

SUBMISSION

Submission to APRA and
ASIC — Draft *Financial
Accountability Regime
Regulator Rules Amendment
Instrument No 1 of 2024*
and Draft RSE licensee Key
Functions descriptions

19 April 2024

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General Manager – Governance, Culture, Remuneration & Accountability

APRA

Via email: far@apra.gov.au

19 April 2024

Dear Mr Bingham

Draft *Financial Accountability Regime Regulator Rules Amendment Instrument No 1 of 2024* and Draft RSE licensee Key Functions descriptions

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the joint APRA-ASIC consultation on amendments to the *Financial Accountability Regime Act (Information for register) Regulator Rules 2024* and the supporting descriptions for each proposed RSE licensee key function.

About ASFA

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

A key focus of ASFA's work is to ensure operational effectiveness of the superannuation system – that is, that the system delivers, at a reasonable cost, services of a type and standard that meet the needs and expectations of fund members and help them develop confidence in the system.

Comments in relation to the draft RSE licensee Key Functions descriptions

The Information Paper/Regulatory Guide RG 279 *Financial Accountability Regime: Information for accountable entities* notes (at page 13) that the key functions to be included in the FAR Register are "functions or functional areas that are deemed to be of particular importance from a prudential and conduct perspective".

Some of the key function descriptions proposed for RSEs are very narrowly confined, while others are extremely broad. This makes it challenging to understand the rationale for why particular functions have been identified by the Regulators as "of particular importance".

ASFA members have particular concerns in relation to the following key function descriptions:

- ‘Investment management’ – ASFA members request that APRA and ASIC provide clarification of what is intended by ‘independent oversight’. In particular, whether this contemplates an oversight function that is operationally independent but still conducted internally within the RSE, or whether it is intended to refer to an oversight function conducted externally, for example by an auditor or adviser.
- ‘Marketing and advertising’ – it is not clear why this is proposed as a key function description for RSEs only, not for ADIs or insurers. “Oversight, design and implementation of the entity’s marketing and advertising strategy and budget” are functions common to all regulated entity types, and there are many regulatory obligations that apply to regulated entities regardless of their type – for example, in relation to misleading and deceptive advertising or disclosure.
- ‘Member outcomes’ – this description is extremely broad and will, for most RSEs, need to be assigned to a large number of accountable persons, which may reduce the utility of the information recorded in the Register. Further, some of the sub-points in the description appear to duplicate, or to overlap with, other proposed key function descriptions. For example, it would appear that ‘design of products, advice and services provided to members’ sub-point overlaps, at least to some extent, with proposed key functions 10 and 11, ‘product design and distribution obligations’ and ‘product origination’.

We recommend that the ‘member outcomes’ key function description is revisited, to remove duplication and group those functions that are not already addressed (or not able to be addressed) under other descriptions in a more targeted and aligned manner. This may involve creating two or three separate function descriptions to replace the existing ‘member outcomes’ function description.

ASFA members have also requested further explanation of what is intended to be covered by the ‘developing and delivering member engagement strategy’ aspect of this key function description – for example, whether this is focussed on current members or on engaging prospective new members.

- ‘Product design and distribution obligations’ and ‘product origination’ – as noted above, there appears to be significant scope for overlap with aspects of the proposed ‘member outcomes’ description. We suggest it may be preferable to instead include a single key function description for RSEs focussed on all relevant functions in relation to product design, origination and distribution.
- ‘Scam management’ – while this key function description is common across RSE’s, insurers and ADIs, the rationale for its narrow focus is unclear. ASFA questions why scam management has been singled out as opposed to, for example, management of financial crime more broadly, which would encompass scams as well as fraud and compliance with anti-money laundering/counter-terrorism financing obligations.
- ‘Whistleblower policy and process’ – ASFA requests clarification that the Regulators’ intent with this key function is only to identify the accountable person with responsibility for *implementation and monitoring* of the entity’s whistleblower policy and processes. We note there may be situations where one accountable person has overall ‘ownership’ responsibility for a policy – such as the whistleblower policy – while another has responsibility for the implementation and monitoring of that policy.

Comments in relation to the draft *Financial Accountability Regime Regulator Rules Amendment Instrument No 1 of 2024* ('Amendment Instrument')

We note that paragraph (a) of the proposed definition of 'RSE licensee Key Function Requirements' in the Amendment Instrument contains a typographical error and should refer to a key function undertaken by an 'accountable entity' (as opposed to an 'accountability entity').

Further, to the extent that our comments and recommendations above in relation to the draft RSE licensee Key Functions descriptions impact the function 'label' (as opposed to the descriptive text) this will need to be reflected in the definition of 'RSE licensee Key Functions' in the Amendment Instrument.

Other comments

ASFA welcomes the release of the Information Paper/Regulatory Guide 279. This provides useful guidance to entities in relation to their initial implementation of the regime. Our members have noted, however, that this provides little guidance to accountable entities regarding the Regulators' expectations as to the 'reasonable steps' to be taken by accountable entities and their accountable persons to comply with their obligations.

We understand, from a webinar held by the Regulators on 9 April, that there is no current intent to provide guidance on this matter. Given the critical importance of the 'reasonable steps' requirement, ASFA strongly encourages the Regulators to reconsider their position and to provide some additional guidance on their expectations for compliance and their general approach to administering this requirement.

The guidance need not – and should not – take the form of a prescriptive checklist, but could instead take the form of:

- examples of the types of questions Boards and senior executives of accountable entities should ask themselves when addressing the 'reasonable steps' requirement
- case study examples of what the Regulators would – and would not – consider sufficient to meet the requirement
- examples of 'better practice' the Regulators have observed from supervising authorised deposit-taking institutions under the Banking Executive Accountability Regime, or from similar international regimes.

This would be invaluable for RSE licensees in providing certainty and a consistent starting point as they work toward compliance with the FAR from 15 March 2025.

If you have any queries or comments in relation to our submission, please contact [REDACTED], Senior Policy Advisor, on [REDACTED] or by email [REDACTED]

Yours sincerely

[REDACTED]

Head of Policy and Advocacy