

3 February 2022

To Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
By email: economics.sen@aph.gov.au

Submission – Financial Accountability Regime Bill 2021

The FSC is pleased to provide this letter to the inquiry of the Senate Economics Legislation Committee (the **Committee**) in relation to the Financial Accountability Regime Bill 2021 (the **FAR Bill**).

We note that we had previously made a submission to the Committee on 17 December 2021 in relation to the exposure draft of the FAR Bill, and attended the Committee hearing held on 27 January 2022 concerning the FAR Bill (and the Compensation Scheme of Last Resort, although this letter is limited to issues pertaining to the FAR Bill).

At the hearing Mr Davies of the FSC was asked to provide further feedback on our views on where we agreed (or disagreed) with the submission provided by King & Wood Mallesons dated 17 December 2021 (the **KWM Letter**) in relation to the FAR Bill.

The FSC is in broad agreement with the comments made in the KWM Letter, and are pleased to set out below our specific feedback in relation to each of the sections set out in the KWM Letter.

1 Extension of FAR to “significant related entities” of RSE licensees

We agree with the comments set out in this section.

In the last section, the KWM Letter states:

In our view, this issue could be addressed by requiring one group executive with general management responsibility for the RSE licensee to be an accountable person, in addition to the directors and management of the RSE licensee itself to whom the FAR requirements would already apply. This would be directly analogous to the regime that applies to foreign banks, where the “senior officer outside Australia” is required by APRA to be an accountable person.

We agree with this suggestion, and would also add that the requirement could be for *one or more* group executive persons to be an accountable person – it would seem sensible to have some flexibility in this regard to cater for situations where the business might wish to put forward 2 or 3 named individuals, for example.

We also note that this suggestion would not only be analogous to the regime that applies to foreign banks, but also to a foreign general insurer that is classified as a Category C insurer under subsection 3(1) of the Insurance Act 1973.

2 Civil penalties should not be imposed on individuals without fault

We agree with the comments set out in this section.

For completeness we note the following paragraph appears to contain a couple of typos which we presume should read as per our additions in bold:

*Notably, **section 81(4)** of the Bill provides that section 94 of the Regulatory Powers Act (Standard Provisions Act) 2014, which deals with a person's state of mind in relation to a contravention of a civil penalty provision, does not apply **to** such breaches. Section 94 provides that in proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove the person's intention, knowledge, recklessness or negligence.*

We further refer to the subsequent paragraph which states:

We think this issue can be addressed if civil penalties could only be imposed on individuals who have been involved in a contravention by the accountable entity (in the circumstances as described in the FAR Bill), and who have also acted dishonestly, intentionally or recklessly. We think this is the intention and at the very least should be confirmed in the Explanatory Memorandum for the FAR Bill.

We would go slightly further and state that the intention should be confirmed in the FAR Bill itself, rather than left to be dealt with in the Explanatory Memorandum.

3 Continued overlap and 'stepping stones' risk with obligations on individuals to ensure compliance with financial services laws

We agree with the comments in this section.

4 Prescribed "accountable person" roles continue to require clarification

We agree with the comments in this section.

We also refer to the paragraph:

Given the material concerns raised by businesses to date in connection with the prescribed responsibilities and positions, we recommend that the Minister Rules be released in draft for consultation prior to the passage of the Bill.

While we agree with this position, we would add for completeness that it is not only the Minister Rules which are relevant in this context, but also the Regulator rules, which can have various impacts on accountable persons, for example, an impact on who would be classified as an accountable person in relation to a particular business (see section 11(1)(b) and 11(3)), when that person has to make a registration (see section 24(2)) and how the deferred remuneration provisions would work in relation to that person (see section 26).

5 Timing

We agree with the comments made in this section.

We would also note that apart from ADIs, the same timing concerns raised would potentially apply to other financial services organisations in respect of the purported application dates for those businesses.

We trust this letter is helpful. If you wish to discuss please contact Ashley Davies at the FSC at

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Yours sincerely



Ashley Davies

Policy Manager – Legal