



Insurance Council
of Australia

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█
General Manager
Governance, Culture, Remuneration and Accountability
Australian Prudential Regulation Authority

By email: far@apra.gov.au

Dear █

Draft amendment instrument and list of key functions for insurance

The Insurance Council of Australia (**Insurance Council**) welcomes the opportunity to provide a submission in response to the proposed amendments to *Financial Accountability Regime Act (Information for register) Regulator Rules 2024* (Regulator Rules), including *Attachment C: Draft key function descriptions* (Attachment C) for insurance entities. We question whether several ADI Key Functions such as Scam management and Collections and enforcement are applicable in an insurance context and suggest that if not, they should be removed. Scam Management is a core focus for ADI's, however is not a well-defined term in the insurance context. Collections and enforcement (default, debt collections and recovery) also has an ADI focus and may not be relevant as a Key Function for insurance.

Key Functions

Our feedback primarily relates to **Attachment C: Draft key functions description**.

- The draft Key Functions largely replicate ADI key functions and include references that are not applicable to general insurers. The ICA recommends that APRA and ASIC (the Regulators) remove non-applicable references or appropriately amend these to reflect specific general insurance functions over which regulators would like oversight. For example:
 - **Collections and enforcement (default, debt collections and recovery):** uses ADI language including 'default', 'debt collection', 'credit contract' and 'consumer leases'. In an insurance context, is this section intended to cover processes in respect of:
 - a) The insurer's customers e.g. failure to pay premiums; and/or
 - b) Recoveries/settlements from a third party perspective (e.g. motor accident recoveries)?

We query whether this key risk is relevant to general insurers and suggest that it be removed if not.

- **Product origination:** This Key Function uses ADI language including 'credit contracts/consumer leases' 'responsible lending' that should be removed for insurers.

It is unclear what 'product origination' is intended to encompass in an insurance context. That is, is it intended to cover responsibilities for overseeing compliance with regulatory requirements at the time of acquisition, as well as responsibilities that support such compliance (e.g. systems and processes)? An example of complexity is that obligations at a time the consumer acquires the product vary according to the insurance context

including for broker-led products; in a CTP (particularly state-led) context; and for consumers such as home and motor products.

We request the Regulators provide worked examples similar to those provided for Operational Risk at the webinar for general and life insurers held on 10 April 2024 (the webinar).

- **General remarks:** we welcome the guidance in paragraph 3.4.2 of *RG279 Financial Accountability Regime: Information for accountable entities* (RG279) which acknowledges that some of the Key Functions outlined in the Regulator Rules may not be applicable to foreign accountable entities or licensed non-operating holding companies (NOHCs). However, we also note that given organisational differences within the general insurance industry (i.e. entities are not homogenous in how they are structured), there may be some Key Functions that are identifiable for one insurer which may not be the case for another. It would be helpful for RG279 to also acknowledge this may be the case for all accountable entities.

Clarification of Key Functions Descriptors

In Attachment C, there are a number of areas in **Table 1: Insurance Key Functions** where further clarity and understanding of Regulators' expectations would be welcome:

- How closely should insurers assign accountability for Key Functions based on Key Function Descriptions? Are the Key Function Descriptions intended to be used as a guide only as to what matters may be relevant to a Key Function?
- Item 5: Financial and regulatory reporting. Given the breadth of regulatory reporting applicable to general insurance, is the focus on all types of financial and regulatory reporting or only certain types?
- We note the Regulators' clarification in the webinar that there may be overlaps between Key Functions. Could the Regulators provide examples to help further clarify this intent? For example, a senior executive with responsibility for developing and reviewing a product management policy covering a broad range of matters associated with product management, could be captured under Item 7: Insurance risk management, Item 9: Product design and distribution and Item 10: Product origination. Where the Regulators consider there is significant overlap, there may be benefit in consolidating Key Functions (for example product design and distribution and product origination). Separately, we recommend the Regulators provide further guidance in any cases where there is potential overlap, and therefore inconsistent industry interpretation and application, of the Key Functions.
- Item 13: Scam management. While we appreciate scam management is currently a core focus for ADIs, we suggest the Regulators' consider whether this Key Function needs to be retained for insurers. What constitutes a 'scam' is not well defined in an insurance context and the degree of scams is likely to be more limited than compared to ADIs. We note the recent [Treasury consultation on scams](#) only relates to Banks and other industries that are interwoven in the scams ecosystem, and does not propose to capture insurers. If the Scam Management Key Function is retained for insurers, the scope needs to be clearly defined, and we seek to understand what insurers will be assessed against and required to put in place. For example, is this intended to only deal with deception directly through an insurer's systems/processes where this impacts customers, or also 'fraud' (which is broader than scams) outside of the insurer's control, including for example:

- Fraud conducted by an unrelated third party directly against an insurer's customers; and
- Where an insurer's brand is fraudulently used to carry out deception against an unrelated third party.
- Accountable Persons of Significant Related Entities (SREs). We would appreciate guidance as to whether they need to be identified against Key Functions given that the Draft Key Function Descriptions do not refer to SREs, only accountable entities or the NOHC of a general insurer?
- If a particular responsibility (e.g. capital management) is managed at the NOHC level on behalf of its general insurer, do the Regulators' still expect a Key Function to be allocated against both the NOHC and the licensed insurer?
- Once the Key Functions are finalised for the insurance compliance date, do the Regulators intend to update the Insurance Key Functions from time to time and if so, can the Regulators advise on a relevant change process to ensure this does not impose an administrative burden on both the Regulators and industry?

These above items are in addition to the member questions provided to Regulators on 4 April 2024, which are included as Attachment A to this submission (please see new addition Q19(e) in relation to accountability maps and Q22 in relation to RG 279, marked in tracked changes). We welcome feedback on these collective questions in writing (including those where a response was provided in the webinar).

General comments

We welcome ongoing engagement with the Regulators as the consultation progresses and the Regulators' confirmation of an expected engagement timeline with industry. Where possible, it would be helpful for any FAR data requests to exclude the Christmas/New Year period where resourcing capacity is likely to be reduced.

Please contact [REDACTED] Senior Policy Advisor, Regulatory & Consumer Policy, at [REDACTED] if you have any queries regarding this submission.

Kind regards,

[REDACTED]
[REDACTED]
Chief Executive Office

**ATTACHMENT A: FINANCIAL ACCOUNTABILITY REGIME (FAR)
REGULATOR WEBINAR MEETING WITH GENERAL AND LIFE INSURERS
QUESTIONS FROM THE INSURANCE COUNCIL OF AUSTRALIA**

Members have a number of questions regarding the operation and implementation of the FAR which we would welcome feedback from ASIC and APRA (the Regulators) on. These questions have been set out below and include new questions marked up via tracked changes.

Topic	Questions
Attachment C: Draft key functions descriptions	
Insurance Key Functions and RSE licensee Key Functions Descriptions	1. We understand that verbal feedback in relation to ADI Key Functions noted that Board level roles are not intended to be allocated to Insurance Key Functions however this does appear to be incorporated into the written guidance. Could the Regulators please confirm; a) That Board members are not intended to be allocated any Insurance Key Functions (i.e. each of the Insurance Key Functions should be allocated at senior/executive level)? b) The CEO and CRO roles are not intended to be ubiquitously allocated to Insurance Key Functions?
	2. Table 1. Includes a number of banking specific references. Please confirm that banking terminology such as 'credit activities', 'consumer leases', 'credit contracts' and 'responsible lending' and will be removed or adjusted to terminology applicable to the insurance sector?
	3. The description of Table 1. Insurance Key Functions Item 7. Insurance risk management in Column 2 appears very broad and it is not clear how it is to be interpreted. Is it the intention that this key function be allocated to the senior executive with responsibility for management of control of the identification, assessment and management of the risks arising/emerging in the context of product design, development and distribution, reserving and pricing functions etc in accordance with specified risk management frameworks, policies and procedures? If not, what is the intended scope?
	4. There are a number of key insurance functions which have overlapping functions. Please elaborate on the intended distinction between Table 1. Item 7 Insurance risk management and Item 9. Product design and distribution obligations? Both mention 'product design' and 'distribution'.
	5. Please clarify the intended scope of Table 1. Item 13 scam management in the context of insurance?
	6. Please provide further information on why 'budgeting and forecasting' is only called out in relation to Table 1. Item 16 Underwriting?
	7. How do the Regulators envisage that the 3 lines of defence are to be allocated to the Insurance Key Functions?
	8. What further guidance, other than Attachment C, can be provided relation to what is meant to be captured under any particular key function? Noting the earlier comment in relation to a number of key functions overlapping, which means they can be conducted

	by multiple accountable persons, and will invite a number of joint accountabilities to be declared.
RG 279 Financial Accountability Regime: Information for accountable entities	
Reasonable steps requirements (Para 2.2 RG 279)	9. We have received a number of questions seeking clarity for how the industry can satisfy the regulator's expectations in relation to the reasonable steps requirements of an accountable entity (AE) or accountable persons (AP). Will the regulator provide further guidance on reasonable steps requirements such as: <ul style="list-style-type: none"> a. What reasonable steps can an AE take to demonstrate compliance with the requirement to conduct its business with 'honesty and integrity, and with due skill, care and diligence'? b. What reasonable steps can an AP take to demonstrate compliance with the requirement to act with 'honesty and integrity, due skill, care and diligence'? c. What steps can an AE take to ensure that each of its accountable persons meets their accountability obligations?
	10. Do the Regulators envisage that the reasonable steps requirement would apply specifically at the Board level and if so, what would Regulators expect to see as evidence of reasonable steps for a Non-Executive Director?
Enhanced notification thresholds	11. Given the increase in the enhanced threshold in the Minister Rules from \$2B to \$10B, the number of accountable entities that are subject to the enhanced obligations are to be reduced. For example, there will no longer be a need to provide an accountability statement to the Regulators. Can Regulators please confirm that there is no expectation that these entities (below the enhanced notification thresholds) keep accountability statements on hand or contain the same information as set out in their guidance to the accountability statement template?
	12. Paragraph 3.4.2 of RG 279 state that "The Regulators emphasise that the list of key functions outlined in the Regulator rules is non-exhaustive." Does that mean, subject to s10 (i.e. prescribe or general test) elements being properly identified, in practice that accountable entities: <ul style="list-style-type: none"> a. can disregard those key functions that do not apply; b. can add other key functions to that list that best describes the accountable person's responsibilities; and/or c. can substitute some, or all, of the list of key functions to ones that better describes the accountable person's responsibilities.
The application of FAR to Australian branches of a foreign entity	13. The Regulator has indicated that it will adopt a risk-based, proportionate approach to implementation. What does this mean for an Australian branch of a foreign accountable entity? For example: <ul style="list-style-type: none"> a. What approach and factors will the Regulator consider in relation to compliance and implementation by an Australian branch of a foreign accountable entity? b. How should foreign accountable entity branches balance the burden of compliance and implementation with the size and complexity of the branch and structure, including where persons have responsibilities for multiple jurisdictions and where they may be potentially conflicting requirements? c. What approach should foreign accountable entity take where the current global incentives plans/arrangements do not strictly comply with the deferred remuneration obligations (e.g. % deferred and deferral period differ but intent/purpose of the obligation is satisfied) including where the incentive plan relates to a person with responsibilities for multiple jurisdictions and/or to comply with the obligation would be burdensome/unproportionate?
	14. When identifying accountable persons:

	<ul style="list-style-type: none"> a. How and what factors should foreign branches consider when taking the principles-based responsibilities approach (i.e. the most senior and influential executives). Would relying on the prescriptive responsibilities be sufficient? b. For foreign accountable entities, please clarify whether foreign executives/persons fall within the regime – would the head of Australia branch and Senior Officer outside Australia be sufficient? c. What factors should foreign accountable entities consider when assigning the proposed Insurance Key Functions in relation to the Australia branch? How should the Insurance Key Functions be applied/interpreted by foreign accountable entities to the Australia Branch? (noting that each Insurance Key Function is not required to be assigned to an accountable person) d. Although the Regulator will not prescribe or recommend the appropriate number of accountable persons, could the Regulator please provide some guidance on what factors will be considered by the Regulator and an example of what may be appropriate for foreign accountable entities (small/not complex Australia branch – no retail insurance)?
Accountable Persons (AP)	<p>15. Appointment of an Interim AP after cessation of existing AP – Are entities required to notify Regulators of the appointment of an Interim AP where an AP has ceased? The FAR Notification of Change to an AP form asks entities to confirm that the AP has ceased and that responsibilities have been allocated. Is the expectation that the name of the interim AP is provided or is the requirement to simply confirm that responsibilities have been allocated?</p> <p>16. Extending an interim AP - In the event a new (replacement) AP is unable to be secured within the 90 days, what are the expectations/requirements for extending the interim AP?</p> <p>17. Registering an AP</p> <ul style="list-style-type: none"> a. Given the 90 days maximum term for interim appointments (without requiring the AP to be registered), does this mean entities will need to apply to register an AP where the appointment is expected to exceed 90 days by day 69 (i.e., at least '21 days prior' to the AP's 'permanent' appointment)? b. In relation to the signed declaration that entities need to submit when applying to register a new AP, the Regulators have stated their expectation is that the declaration is signed by a director of the entity submitting the form, or a person delegated to sign on the Board's behalf. Is there any guidance / restrictions on which individual / team this task can be delegated to? <p>18. AP Absence – What are the Regulators' expectations for managing short-term AP absences (e.g., when an AP goes on annual or personal leave)? What is the accepted period of delegation for an AP's absence, without needing to appoint an interim AP?</p>
Accountability maps and statements	<p>19. It would be helpful to receive further guidance setting out the Regulators' expectations when providing accountability map or statements;</p> <ul style="list-style-type: none"> a. where there are multiple entities involved and where there may differ marginally per entity (for example, where someone may be a director of one AE or Significant Responsible Entity (SRE), but an AP due to corporate responsibilities for that entity and potentially others). b. on the overlap between the Primary Area of Focus and Key functions (which often overlap to some degree and may link to prescribed role responsibilities), and how the Regulators envisage this will be reflected in accountability maps and statements – particularly in the context of multi-entity views. c. where individuals may be filling in on a temporary basis. Whilst they do not have to be registered to have an accountability map or statement lodged, can Regulators please provide guidance on how this will operate in practice?

	<p><u>d.</u> How mapping of key functions to Chief Risk Officer and Head of Internal Audit Roles should be approached, noting the comprehensive scope of those roles under an entity's three lines of defence model?</p> <p><u>d.e.</u> <u>A point raised in the FAR webinar for superannuation entities held 9 April 2024 is that the accountability map lodged with the Regulators would require a person one level down from APs to be mapped. Noting the two sectors are different, is this requirement also expected of insurers?</u></p>
FAR Breaches	<p>20. FAR Breaches</p> <ol style="list-style-type: none"> a. What would the Regulators deem a reasonable timeframe for entities to finalise investigations of suspected breaches of FAR obligations, following the initial notification to the Regulators of the suspected breach (based on 'reasonable grounds')? b. In reporting variable remuneration reductions applied as a consequence for a confirmed FAR breach, would it be acceptable for entities to wait until the year-end remuneration review process has been completed, to allow for reductions to in-year short-term incentive (STI) outcomes to be calculated? (this might apply in cases where the relevant AP(s) are not being terminated, which would result in immediate cancellation of all STI). c. Will any guidance be provided regarding what is to be considered 'reasonable grounds' for the purposes of section 32(d) of the FAR Act (or Para 4.1 RG 279)?
Effective dates in regulatory reporting requirements	<p>21. Entities can generally ascribe the FAR start date for their initial lodgement, for example for the Entity register, the entity start date will be the FAR commencement date. Whilst many other effective dates may also line up with this, there are some descriptions that are not as clear, such as:</p> <ol style="list-style-type: none"> a. Reporting Form Instruction Guide for FAR Entity profile register. The FAR classification start date would be 15 March 2024. It then asks if it is dual or sole regulated and then asks when dual/sole regulated start date (1.5) is based on completion of 1.4. The assumption is that this would also be 15 March 2024 as it is related to the FAR implementation, but it could be interpreted to be the start date they were regulated by each regulator (i.e. the APRA & ASIC 'licence' issue date) which can be different. b. The Accountable Person Reporting Form instructions, item 3.2.4 'position title start date' is quite clear they align to the commencement of FAR/appointment as an AP (not how long they've held that actual position for). Key functions are describing activities that already occur in financial services and individual APs may have held that key function responsibility, yet 4.2.2 does not make it clear that this would be a date after the implementation of FAR, although it may be assumed that this? Can Regulators please provide further clarification.
	<p><u>22. Remuneration commencement dates – can the Regulators please confirm whether the following understanding of the FAR Consequential Amendments Act section 23 and FAR Act section 28(2)(a), is correct:</u></p> <ol style="list-style-type: none"> <u>a. that the FAR remuneration deferral requirements (i.e. 40% of variable remuneration to be deferred) starts for insurers in the first performance period after FAR NOHC and insurer compliance date. This would mean for an insurer whose financial year and performance period begins on 1 July each year, the start date for FAR deferrals will be 1 July 2025?</u> <u>b. This would mean insurers do not need to realign their performance periods to 15 March 2025 for Accountable Persons, and can remain consistent with CPS511 and their existing performance periods?</u>

FAR Accountable Person reporting form Instructions Guide (Instructions)	
APRA Connect	<p><u>22-23.</u> The information required to be placed into APRA Connect is far more granular than that which would be required in the accountability statement. For questions where a “description” is required (i.e. questions 4.1.5, 4.2.3, 4.3.6), is there any further guidance as to:</p> <ol style="list-style-type: none"> a. Whether they are free text and without a character limit; b. Whether there is an expectation that it should also be described using the “action” words (e.g. delivering, monitoring, approving, reviewing etc) in similar vein as to the Regulator’s guidance from the accountability statement template; and c. Whether there is an expectation that it should also incorporate the primary areas of focus as per Appendix 2 of the draft RG 279, irrespective if the entity is not subject to submit accountability statements, or are these strictly for enhanced entities? <p><u>23-24.</u> Is there an expectation to update the register in the following circumstances for core entities:</p> <ol style="list-style-type: none"> a. Where there is a temporary assignment of a key function? We note that section 2.2 of the Instructions requires an explanation where an accountable person had a commencement date in the past (i.e. an exemption for a retrospective commencement date). However, there is no commensurate exemption for a key function. For example, an accountable person may have a key function for a period of 90 days until its returned to another accountable person. Does this interim period then require an update in the register? b. Where there is a minor change in the scope of an accountable person’s key function? c. There are some SREs which have the same accountable person and same key functions as expressed for the accountable entity. Is there an expectation to duplicate responses in question 4.2.3 and 4.3.6? Or can we just revert to the earlier response made in 4.2.3?
General Questions	
Engagement	<p><u>24-25.</u> Engagement questions</p> <ol style="list-style-type: none"> a. The Regulators have indicated that they will undertake a review of accountable entity’s progress in implementing FAR and provide an opportunity receive feedback. This was done in BEAR and, more recently, for ADIs on FAR. Can more guidance be provided regarding what that review would entail, whether it will cover accountability statements and when Regulators envisage this will occur? We note this would be particularly useful for entities being subjected to an accountability regime for the first time. b. Are any other FAR data requests taking place this year and if so, what is the expected timeline? c. APRA Connect Training Sessions - Have times/dates been set for APRA Connect training for insurers or should insurer’s rely on videos which have been uploaded for the ADIs? If they are to be held, could you please publish the proposed timeline?
Lodgements	<p><u>25-26.</u> Lodgement questions</p> <ol style="list-style-type: none"> a. Will there be an expectation on insurers which are enhanced entities to lodge draft artefacts (including accountability statements and maps) for review – if so, when will this period start? Noting senior executives often take leave during the

	<p>December/January period, industry would appreciate it, if these periods could be avoided.</p> <ul style="list-style-type: none"> b. Do Regulators intend to review lodgement forms in draft for insurers? If yes, how is this intended to be facilitated? Through APRA Connect? c. If the draft review is proposed to be facilitated using APRA Connect, when are the Regulators proposing to update the APRA Connect portal for Insurance Entities and their NOHC so the relevant FAR Forms are available for lodgement? d. Are the Regulators proposing to make the FAR forms available in APRA Connect Test environment? e. Will the start dates in the relevant forms largely align to 15 March 2025 for insurers? f. Are there any differences to the Regulators' guidance package recently released (other than finalisation of Insurance Key Functions), that insurers should expect to come? g. If an Accountable Person has previously been registered for FAR under the ADI compliance date, should the 'Registration' form (rather than Notification) be used to register the person against a new insurance NOHC or insurer? h. If a breach relates to multiple accountable entities, is a separate breach notification form required for each entity? i. If an entity has lodged a breach notification form and there are subsequently further updates - is there a functionality which allows for notification of changes?
Exemptions	<p><u>26-27.</u> The FAR Act provides for exemptions by the Minister.</p> <ul style="list-style-type: none"> a. Have any exemption applications been made or are likely to be made? b. What types of circumstances would be considered appropriate? For example, would a request to be exempt from complying with the deferred remuneration obligations be possible for foreign accountable entities (e.g. where % holdback and deferral period differs)? If so, what information should be included in the application?
Learnings from BEAR transition experience	<p><u>27-28.</u> What has been the experience with ADIs so far. Are there any key questions, challenges or points of clarification that insurers should take note of?</p>