



Law Council  
OF AUSTRALIA

*Legal Practice Section*

19 April 2024

Mr Stuart Bingham  
General Manager, Governance, Culture, Remuneration & Accountability  
APRA  
GPO Box 9836  
SYDNEY NSW 2001

By email: far@apra.gov.au

Dear Mr Bingham

**Financial Accountability Regime—Regulator rules and Transitional rules**

1. This submission has been prepared by the Superannuation Committee of the Law Council of Australia's Legal Practice Section. The Committee welcomes the opportunity to make a submission to APRA and ASIC about the Financial Accountability Regime (**FA Regime**)—Regulator rules and Transitional rules.
2. The Regulators request that all interested stakeholders use this consultation to provide feedback or information on:
  - (a) the proposed lists of Insurance Key Functions and RSE licensee Key Functions within the draft amendment instrument;
  - (b) the proposed Insurance Key Functions and RSE licensee Key Functions descriptions;
  - (c) the compliance impact of the proposed changes; and
  - (d) any other substantive costs associated with the changes.
3. The draft amendment instrument lists a number of RSE licensee Key functions. The draft amendment instrument does not contain definitions of individual Key functions. Instead, the Key functions are in turn "described"/defined in some detail in the Joint APRA/ASIC guidance (Attachment C to the Consultation).
4. The Committee is concerned that the current approach of listing Key functions without defining them in the law creates significant uncertainty. The application and interpretation of the Key functions requires reference to extraneous material in the form of APRA/ASIC descriptions "guidance". As a matter of certainty in application of the intended approach for listing of functions with accountable person entry in the Register, in our view, either:
  - (a) the amendment instrument should include appropriate definitions (using the guidance descriptors as a starting point for that) of each Key function; or

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- (b) the Key functions should not be included as prescribed rules at all and rather take the form of guidance alone both in heading list and detailed definition.
5. The Committee notes that the draft amendment instrument promulgates further inconsistencies in the FA Regime whereby the Key functions listed do not align with the tests in the law to determine if a person is an accountable person, in particular, the prescribed responsibilities in the *Financial Accountability Regime (Minister) Rules 2024*. This creates additional complexity in applying the FA Regime and so risks resulting in greater confusion. The current Information Paper merely provides some guidance on the difference between Accountable responsibilities and attributing key functions amongst accountable persons who may exercise such functions.
  6. Further, the Committee cautions against the Key functions in the amendment instrument being a basis for interpreting the accountabilities of accountable persons: e.g. for the purposes of accountability statements. While the Key functions list is asserted to be for distinct and separate purposes, there is no legal basis for these rules being a basis for determining accountabilities. We raise this in case there is an intent to ensure that each Key function finds a suitable “home” for each accountable person prescribed responsibility. The listing of Key functions in a register ought not to drive an indirect expansion of the statutory listing of accountable persons contained in the FA Regime.
  7. The Committee would welcome the opportunity to discuss this submission. In the first instance, please contact the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

Yours sincerely



**Geoff Provis**  
**Section Chair**