



## Explanatory Statement

### *Financial Accountability Regime Regulator Rules Amendment Instrument No. 1 of 2024*

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

#### Summary

1. The *Financial Accountability Regime Regulator Rules Amendment Instrument No. 1 of 2024 (Amendment Instrument)* amends *Financial Accountability Regime Act (Information for register) Regulator Rules 2024 (the Principal Instrument)*.
2. Section 105(1) of the *Financial Accountability Regime Act 2023 (the Act)* provides that APRA and ASIC (*the Regulators*) may jointly, by legislative instrument, make rules (*the Regulator rules*) prescribing matters required or permitted by the Act to be prescribed by the Regulator rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. On 6 March 2024, the Regulators made the Principal Instrument. The Amendment Instrument and Principal Instrument are legislative instruments for the purposes of the *Legislation Act 2003 (the Legislation Act)*.
3. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

#### Background

4. 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 be extended to all APRA-regulated financial services institutions.
5. The Act and the *Financial Accountability Regime (Consequential Amendments) Act 2023* implement the recommendations of the Royal Commission by establishing the Financial Accountability Regime, a new accountability regime for institutions and their senior executives in the banking, insurance, and superannuation industries. The regime is jointly administered by APRA and ASIC.

6. The obligations of an authorised deposit-taking institution (**ADI**) and non-operating holding companies (**NOHC**) of an ADI under the Act commenced on 15 March 2024. The obligations of general insurers, authorised NOHCs of general insurers, life companies, authorised NOHCs of life companies, private health insurers and RSE licensees commence on 15 March 2025.
7. Under section 40(1) of the Act, the Regulators must establish and keep a register of accountable persons (***the register of accountable persons***). The register of accountable persons must contain certain information for each accountable person under the Act, including any information prescribed by the Regulator rules for the purposes of paragraph 40(4)(g) of the Act.
8. The Principal Instrument was made by the Regulators to prescribe information for inclusion in the register of accountable persons for all accountable persons (commencement information, personal identification details, employment status, reporting lines, and suspensions), and key functions information for accountable persons of ADIs and NOHCs of ADIs.

### **Purpose of the instrument**

9. The Amendment Instrument supports the ongoing administration of the Financial Accountability Regime by the Regulators by amending the Principal Instrument to prescribe further information for inclusion in the register of accountable persons for the purposes of paragraph 40(4)(g) of the Act. This will enable the Regulators to administer the Financial Accountability Regime on the commencement of that regime for the insurance and superannuation industries on 15 March 2025.

### **Operation of the instrument**

10. Schedule 1 of the Amendment Instrument amends the Principal Instrument to prescribe key functions information to be included in the register of accountable persons for a general insurer, an authorised NOHC of a general insurer, a life company, a registered NOHC of a life company, a private health insurer, and an RSE licensee.
11. Item 1 inserts four definitions into the Primary Instrument, “Insurance Key Function” “Insurance Key Functions Requirements” “RSE licensee Key Function” and “RSE licensee Key Function Requirements”.
12. Subsection (a) to (p) of the “Insurance Key Function” definition sets out what each key function is. The “Insurance Key Functions Requirements” definition clarifies that information regarding a key function only needs to be provided to the Regulators for inclusion in the register of accountable persons if:
  - (a) the key function is undertaken by an accountable entity which is a general insurer, an authorised NOHC of a general insurer, a life company, a registered NOHC of a life company, or a private health insurer; and

- (b) an accountable person 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 key function.

These definitions do not require a relevant accountable entity to undertake each key function.

13. Subsections (a) to (p) of the “RSE licensee Key Function” definition set out what each key function is. The “RSE licensee Key Function Requirements” definition clarifies that information regarding a key function only needs to be provided to the Regulators for inclusion in the register of accountable persons if:

- (a) the key function is undertaken by an accountable entity which is a RSE licensee; and
- (b) an accountable person 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 key function.

These definitions do not require a relevant accountable entity to undertake each key function.

14. Item 2 and Item 3 of the Amendment Instrument amend Note 1 in the Primary Instrument definitions, to clarify that the following terms are defined in the Act: ADI; authorised NOHC; general insurer; life company; private health insurer; registered NOHC; and RSE licensee.

15. Item 4 repeals Note 2 in the Primary Instrument as it is no longer needed. The terms in Note 2 of the Primary Instrument, ADI and authorised NOHC, are both defined in the Act and are now referred to in the amended Note 1 of the definitions.

16. Item 5 inserts the requirement for a relevant accountable entity to provide the Regulators with the following information:

- (a) each Insurance Key Function of an accountable person (if any);
- (b) the date the person assumed and ceased responsibility for the Insurance Key Function (if applicable);
- (c) each RSE licensee Key Function of an accountable person (if any); and
- (d) the dates the accountable person assumed and ceased responsibility for a Key Function (if applicable).

17. Item 6, Item 7, and Item 8 renumber subparagraphs 5(1)(l), 5(1)(m) and 5(1)(n) in the Principal Instrument, to take into account the insertion of new subparagraphs described in paragraph 16 above.

*The concept of key functions*

18. The concepts of Insurance Key Functions and RSE licensee Key Functions, like the concept of ADI Key Functions, do not expand the definition or scope of responsibilities of accountable persons under the Act. The inclusion of information regarding Insurance Key Functions and RSE licensee Key Functions in the register of accountable persons will assist the Regulators in assessing a relevant accountable entity's compliance with its obligation under paragraph 23(1)(a) of the Act.
19. Relevant information in respect of Insurance Key Functions and RSE licensee Key Functions should reflect actual practices. For example, one accountable person may not have the requisite level of responsibility for any applicable Insurance Key Functions or RSE licensee Key Functions, while another accountable person may have the requisite level of responsibility for multiple applicable Insurance Key Functions or RSE licensee Key Functions.
20. Accountable entities can also assign an applicable Insurance Key Function or RSE licensee Key Function to more than one accountable person if those accountable persons have the requisite level of responsibility for different aspects of the Insurance Key Function or RSE licensee Key Function.

### **Consultation**

21. In making the Amendment Instrument, the Regulators undertook a public consultation between March 2024 and April 2024. The instrument was amended where appropriate to reflect the feedback received during the consultation.

### **Impact Analysis**

22. The Office of Impact Analysis advised that an Impact Analysis is not required for the instrument.

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

23. 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 Regulator Rules Amendment Instrument No. 1 of 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. Section 105(1) of the *Financial Accountability Regime Act 2023 (the Act)* provides that the APRA and ASIC (*the Regulators*) may jointly, by legislative instrument, make rules (*the Regulator rules*) prescribing matters required or permitted by the Act to be prescribed by the Regulator rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.
2. The legislative instrument amends *Financial Accountability Regime Act (Information for register) Regulator Rules 2024 (the Principal Instrument)*. The Principal Instrument was made by the Regulators to prescribe information for inclusion in the register of accountable persons for all accountable persons (commencement information, personal identification details, employment status, reporting lines, and suspensions), and key functions information for accountable persons of authorised deposit taking institutions (*ADIs*) and non-operating holding companies (*NOHCs*) of ADIs.
3. The legislative instrument supports the ongoing administration of the Financial Accountability Regime by prescribing information for inclusion in the register of accountable persons for the purposes of paragraph 40(4)(g) of the Act.
4. The obligations of an ADI and authorised NOHC of an ADI under the Act commenced on 15 March 2024. The obligations of general insurers, authorised NOHCs of general insurers, life companies, authorised NOHCs of life companies, private health insurers and RSE licensees commence on 15 March 2025.
5. Schedule 1 of the legislative instrument amends the *Financial Accountability Regime Act (Information for register) Regulator Rules 2024 (Principal Instrument)* to prescribe additional key functions information for inclusion in the register of accountable persons when the Financial Accountability Regime commences operation for general insurers, authorised NOHCs of general insurers, life companies, authorised NOHCs of life companies, private health insurers and RSE licensees on 15 March 2025.
6. The Principal Instrument prescribes a range of information to be included in the register of accountable persons for all accountable persons. This includes the following personal information:

- (a) the name of the accountable person;
  - (b) the date a person becomes an accountable person;
  - (c) the date of birth, direct phone number and direct email address of an accountable person, as well as the date of any change to these details or to an accountable person's name;
  - (d) accountable person's position (role) title, the start and end date of the position (role) title, the name of the accountable person's employer and the accountable person's employment start and end dates;
  - (e) reporting lines information, being the position title of the person the accountable person reports to and the dates the accountable person started, and ceased, to report to that person; and
  - (f) an accountable person's suspension start and end date (where the suspension is because the person has failed to comply with one or more of the person's accountability obligations under section 21 of the Act).
7. The Principal Instrument also prescribes key functions information, to be included in the register of accountable persons for an accountable person of ADIs and NOHCs of ADIs. This includes the dates the accountable person assumed, and ceased to have, responsibility for a key function.
  8. The effect of the amendments to the Principal Instrument made by the legislative instrument is to prescribe key functions information for inclusion in the register of accountable persons of a general insurer, an authorised NOHC of a general insurer, a life company, a registered NOHC of a life company, a private health insurer, and an RSE licensee. This is achieved by inserting four new definitions into the Principal Instrument: "Insurance Key Function" "Insurance Key Functions Requirements" "RSE licensee Key Function" and "RSE licensee Key Function Requirements". This will ensure the Principal Instrument (as amended) has appropriate operation for the insurance and superannuation industries when their obligations commence on 15 March 2025.

### **Human rights implications**

9. 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.
10. '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.
11. 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.

12. The Regulators are collecting personal information of accountable persons of general insurer, an authorised NOHC of a general insurer, a life company, a registered NOHC of a life company, a private health insurer, and an RSE licensee, including key functions information, for the purpose of their regulatory functions under the Act and the *Financial Accountability Regime (Consequential Amendments) Act 2023*. These functions include:
  - (a) maintaining a register of accountable persons for all entities which are subject to the regime;
  - (b) understanding the accountability obligations of an accountable person;
  - (c) performing supervisory activities in connection with the administration of the regime and any associated investigation or enforcement activity; and
  - (d) handling and responding to queries and requests received in relation to the regime.
13. 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 Financial Accountability Regime (*the regime*) achieves its broader legislative purpose of improving the operating culture and increasing transparency and accountability of entities making that transition.
14. The collection of key functions information of accountable persons of general insurer, an authorised NOHC of a general insurer, a life company, a registered NOHC of a life company, a private health insurer, and an RSE licensee is necessary for the Regulators to undertake their regulatory functions. It is particularly important that the Regulators have sufficient information to properly and accurately identify accountable persons and their respective responsibilities, noting that the Regulators will need to ensure they are dealing with the correct person if undertaking enforcement action to disqualify an accountable person.
15. A range of safeguards apply to how the Regulators collect, use, and disclose personal information about an accountable person for the purposes of the regime, including:
  - (a) the Regulator’s Privacy Policies and privacy collection notices, which are available on their websites and constitute notice under Australian Privacy Principle 5 for collecting personal information in relation to the regime;

- (b) data security and integrity measures as required to comply with Australian Privacy Principle 11 to secure personal information and as required to comply with the Commonwealth Protective Security Policy Framework; and
  - (c) the secrecy provisions in section 56 of the *Australian Prudential Regulation Authority Act 1998* and section 127 of the *Australian Securities and Investments Commission Act 2001*.
16. Information collected for the register will only be made publicly available in circumstances where the Regulators disqualify an accountable person under the Act. The information made public in relation to disqualifications will only contain the name of each disqualified accountable person and the scope of their disqualification.
17. Making the limited disqualification information public is important for transparency purposes and supports regulated entities to discharge their obligations, noting it is an offence under the Act if an accountable entity or a significant related entity allows a person to be or act as an accountable person whilst disqualified.

## **Conclusion**

18. 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.