer as well as the Chief Operations Officer, which are separate responsibilities.

Other prescribed responsibilities relate to management of important arrangements and functions of the accountable entity, specifically:

- senior executive responsibility for management of the accountable entity’s risk control and management arrangements, information management, client or member remediation programs (including any hardship arrangements connected to a client remediation program), or breach reporting;
- senior executive responsibility for management of the accountable entity’s functions of internal audit, compliance, human resources, or dispute resolution); and

- senior executive responsibility for management of the accountable entity's anti-money laundering function if the accountable entity is a reporting entity for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Examples of persons that may be captured by these other prescribed responsibilities include an accountable entity's Chief Risk Officer, Chief Information or Technology Officer, and the Head of Human Resources.

Subsection 5(3) clarifies that the prescribed responsibilities capture senior executive responsibility for management of an activity or function, distinct from a (typically lower level) responsibility for carrying out or executing the activity or function. This gives effect to the intent to capture senior executives who are responsible for development, maintenance and review (rather than execution) of a framework.

Section 6 – Prescribed positions for accountable entities other than foreign accountable entities and NOHCs—all sectors

This section prescribes positions that cause a person to be an accountable person of an accountable entity in the banking, insurance, and superannuation sectors, for the purposes of subsection 10(3) of the Act.

This section only applies in relation to an accountable entity that is an ADI, general insurer, life company, private health insurer or an RSE licensee. It does not apply in relation to accountable entities that are foreign accountable entities or NOHCs; refer instead to section 11, which prescribes an equivalent position for board members of NOHCs.

Subsection 6(2) prescribes the position of member of the accountable entity's board of directors (or equivalent). This means each member of the accountable entity's board of directors would be an accountable person under the Act. Such a person is likely to have oversight of the accountable entity's activities and functions and is therefore appropriate to be an accountable person.

Section 7 – Prescribed responsibilities for accountable entities other than foreign entities and NOHCs—insurance

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity that is a general insurer, life company, or private health insurer (and is not foreign accountable entity or NOHC), for the purpose of paragraph 10(2)(b) of the Act. These responsibilities apply in addition to the responsibilities prescribed by section 5 across all regulated sectors, including insurance. The additional responsibilities are to cater to the unique requirements of the insurance industry.

The two prescribed responsibilities are senior executive responsibility for management of the accountable entity's:

- actuarial function; and

- claims handling function.

This section is only intended to capture persons with senior executive responsibility for management of an activity or function. A person does not have that level of responsibility simply by carrying out the relevant activity or function. That is, they are intended to capture individuals responsible for the development, maintenance and review (rather than execution) of a framework.

Section 8 – Prescribed responsibilities for accountable entities that are RSE licensees

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity that is a RSE licensee for the purposes of paragraph 10(2)(b) of the Act. These responsibilities apply in addition to the responsibilities prescribed by section 5 across all regulated sectors, including superannuation. RSE licensees have these additional responsibilities to cater to the unique requirements of the superannuation industry.

The four prescribed responsibilities are senior executive responsibility for management of the accountable entity's:

- member administration operations;
- investment function;
- financial advice service; and
- insurance offerings.

This section is only intended to capture persons with senior executive responsibility for management of an activity or function, and of the RSE licensee's associated interactions with members. A person does not have that level of responsibility simply by carrying out the relevant activity or function.

Section 9 – Prescribed responsibilities for accountable entities that are foreign accountable entities

A 'foreign accountable entity', as defined by section 8 of the Act, means a foreign ADI (within the meaning of the *Banking Act 1959*), a foreign general insurer (within the meaning of the *Insurance Act 1973*), or an eligible foreign life insurance company (within the meaning of the *Life Insurance Act 1995*) that is registered under section 21 of the *Life Insurance Act 1995*. These terms are also specifically defined in section 4. For example, section 4 provides that an eligible foreign life insurance company means an eligible foreign life insurance company within the meaning of the *Life Insurance Act 1995* that is registered under section 21 of the *Life Insurance Act 1995*. In accordance with paragraph 16ZD(1)(d) of the *Life Insurance Act 1995*, this does not include an eligible life company (defined in the Schedule to that Act as a body corporate that, immediately before the commencement of that Act, was registered under the *Life Insurance Act 1945*) that is registered under section 21 of that Act.

A foreign accountable entity is subject to the accountability obligations of the Financial Accountability Regime only to the extent that it operates a branch of the foreign accountable entity in Australia (subsection 15(2) of the Act). A foreign accountable entity is not subject to the Financial Accountability Regime for its offshore operations or for its significant related entities. In these respects the Financial Accountability Regime applies identically to the Banking Executive Accountability Regime, except that where under the Banking Executive Accountability Regime an ADI (including a foreign ADI to the extent it operated a branch in Australia) had obligations in relation to each of its subsidiaries, under the Financial Accountability Regime a foreign accountable entity has those obligations only for a locally incorporated subsidiary that has a material and substantial effect on the Australian branch and meets the other limbs of the definition of ‘significant related entity’ in subsection 12(1) of the Act.

An accountable person of a foreign accountable entity has obligations under the Financial Accountability Regime only in relation to an Australian branch of the foreign accountable entity (subsection 18(3) of the Act). A foreign accountable entity’s obligation to ensure its operations are covered by its accountable persons applies to all parts or aspects of the operations of each Australian branch (subsection 23(3) of the Act).

This section prescribes responsibilities which cause a person to be an accountable person of an accountable entity that is a foreign accountable entity for the purposes of paragraph 10(2)(b) of the Act. The four prescribed responsibilities are:

- senior executive responsibility for the conduct of the activities of a branch of the foreign accountable entity that is operating in Australia, for example the Head of Branch or Country, or similar;
- responsibility for overseeing the operation of the Australian branch of a foreign ADI or foreign general insurer, as a senior officer outside Australia with delegated authority from the board of directors (or equivalent). For example, a director or senior executive who is the foreign accountable entity’s senior officer outside Australia, consistent with APRA’s *Prudential Standard CPS 510 Governance*;
- responsibility for oversight of an eligible foreign life insurance company as a member of its Compliance Committee. A person with such responsibility has powers of management over the Australian branch of the company to ensure its compliance with prudential standards and the *Life Insurance Act 1995* (refer subsection 16ZF(1) of that Act); and
- responsibility as a foreign general insurer’s *agent in Australia*, consistent with requirements for such an agent in section 118 of the *Insurance Act 1973* and APRA’s prudential standards. Where the agent is a corporate agent, the section aims to capture the key member of management that exercises control over the operations of the agent in Australia. Where the agent is an individual, the section aims to capture that individual.

Section 10 – Prescribed responsibilities for accountable entities that are NOHCs

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity that is an authorised NOHC of an ADI, an authorised NOHC of a general insurer, or a registered NOHC of a life company for the purposes of paragraph 10(2)(b) of the Act. NOHCs (non-operating holding companies) are treated differently to other accountable entities because NOHCs do not carry on their own operations, instead their usual function is to own or control companies (which themselves may be accountable entities). As such, there are fewer prescribed responsibilities than other Australian accountable entities.

There are four prescribed responsibilities:

- senior executive responsibility for management or control of the business activities of the accountable entity and all significant related entities of the accountable entity;
- senior executive responsibility for management or control of the accountable entity's financial resources;
- senior executive responsibility for management of the accountable entity's overall risk controls or risk management arrangements; and
- senior executive responsibility for management of the accountable entity's internal audit function.

These prescribed responsibilities are intended to cover persons such as the accountable entity's Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, and Head of Internal Audit.

This section is only intended to capture persons with senior executive responsibility for management of an activity or function. A person does not have that level of responsibility simply by carrying out the relevant activity or function. That is, they are intended to capture individuals responsible for development, maintenance and review (rather than execution) of a framework.

Section 11 – Prescribed positions for accountable entities that are NOHCs

This section prescribes positions that cause a person to be an accountable person of an accountable entity that is an authorised or registered NOHC in the banking or insurance sectors, for the purpose of subsection 10(3) of the Act. Specifically, this section applies to an authorised NOHC of an ADI, authorised NOHC of a general insurer, or registered NOHC of a life company.

Subsection 11(2) prescribes the position of a member of the accountable entity's board of directors (or equivalent). This means each member of an authorised or registered NOHC's board of directors would be an accountable person under the Act. Such a person is likely to have oversight of the accountable entity's activities and functions and is therefore appropriate to be an accountable person.

Section 12 – Relationship between sections in this Part

This section provides that unless expressly provided, no section in Part 2 is intended to limit the operation of any other section in Part 2. For instance, an accountable entity that is a general insurer may have accountable persons with responsibilities prescribed by both section 5 and section 7.

Part 3 – Accountable entities—enhanced notification threshold

All accountable entities have notification obligations under section 31 of the Act to provide core business information to the Regulator. Accountable entities which meet the enhanced notification threshold set by these Rules have additional disclosure obligations to the Regulator, including providing an accountability statement for each accountable person and an accountability map.

Part 3 explains how to determine the enhanced notification threshold for each type of accountable entity regulated by the Financial Accountability Regime.

The methodology has been developed on the advice of the Regulators and is based on total assets reported to APRA in earlier financial years. This approach is broadly consistent with the methodologies used by APRA to identify entities as significant financial institutions. This approach is intended to support understanding of, and compliance with, the Financial Accountability Regime.

Consistently with APRA’s approach to significant financial institutions, no thresholds are prescribed under Part 3 for accountable entities that are foreign accountable entities. Foreign accountable entities are therefore not subject to the enhanced notification obligations.

Division 1 – Accountable entities that are ADIs

Section 13 – Determining when accountable entity meets enhanced notification threshold—ADIs

This section sets out how to determine the enhanced notification threshold for accountable entities (other than foreign accountable entities) which are ADIs, for the purposes of subsection 31(3) of the Act.

An ADI that is an accountable entity meets the enhanced notification threshold at a particular time during a financial year of the entity if, in the relevant final report submitted to APRA, its total assets value exceeds \$20 billion.

A ‘financial year’ in relation to an accountable entity means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

An ADI’s ‘relevant final report’ and ‘total assets value’ are defined by sections 14 and 15, respectively.

Section 14 – Relevant final report–ADIs

This section explains that a **relevant final report** in relation to an accountable entity that is an ADI is the most recent final report of the ADI’s financial position in a financial year of the entity that is submitted to APRA under any of the following:

- Reporting Standard ARS 322.0 Statement of Financial Position (Consolidated);
- Reporting Standard ARS 323.0 Statement of Financial Position (Licensed ADI); and
- Reporting Standard ARS 720.0 ABS/RBA Statement of Financial Position.

An ADI’s **final report** is the report that is submitted to APRA under any of the above three reporting standards in relation to the reporting period for a financial year of that ADI that includes the last day of the ADI’s financial year. For example, if an ADI’s financial year ends on 30 September and a Reporting Standard requires monthly reports, the final report under that Reporting Standard would be the report relating to September.

Some ADIs have submitted, or currently submit, multiple final reports to APRA in the same financial year, for example reporting under both Reporting Standard ARS 322.0 and Reporting Standard ARS 720.0. In such a situation, subsections 14(2) and (3) establish a hierarchy as to which report will be the relevant final report for the purpose of this section:

- If the ADI has submitted a relevant final report in a financial year under Reporting Standard ARS 322.0, that will be the standard that determines the asset value for that financial year.
- If the ADI has not submitted a relevant final report in a financial year under Reporting Standard ARS 322.0, then the Reporting Standard ARS 323.0 will be the standard that determines the asset value for that financial year.
- If the ADI has not submitted a relevant final report in a financial year under either Reporting Standard ARS 322.0 or Reporting Standard ARS 323.0, then the Reporting Standard ARS 720.0 will be the standard that determines the asset value for that financial year.

This approach also takes into account the fact that an ADI can have its own financial year, and this could differ from a standard financial year. Financial year is defined in section 8 of the Act (and section 323D of the *Corporations Act 2010*). A financial year is specific to an ADI and can include a financial year that begins before the commencement of the Rules in accordance with section 31. The last day of a financial year may also be different for each Reporting Standard. In most circumstances a financial year for an ADI will be a period of 12 consecutive months, with its first financial year commencing on the day the ADI is registered or incorporated. Being able to use its own financial year minimises the regulatory burden on an ADI and ties in with its existing reporting obligations to APRA.

Examples of how to calculate total assets value are set out below.

Example 1 – existing ADI

It is currently financial year 2023–24 for an ADI.

This ADI submitted a relevant final report for financial year 2022–23, in which its total assets value was reported to be \$20.5 billion. As this amount exceeds the \$20 billion threshold set in subsection 13(2) of the Rules, the ADI meets the enhanced notification threshold for the 2023-24 financial year.

Example 2 – new ADI

It is currently financial year 2023–24 for an ADI.

This ADI has not yet submitted any final reports because it is a newly authorised ADI. It is not taken to meet the enhanced notification threshold at a particular time in financial year 2023–24 as there is no relevant final report from which to determine its total assets value.

Section 15 – Total assets value–ADIs

This section provides the methodology for determining the *total assets value* of an ADI. Total assets value is the total assets amount in a relevant final report submitted to APRA in a financial year, in accordance with particular Reporting Standards. Total assets value represents total assets for one financial year.

If the report is under:

- Reporting Standard ARS 322.0, the total assets value is the amount reported in Section A, item 12 Total assets in Form ARF 322.0;
- Reporting Standard ARS 323.0, the total assets value is the amount reported in Section A, item 11 Total assets in Form ARF 323.0;
- Reporting Standard ARS 720.0, using Form ARF 720.0A, the total assets value is the amount reported in Section A, item 13 Total assets including intra-group assets of that form;
- Reporting Standard ARS 720.0, using Form ARF 720.0B, the total assets value is the amount reported in Section A, item 13 Total assets including intra-group assets of that form.

Division 2 – Accountable entities that are general insurers

Section 16 – Determining when accountable entity meets enhanced notification threshold–general insurers

This section sets out the enhanced notification threshold for accountable entities (other than foreign accountable entities) that are general insurers, for the purposes of subsection 31(3) of the Act.

A general insurer meets the enhanced notification threshold at a particular time during a financial year of the entity if, in the most recent final report submitted to APRA, its total assets value exceeds \$10 billion.

A 'financial year' in relation to an accountable entity means the individual entity's own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

A general insurer's 'final report' and 'total assets value' are defined by sections 17 and 18, respectively.

Section 17 – Final report–general insurers

This section provides that a **final report** in relation to an accountable entity that is a general insurer means a report that is submitted to APRA under Reporting Standard GRS 300.0 for a reporting period that includes the last day of the financial year of the entity. Reporting Standard GRS 300.0 should not be confused with Reporting Standard GRS300.0_G.

Section 18 – Total assets value–general insurers

This section provides that **total assets value** in a general insurer's final report is the amount reported in item 15 Total assets in Reporting Standard GRS 300.0 Statement of Financial Position.

Division 3 – Accountable entities that are life companies

Section 19 – Determining when accountable entity meets enhanced notification threshold–life companies

This section sets the enhanced notification threshold for accountable entities (other than foreign accountable entities) that are life companies, for the purposes of subsection 31(3) of the Act.

A life company meets the enhanced notification threshold at a particular time during a financial year of the entity if, in the most recent final report submitted to APRA, its total assets value exceeds \$10 billion.

A 'financial year' in relation to an accountable entity means the individual entity's own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

A life company's 'final report' and 'total assets value' are defined by sections 20 and 21, respectively.

Section 20 – Final report–life companies

This section provides that a **final report** in relation to an accountable entity that is a life company means a report that is submitted to APRA under Reporting Standard LRS 300.0 for a reporting period that includes the last day of the financial year of the entity.

Section 21 – Total assets value–life companies

This section provides that the **total assets value** in a life company’s final report is the amount reported in item 15 Total assets in Reporting Standard LRS 300.0 Statement of Financial Position.

Division 4 – Accountable entities that are private health insurers

Section 22 – Determining when accountable entity meets enhanced notification threshold–private health insurers

This section sets the enhanced notification threshold for accountable entities that are private health insurers, for the purposes of subsection 31(3) of the Act.

A private health insurer meets the enhanced notification threshold at a particular time during a financial year of the entity if, in the most recent final report submitted to APRA, its total assets value exceeds \$3 billion.

A ‘financial year’ in relation to an accountable entity means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

A private health insurer’s ‘final report’ and ‘total assets value’ are defined by sections 23 and 24, respectively.

Section 23 – Final report–private health insurers

This section provides that a **final report** in relation to an accountable entity that is a private health insurer means a report that is submitted to APRA under Reporting Standard HRS 300.0 Statement of Financial Position for a reporting period that includes the last day of the financial year of the entity.

Section 24 – Total assets value–private health insurers

This section provides that the **total assets value** of an accountable entity that is a private health insurer is the amount reported in item 15 Total assets in Reporting Standard HRS 300.0 Statement of Financial Position.

Division 5 – Accountable entities that are RSE licensees

Section 25 – Determining when accountable entity meets enhanced notification threshold–RSE licensees

This section sets the enhanced notification threshold for accountable entities that are RSE licensees, for the purposes of subsection 31(3) of the Act.

An RSE licensee meets the enhanced notification threshold at a particular time during a financial year of the entity if, in the final report submitted to APRA, its total assets value exceeds \$30 billion.

A ‘financial year’ in relation to an accountable entity, means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

An RSE licensee’s ‘final report’ and ‘total assets value’ are defined by sections 26 and 27, respectively.

Section 26 – Final report–RSE licensees

This section provides that a ***final report*** in relation to an accountable entity that is an RSE licensee means a report that is submitted to APRA under Reporting Standard SRS 320.0 for a reporting period that includes the last day of the financial year of the entity.

An RSE licensee is required to provide a report for each reporting period in respect of each RSE for which it is a trustee.

Section 27 – Total assets value–RSE licensees

This section provides the methodology to determine the ***total assets value*** of an accountable entity that is an RSE licensee.

The total assets value is the amount reported in item 11 Total assets in Form SRF 320.0 in Reporting Standard SRS 320.0.

Where the RSE licensee is trustee of more than one RSE, defined benefit RSE, PST (Pooled Superannuation Trust) or ERF (Eligible Rollover Fund), the RSE must separately provide information required by the form for each of those entities within its business operations. In this case, to determine its total assets value the RSE licensee should identify the Total assets amount reported for each entity of which the accountable entity is an RSE licensee, and add those amounts together.

Where an RSE has been transferred from one trustee to another, the RSE licensee should only incorporate the asset values of the RSEs under its trusteeship at the end of each financial year.

Division 6 – Accountable entities that are in the same corporate group

Section 28 – Related accountable entity also taken to meet enhanced notification threshold

This section applies the enhanced notification threshold to related accountable entities in a corporate group.

Where one accountable entity (the ***first accountable entity***) meets the relevant enhanced notification threshold at a particular time during a financial year of the first accountable entity (as set out under subsection 13(2), 16(2), 19(2), 22(2) or 25(2)), and it is related to another accountable entity that is not a foreign accountable entity (the ***second accountable entity***) which has not met the threshold, the second accountable entity is taken to meet the enhanced notification threshold at that particular time.

In accordance with section 8 of the Act, the question of whether two entities are related to each other is determined in the same way as the *Corporations Act 2001*.

Division 7 – Miscellaneous

Section 29 – Reporting Standards

This section provides that where a provision of the Rules refers to a Reporting Standard with a specific identifier in relation to a final report for reporting period that includes the last day of a financial year of an accountable entity, that provision is known as a ***referring provision***. An ***identifier*** means a combination of letters and numbers (with or without punctuation marks, and whether or not followed by a title). The referring provision is taken to refer to the version of the Reporting Standard with that identifier that applied to that reporting period because of a determination made under section 13 of the *Financial Sector (Collection of Data) Act 2001*.

However, if that Reporting Standard has been superseded by a more recent Reporting Standard (with a different identifier and included in a different determination), then a reference to the Reporting Standard that has been superseded is taken to be a reference to the new Reporting Standard. A reference to any material in the Reporting Standard that has been superseded, for example, the reporting form, is taken to be a reference to the corresponding material in the more recent Reporting Standard.

The intention of this section is to ‘future proof’ the Rules so that if a new Reporting Standard is determined under the *Financial Sector (Collection of Data) Act 2001*, and accountable entities are required to report in accordance with that new Reporting Standard, the referring provisions in the Rules operate to refer to the new Reporting Standard.

Part 4 – Miscellaneous

Section 30 – Evidentiary use of certain material—manner of authentication of examination record

This section prescribes the manner in which a written record of an examination of a person can be authenticated for the purpose of subsection 54(7) of the Act. If a written record is authenticated in the prescribed manner, it is admissible as prima facie evidence of the statements it records.

A written record can be authenticated if all of the following circumstances are met:

- the written record is produced as soon as practicable after the conclusion of the examination;
- the written record is endorsed by a person (the *endorser*) other than the person examined at the examination;
- the endorser was present throughout the examination; and reads and endorses the written record as soon as practicable after it is produced; and
- the endorsement is to the effect that the record is a true record of what was said in the examination and is signed and dated by the endorser.

This approach aligns with regulation 13.22 of the *Superannuation Industry (Supervision) Regulations 1994*, for consistency among regulated sectors.

Part 5 – Application and transitional provisions

Section 31 – Application provision–total assets value

This section clarifies how the enhanced notification thresholds in Part 3 apply in relation to the commencement of these Rules.

In accordance with subsections 13(2) for ADIs, 16(2) for general insurers, 19(2) for life companies, 22(2) for private health insurers, and 25(2) for RSE licensees, an accountable entity meets the enhanced notification threshold at a particular time during a financial year of the entity if its total assets value exceeds a certain threshold as reported in the entity’s relevant final report (ADIs) or final report (other entities).

This section clarifies that in working out the total assets value of an accountable entity, the start of the financial year may be before the Rules commence, or before the time when the entity starts being an accountable entity.

This clarification is most relevant during the first year that the Rules apply. This is because, for many accountable entities, the financial year will have started before the commencement of the Rules. It may also be relevant in future years when an entity becomes an accountable entity after the start of the financial year.

A ‘financial year’ in relation to an accountable entity, means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). In most circumstances a financial year will be a period of 12 consecutive months, with its first financial year commencing on the day the entity is registered or incorporated. This first day may be 1 July, as for other entities, but could also be any other day or month.

To avoid doubt, an entity cannot be deemed to meet the enhanced notification threshold until after the Rules have commenced.

Example 1 – first year of application

An ADI's financial year begins on 1 November. As the Act commenced on 15 September 2023, the ADI becomes an accountable entity 6 months later on 15 March 2024, in accordance with paragraph 9(2)(a) of the Act. In determining whether the ADI has enhanced notification obligations for the financial year under subsection 13(2) of the Rules, its total assets value as reported in its relevant final report for 2022-23 is used, as this reporting period includes the last day of the entity's financial year. It is inconsequential that the financial year began before the Rules commenced, and before the ADI became an accountable entity. Assuming the ADI has reported a total assets value that is over \$20 billion for the financial year 2022-23, and has a 12 month financial year, the ADI will be obliged to comply with the enhanced notification obligations from 15 March 2024.

Example 2 – future years of application

A general insurer's financial year begins on 1 July 2024. As the Act commenced on 15 September 2023, the insurer becomes an accountable entity 18 months later on 15 March 2025, consistent with paragraph 9(4)(a) of the Act. In determining whether the insurer has enhanced notification obligations under subsection 16(2) of the Rules, its total assets value as reported for the financial year 1 July 2024 is used, even though that financial year began before the general insurer became an accountable entity.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Financial Accountability Regime (Minister) Rules 2024

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Financial Accountability Regime Act 2023* (the Act) implements the recommendations of the Financial Services Royal Commission by establishing the Financial Accountability Regime, which introduces a new accountability regime for institutions and their senior executives in the banking, insurance, and superannuation sectors. The Financial Accountability Regime will be jointly regulated by the Australian Prudential Regulation Authority (APRA) and the Australian Securities Investments Commission (ASIC).

The Act sets obligations for institutions ('accountable entities', who fall under section 9 of the Act) and their senior executives ('accountable persons', who fall under section 10 of the Act or the *Financial Accountability Regime (Minister) Rules 2024* (Rules) in regulated sectors to foster a culture of accountability and transparency. Obligations of accountable entities include notification of key business information to APRA or ASIC (the 'Regulator' under section 8 of the Act). Accountable entities with assets above a certain threshold have enhanced notification obligations to give the Regulator more detailed information about the entity's personnel and structure.

The Rules support the establishment of the Financial Accountability Regime by:

- prescribing responsibilities and positions which cause an individual to be an accountable person of an accountable entity, and therefore subject to the Financial Accountability Regime;
- prescribing when an accountable entity meets the enhanced notification threshold based on total assets reported to APRA; and
- prescribing the manner in which a written record of an examination of a person can be authenticated and is admissible as prima facie evidence of the statements it records.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

While the substantive provisions of the Act engage rights under the International Covenant on Civil and Political Rights, this Legislative Instrument does not touch on those matters.

For instance, the Act provides for the Regulator to collect, use and disclose information about accountable entities and their accountable persons, which may include personal information and therefore engages the right to privacy. This Legislative Instrument establishes which persons may be accountable persons for the purposes of the Act, but does not contain provisions which relate to handling of information about such persons, so does not engage the right to privacy.

Similarly, this Legislative Instrument does not contain penalties or provisions impacting other rights, such as the right against self-incrimination or the rights to a fair trial and to freedom of expression engaged by the primary legislation.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.