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To whom it may concern

## Financial Accountability Regime Minister Rules 2022

The Insurance Council of Australia<sup>1</sup> (**Insurance Council**) welcomes the opportunity to provide a submission to the Financial Accountability Regime (**FAR**) Minister Rules (**Minister Rules**). We note the Financial Accountability Regime Bill 2022 (**FAR Bill 2022**) to establish the FAR is currently before Parliament and will implement recommendations 3.9, 4.12, 6.6, 6.7 and 6.8 of the Financial Services Royal Commission.

We remain supportive of the objective of the FAR Bill 2022 to ensure there are clear lines of accountability to support robust organisational governance. We are also generally supportive of the Minister Rules, noting their similarity to the Banking Executive and Accountability Regime (**BEAR**), however there are some areas that we wish to raise for further consideration and clarification in terms of the proposed operation and application to the general insurance industry as outlined below.

This submission touches on previously submitted general industry views referenced in our submissions dated February 2020<sup>2</sup> and August 2021.<sup>3</sup>

### **Areas raised by the Insurance Council**

#### **1. Accountable Person of a Significant Related Entity (SRE)**

The Insurance Council seeks clarity on the intent of the prescribed responsibility outlined in Minister Rule 5(2)(g) ("*senior executive responsibility for management or control of the business activities of a significant related entity of the accountable entity*") given that an individual may already be captured as an accountable person of an SRE in accordance with section 10(6) of the FAR Bill 2022. The proposed Minister Rule 5(2)(g) appears to introduce duplication; however, it is not clear whether the intention of 5(2)(g) is to introduce a distinctly different category of accountable person to that of section 10(6) of the FAR Bill 2022.

As outlined in the Insurance Council's previous submission (August 2021), we believe the application of the FAR in respect of SREs should be limited to the most senior person responsible for the SRE, for

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<sup>1</sup> The ICA is the representative body of the general insurance industry in Australia and represents approximately 89% 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 \$59.2 billion per annum and on average pays out \$148.7 million in claims each working day (\$38.8 billion per year)

<sup>2</sup> Insurance Council submission to the *Financial Accountability Regime* – February 2020 ([link](#))

<sup>3</sup> Insurance Council submission to the *Financial Accountability Regime* – August 2021 ([link](#))

example, a group Chief Executive Officer. We welcome reference to the expectation that accountable persons will typically include the most senior executives of an entity.<sup>4</sup>

Whilst we acknowledge this expectation, we also remain concerned that Minister Rule 5(2)(g) may require an individual accountable person to be identified as responsible for the business activities for each SRE. This creates complexity and may not add any governance benefits to entities where multiple senior executives support SRE governance. We encourage the amendment to the Explanatory Statement to add additional examples in the Explanatory Statement to the Rules to clarify that it is intended that more than one person can be identified under a prescribed responsibility/position.

The previous prescribed responsibilities and roles outlined in Treasury's 2020 Policy Proposal Paper provided greater clarity on individuals intended to be captured for prescribed responsibility (for example "*The senior executive responsible for the development, maintenance and review (rather than execution) of the framework targeted at managing the accountable entity's dispute resolution function (internal and external)*"). We support similar guidance be included in the Minister Rules for all prescribed responsibilities to ensure clarity on individuals intended to be captured and consistent application across industry.

## **2. Accountable entities other than foreign accountable entities**

The Insurance Council would welcome clarity on the intended application of FAR to foreign entities, namely Australian-regulated accountable entities or SREs with operations entirely offshore (for example, offshore branches or subsidiaries). Given the obligations of accountable entities, SREs and accountable persons will extend to conduct matters and that entities operating outside Australia are not directly subject to Corporations Act provisions, it is unclear how these obligations are intended to operate in such circumstances.

## **3. Anti-Money Laundering (AML)**

The Insurance Council suggests that consideration be given to removing the prescribed responsibility for the management of an accountable entity's AML function in Minister Rule 5(2)(d)(iv) as it relates to general insurers. Given the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* does not capture general insurers (as general insurance is not a "designated service"), it is not clear how the prescribed responsibility would apply to general insurers.

## **4. End-to-end product responsibility**

The Insurance Council supports not including end-to-end product prescribed responsibility, recognising that there are often different accountable persons responsible for different aspects of the product value chain. We note that in practice these responsibilities will most likely be captured through the definition of an accountable person in most instances, allowing entities flexibility in how these accountabilities are captured across organisational structures. A standalone end-to-end product accountability would have been challenging to operationalise in practice, duplicating with the other prescribed accountabilities such as claims handling and complaints.

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<sup>4</sup> Explanatory Memorandum to the FAR Bill 2022, paragraph 1.53 (reference to directors, Chief Executive Officers (CEO) and officers reporting directly to the CEO) and Explanatory Statement to the Minister Rules, page 4 (reference to the CEO or equivalent)

Regarding the FAR Bill 2022 implementation, we are supportive of the 18-month transition period once the FAR Bill 2022 receives royal assent.

Should you wish to discuss this response further, contact Ms Aparna Reddy, General Manager, Policy and Regulatory Affairs, at [areddy@insurancecouncil.com.au](mailto:areddy@insurancecouncil.com.au) or 0427 902 960.

Yours sincerely



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