

13 August 2021

Ms Ly Reeve
Director, Regulatory Powers and Accountability Unit
Financial System Division
Treasury

By email: FAR@treasury.gov.au

Dear Ms Reeve

Treasury consultation on the Financial Accountability Regime

COBA appreciates the opportunity to provide a submission to Treasury's consultation on the Financial Accountability Regime (FAR).

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies).

Collectively, our sector has \$147 billion in assets and more than 4.5 million customers. Customer owned banking institutions account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

Key points

- **Commencement of the FAR should be 12 months after finalisation of all elements of the regime, including legislation, regulations and rules.**
- **Application of joint accountability in the end-to-end product responsibility should be reconsidered.**
- **The tiered approach to core and enhanced compliance entities is supported but the threshold should be increased from \$10 billion in total assets to \$20 billion.**

Timing for commencement

The proposed commencement date of the FAR for ADIs of 1 July 2022 or 6 months after commencement of the legislation does not allow ADIs 12 months to prepare after finalisation of all aspects of the regime.

Allowing ADIs adequate time to prepare for new regulatory compliance obligations is important given the current pace and volume of regulatory change that ADIs are required to manage and other competing priorities for scarce resources, such as managing cyber risk.

Considerable detail of the FAR will be contained in materials other than the Bill and explanatory memorandum. Treasury's Question and Answer¹ document highlighted that further public consultation

¹ [Exposure Draft Legislation Q&A – Financial Accountability Regime](#)

on the Minister's Rules, which contains key elements of the new regime, is expected in September/October.

It is crucial that all rules, regulations and transitional arrangements are provided in a timely manner to allow our members to understand the full scope of the regime.

The new responsibilities under the FAR compared to the BEAR are likely to require that existing contracts of employment will have to be reviewed and updated to make clear who has responsibility for each of these prescribed responsibilities. Implementation considerations will include dealing with cases of overlapping responsibilities. For example, client remediation would currently be spread between a number of executives and generally levels of authority would depend on the amount involved, i.e. line managers could remediate incorrectly charged fees for a single customer but the CEO/CFO or Board is likely to be involved in the responsibility for remediation involving multiple customers where the amount is significant.

Adequate time will be needed to allocate responsibilities, update accountability maps and statements, review the entity's risk position, update reporting systems and obtain board approvals.

Joint accountability

COBA members have raised concerns about the operation of joint accountability, particularly with respect to the end-to-end product responsibility as outlined in the Policy Proposal Paper:

*"... where an accountable entity registers multiple individuals with each individual being accountable for some but not all stages of the product value chain for the same product or service, these individuals will be held jointly accountable for the end-to-end product responsibility in relation to that product or service."*²

COBA members note that multiple individuals will have responsibility for a given product, with the scope of responsibility dictated by the various stages from development, implementation and operation of the product.

COBA members suggest that joint accountability should not be imposed where individual responsibility is clear for a specific phase in the development, implementation and operation of a product.

This approach will achieve the result of clear accountabilities while not unfairly holding an individual responsible for issues being dealt with by another responsible person. This would not adversely impact on the need for such accountable people to be across other areas that impact on their area/s of responsibility, as they would be expected to make reasonable enquiries of the issues that impact their area/s of responsibility.

Threshold for enhanced notification requirements

COBA supports the proposed tiered approach for the 'core' and 'enhanced' compliance model. This will reduce the regulatory burden on smaller ADIs without creating any material accountability risks.

COBA understands that the Minister will have the power to set out the rules to determine the enhanced notification thresholds for the various entities under the FAR. While further consultation on the threshold is expected in September/October, the Policy Proposal Paper sets the threshold for ADIs at "Total assets > \$ 10 billion".

COBA recommends that the ADI threshold for enhanced compliance obligations should be increased to \$20 billion. This would align with APRA's \$20 billion threshold for its simplified capital framework for

² Financial Accountability Regime – [Policy Proposal Paper](#)

smaller, less complex ADIs and align more closely with APRA's \$15 billion threshold for significant financial institution status under the new remuneration standard.

Interaction with other regimes

COBA members are concerned about the potential for FAR to overlap with other regulatory regimes, particularly Prudential Standard CPS 511 Remuneration (CPS 511) and the expanded breach reporting regime.

COBA supports the objective stated in the explanatory materials that the remuneration deferral period is intended to be consistent with provisions in APRA's proposed CPS 511. We encourage as much alignment as possible between the two regimes to minimise inconsistencies and ease implementation for our members.

From a practical perspective, it would be preferable that the FAR commencement aligns with the commencement of CPS 511. For ADIs that are significant financial institutions, CPS 511 will commence from 1 January 2023, and for other APRA-related entities from 1 January 2024.

Members also sought clear guidance from APRA and ASIC in relation to the interaction between FAR notification obligations and breach reporting in the expanded breach reporting regime. While the full extent of APRA and ASIC's joint administration of FAR is under development, our members urge the regulators to ensure they are on the same page in relation to the potential crossover between breach reporting and FAR notification requirements.

Transitional arrangements

COBA understands that Treasury intends to consult on the transitional and consequential provisions for the FAR in August/September.

COBA members have also requested clear guidance from APRA on the transitional arrangements from BEAR to FAR, as well as sufficient time allowed to complete the transition.

Thank you for the opportunity to provide this submission. Please do not hesitate to contact Maryanna Vasilareas, Senior Policy Adviser (mvasilareas@coba.asn.au) should you have any further questions.

Yours sincerely



Michael Lawrence
Chief Executive Officer