



APRA



ASIC

Explanatory Statement

Financial Accountability Regime (Consequential Amendments) Transitional Rules 2024

Prepared by the Australian Prudential Regulation Authority (*APRA*) and the Australian Securities and Investments Commission (*ASIC*).

Summary

1. Item 34(1) of Schedule 2 of the *Financial Accountability Regime (Consequential Amendments) Act 2023 (the Act)* provides that the APRA and ASIC (*the Regulators*) may jointly, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Act or the enactment of the Act or the *Financial Accountability Regime Act 2023 (the FAR Act)*. On 6 March 2024, the Regulators made the *Financial Accountability Regime (Consequential Amendments) Transitional Rules 2024 (the instrument)*. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003 (the Legislation Act)*.
2. The instrument commences on the day after it is registered on the Federal Register of Legislation.

Background

3. On 4 February 2019, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry released its Final Report. The Final Report included recommendations that provisions modelled on the Banking Executive Accountability Regime (*BEAR*) be extended to all APRA-regulated financial services institutions.
4. The Act and the FAR Act implement the recommendations of the Royal Commission by establishing the Financial Accountability Regime (*FAR*), a new accountability regime for institutions and their senior executives in the banking, insurance, and superannuation sectors. The regime will be jointly administered by APRA and ASIC.

Purpose of the instrument

5. The instrument supports the establishment of the FAR by prescribing:
 - (a) that certain information must be provided to the Regulators by authorised deposit-taking institutions (*ADIs*) which are subject to the BEAR and which become accountable entities under the FAR Act, to facilitate the transition of such ADIs from the BEAR to the FAR;
 - (b) the required timeframe for submission of that information; and
 - (c) the method of submission of that information.

Operation of the instrument

6. Section 6(1) of Part 2 of the instrument requires an ADI which is subject to the BEAR and which becomes an accountable entity under the FAR Act on 15 March 2024 (*the banking start time*) to provide the Regulators with certain prescribed information in a specified manner within 30 days after the banking start time.
7. Section 6(2) of Part 2 of the instrument prescribes the information which must be provided to the Regulators, being certain information in respect of each person who is, immediately prior to the banking start time, an accountable person for the purposes of the BEAR and who, at the banking start time, becomes an accountable person of the relevant accountable entity or a significant related entity of that accountable entity under the FAR Act. The information which must be provided is separated into five categories: personal identification details, employment status, reporting lines, responsibilities information and key functions information.
8. Section 6(3) of Part 2 of the instrument requires the prescribed information to be provided to the Regulators by completing and submitting the electronic notification form which is made available by APRA in APRA Connect for this purpose.
9. Paragraphs 6(2)(a)-(h) of Part 2 of the instrument prescribe as information which must be provided: specific personal information, employment status information, reporting line information and responsibilities information.

Key functions information

10. Paragraphs 6(2)(i) – (j) of Part 2 of the instrument prescribe as information which must be provided to the Regulators each ADI Key Function (if any) of an accountable person and the date the accountable person assumed responsibility for each ADI Key Function (if applicable).
11. The term “ADI Key Function” is defined in section 5 of Part 1 of the instrument. Relevant information regarding an ADI Key Function is only required to be provided where:
 - (a) an accountable entity which is an ADI undertakes the ADI Key Function; and

- (b) a person who is determined to be an accountable person in accordance with the FAR Act has actual or effective senior executive responsibility for management or control of the whole of, or a significant or substantial part or aspect of, the ADI Key Function.

The instrument does not require a relevant accountable entity to undertake each ADI Key Function or to assign each ADI Key Function to an accountable person.

- 12. The concept of ADI Key Functions does not expand the definition or scope of responsibilities of accountable persons under the FAR Act. The provision of information regarding ADI Key Functions will assist the Regulators in assessing a relevant accountable entity's compliance with its obligation under paragraph 23(1)(a) of the FAR Act.
- 13. Relevant information in respect of ADI Key Functions should reflect actual practices. For example, one accountable person may not have the requisite level of responsibility for any applicable ADI Key Functions, while another accountable person may have the requisite level of responsibility for multiple applicable ADI Key Functions.
- 14. Accountable entities can also assign an applicable ADI Key Function to more than one accountable person if those accountable persons have the requisite level of responsibility for different aspects of the ADI Key Function.

References in definitions

- 15. The instrument refers to definitions contained in the following statutes as in force from time to time:
 - (a) the Act;
 - (b) *Banking Act 1959 (the Banking Act)*, except in relation to Part IIAA (see paragraph 16);
 - (c) *Corporations Act 2001*; and
 - (d) the FAR Act.
- 16. The instrument also refers to definitions in Part IIAA of the Banking Act, and where it does so the Part referred to is the Part which is in force immediately before the banking start time.
- 17. All statutes referred to in the instrument as specified in paragraphs 15 and 16 above are available on the Federal Register of Legislation at www.legislation.gov.au.

Consultation

- 18. In making the instrument, the Regulators undertook a public consultation between July 2023 and August 2023. The instrument was amended where appropriate to reflect the feedback received during the consultation.

Impact Analysis

19. The Office of Best Practice Regulation (now known as Office of Impact Analysis) advised that a Regulation Impact Statement (now known as Impact Analysis) is not required for this legislative instrument.

Statement of Compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

20. A Statement of Compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

Statement of Compatibility with Human Rights

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

The *Financial Accountability Regime (Consequential Amendments) Transitional Rules 2024 (the legislative instrument)* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act.

Overview of the Legislative Instrument

1. Item 34(1) of Schedule 2 of the *Financial Accountability Regime (Consequential Amendments) Act 2023 (the Act)* provides that the APRA and ASIC (*the Regulators*) may jointly, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Act or the enactment of the Act or the *Financial Accountability Regime Act 2023 (the FAR Act)*.
2. This legislative instrument supports the establishment of the Financial Accountability Regime (*the FAR*) by prescribing:
 - (a) that certain information must be provided to the Regulators by authorised deposit-taking institutions (*ADIs*) which are subject to the Banking Executive Accountability Regime (*the BEAR*) and which become accountable entities under the FAR Act, to facilitate the transition of such ADIs from the BEAR to the FAR;
 - (b) the required timeframe for submission of that information; and
 - (c) the method of submission of that information.
3. Paragraphs 6(2)(a)-(h) of Part 2 of the legislative instrument prescribe as information which must be provided: specific personal information, employment status information, reporting line information and responsibilities information.
4. Paragraphs 6(2)(i) – (j) of Part 2 of the legislative instrument prescribe as information which must be provided to the Regulators each ADI Key Function (if any) of an accountable person and the date the accountable person assumed responsibility for each ADI Key Function (if applicable).

Human rights implications

5. The legislative instrument may engage the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (*ICCPR*), as it requires the provision of personal information to the Regulators.

6. 'Personal information' is defined in the *Privacy Act 1988* as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
7. The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for the interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.
8. The provision of personal information to the Regulators is compatible with the rights recognised in Article 17 of the ICCPR as it is proportional to the ends sought and is necessary in the circumstances to ensure the transition from BEAR to FAR achieves its broader legislative purpose of improving the operating culture and increasing transparency and accountability of entities making that transition.

Conclusion

9. Accordingly, to the extent that the legislative instrument may engage rights under Article 17 of the ICCPR, it is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act as the limitations are appropriate, proportionate and achieve a legitimate objective.