



Insurance Council
of Australia

17 September 2021

Director
Regulatory Powers and Accountability Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: FAR@treasury.gov.au

Dear Ms Ly Reeve

Financial Accountability Regime – Consequential Amendments and Transitional Provisions

The Insurance Council of Australia (**Insurance Council**) welcomes the opportunity to comment on the *Exposure Draft Financial Accountability Regime (Consequential Amendments and Transitional Provisions) Bill 2021 (FAR Consequential Amendments Bill ED)* and *Exposure Draft Financial Accountability Regime (Consequential Amendments and Transitional Provisions) Bill 2021 Explanatory Memorandum (FAR Consequential Amendments EM ED)*.

The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 95 percent of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generates gross written premium of \$55.9 billion per annum and on average pays out \$169.6 million in claims each working day (\$42.4 billion per year).

There are two matters in relation to the FAR Consequential Amendments Bill ED on which we wish to comment.

1. Disclosure of personal affairs

We note that the FAR Consequential Amendments Bill ED will amend section 59 of the *Australian Prudential Regulations Authority Act 1988 (APRA Act)* and sections 136, 337 and 337A of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)* to require APRA and ASIC respectively to include information about investigations conducted under the Financial Accountability Regime (**FAR**) in their respective annual reports from the 2022–23 financial year onwards.

While section 59(4) of the APRA Act will prohibit APRA from disclosing information about the affairs of a particular person as a part of the information on FAR investigations to be included in its annual reports, the FAR Consequential Amendments Bill ED does not contain an equivalent provision to amend the ASIC Act to similarly prohibit ASIC.

The Insurance Council queries whether the lack of an equivalent provision to section 59(4) of the APRA Act in the FAR Consequential Amendments Bill ED to amend the ASIC Act is a consequence of:

- an existing provision of the ASIC Act which will serve to prohibit ASIC from disclosing this information in its annual reports (such as ASIC Act section 127(1A));
- an oversight; or
- a deliberate decision that ASIC should not be subject to the same limitation as APRA with respect to this information. If so, the Insurance Council would like to further understand the policy intent behind this given that the FAR is to be jointly administered by both APRA and ASIC.

The Insurance Council is of the view, given the FAR is to be jointly administered by both APRA and ASIC, that both regulators should be subject to the same prohibition on disclosing information about the affairs of a particular person as a part of the information on FAR investigations to be included in their respective annual reports.

2. Early application for registration of Accountable Persons

Item 22, Schedule 2 to the FAR Consequential Amendments Bill ED provides for the early application for registration of accountable persons for certain accountable entities, including general insurers, “from 30 days before the FAR start time for the body corporate”. Assuming a 1 July 2023 FAR start date for general insurers, there will likely be a significant number of early registration applications in the 30-day period before 1 July 2023. This high volume of applications may impact on the regulator’s capacity to process applications in a timely manner.

Further, we note that item 22(4) states that the registration of an accountable person comes into force at the later of the FAR start time or when the Regulator registers the person. However, as discussed at the 3 August 2021 Treasury roundtable with general insurers, the FAR legislative framework will not impose a requirement on the regulator to notify accountable entities of the registration of an accountable person, or by implication the date of registration.

Given this framework, it is foreseeable that an accountable entity may have taken all reasonable steps to ensure that its accountable persons are registered by 1 July 2023 (assuming this is its FAR start date), yet as of 1 July 2023, be in a situation where those persons are not registered and be unaware of their lack of registration. In this circumstance, it is the Insurance Council’s view that an accountable entity should not be in breach of its FAR obligations and our members seek assurance that this is also Treasury’s view.

We trust that our observations are of assistance. If you have any questions or comments in relation to our submission please contact Aparna Reddy, the Insurance Council's General Manager, Policy – Regulatory Affairs, on telephone: 02 9253 5176 or email: areddy@insurancecouncil.com.au.

Yours sincerely



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