

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Financial Accountability Regime (Consequential Amendments and Transitional Provisions) Bill 2021

No. , 2021

(Treasury)

A Bill for an Act to deal with consequential amendments and transitional matters arising from the enactment of the *Financial Accountability Regime Act 2021*, and for related purposes

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1 **A Bill for an Act to deal with consequential**
2 **amendments and transitional matters arising from**
3 **the enactment of the *Financial Accountability***
4 ***Regime Act 2021*, and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Financial Accountability Regime (Consequential*
8 *Amendments and Transitional Provisions) Act 2021*.

No. , 2021 *Financial Accountability Regime (Consequential Amendments and* 1
Transitional Provisions) Bill 2021

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	
2. Schedule 1, Part 1	At the same time as the <i>Financial Accountability Regime Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	
3. Schedule 1, Part 2	The later of: (a) 1 July 2022; and (b) the day that is 6 months after the <i>Financial Accountability Regime Act 2021</i> commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 2	At the same time as the <i>Financial Accountability Regime Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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1 (2) Any information in column 3 of the table is not part of this Act.
2 Information may be inserted in this column, or information in it
3 may be edited, in any published version of this Act.

4 **3 Schedules**

5 Legislation that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

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Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

1 **Schedule 1—Consequential amendments**

2 **Part 1—Amendments for the start of the financial**
3 **accountability regime**

4 *Australian Prudential Regulation Authority Act 1998*

5 **1 Subsection 3(1) (after paragraph (b) of the definition of**
6 ***prudential regulation framework law*)**

7 Insert:

8 (ba) the *Financial Accountability Regime Act 2021*;

9 (bb) the *Financial Accountability Regime (Consequential*
10 *Amendments and Transitional Provisions) Act 2021*;

11 **2 Section 48**

12 Omit “Under”, substitute “(1) Under”.

13 **3 At the end of section 48**

14 Add:

15 (2) Subsection (1) does not apply to an appointment made under, or for
16 the purposes of, the *Financial Accountability Regime Act 2021*.

17 **4 Paragraph 53(1)(d)**

18 Repeal the paragraph, substitute:

19 (d) amounts of any fees, charges or penalties paid to APRA, on
20 behalf of the Commonwealth, under section 51 or any other
21 law of the Commonwealth except:

22 (i) Part 3A of the *Financial Institutions Supervisory Levies*
23 *Collection Act 1998*; or

24 (ii) the *Financial Accountability Regime Act 2021*;

25 **5 Subsection 56(1) (after paragraph (cb) of the definition of**
26 ***protected document*)**

27 Insert:

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Consequential amendments **Schedule 1**
Amendments for the start of the financial accountability regime **Part 1**

1 ; or (cc) a person in relation to whom information is, or was, required
2 to be given under the *Financial Accountability Regime Act*
3 *2021*;

4 **6 Subsection 56(1) (after paragraph (d) of the definition of** 5 ***protected document*)**

6 Insert:

7 (da) a document given or produced to ASIC under, or for the
8 purposes of, a provision of the *Financial Accountability*
9 *Regime Act 2021*, other than a document given or produced
10 to ASIC by APRA; or

11 **7 Subsection 56(1) (after paragraph (cb) of the definition of** 12 ***protected information*)**

13 Insert:

14 ; or (cc) a person in relation to whom information is, or was, required
15 to be given under the *Financial Accountability Regime Act*
16 *2021*;

17 **8 Subsection 56(1) (after paragraph (d) of the definition of** 18 ***protected information*)**

19 Insert:

20 (da) information given or produced to ASIC under, or for the
21 purposes of, a provision of the *Financial Accountability*
22 *Regime Act 2021*, other than information given or produced
23 to ASIC by APRA; or

24 **9 Paragraph 56(2)(c)**

25 Omit “or (7F)”, substitute “, (7F), (7G), (7H), (7J), (7K) or (7L)”.

26 **10 After subsection 56(7F)**

27 Insert:

28 (7G) It is not an offence if:

29 (a) the disclosure of protected information or the production of a
30 protected document is to an accountable entity (within the

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Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

- 1 meaning of the *Financial Accountability Regime Act 2021*);
2 and
3 (b) the information, or the information contained in the
4 document, as the case may be, is information contained in the
5 register kept under section 37 of the *Financial Accountability*
6 *Regime Act 2021*.

7 Note: A defendant bears an evidential burden in relation to the matters in
8 subsection (7G) (see subsection 13.3(3) of the *Criminal Code*).

9 (7H) It is not an offence if:

- 10 (a) the disclosure of protected information or the production of a
11 protected document is to an individual; and
12 (b) the information, or the information contained in the
13 document, as the case may be, is only personal information
14 about the individual; and
15 (c) the information, or the information contained in the
16 document, as the case may be, is information contained in the
17 register kept under section 37 of the *Financial Accountability*
18 *Regime Act 2021*.

19 Note: A defendant bears an evidential burden in relation to the matters in
20 subsection (7H) (see subsection 13.3(3) of the *Criminal Code*).

21 (7J) It is not an offence if:

- 22 (a) the disclosure of protected information or the production of a
23 protected document is by APRA; and
24 (b) the information, or the information contained in the
25 document, as the case may be, is information that discloses:
26 (i) whether a person is disqualified under section 39 of the
27 *Financial Accountability Regime Act 2021*; or
28 (ii) a decision made under Division 2 of Part 3 of Chapter 3
29 of that Act (which is about disqualification of
30 accountable persons), or the reasons for such a decision.

31 Note: A defendant bears an evidential burden in relation to the matters in
32 subsection (7J) (see subsection 13.3(3) of the *Criminal Code*).

33 (7K) It is not an offence if the disclosure of protected information or the
34 production of a protected document by a person is for the purpose
35 of APRA complying with section 36 of the *Financial*
36 *Accountability Regime Act 2021*.

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Amendments for the start of the financial accountability regime **Part 1**

1 Note: A defendant bears an evidential burden in relation to the matters in
2 subsection (7K) (see subsection 13.3(3) of the *Criminal Code*).

3 (7L) It is not an offence if:

4 (a) the disclosure of protected information or the production of a
5 protected document is by ASIC, for the purposes of the
6 performance of ASIC's functions, or the exercise of ASIC's
7 powers; and

8 (b) the protected information was disclosed previously to ASIC,
9 or the protected document was produced previously to ASIC,
10 for the purpose of APRA complying with section 36 of the
11 *Financial Accountability Regime Act 2021*.

12 Note: A defendant bears an evidential burden in relation to the matters in
13 subsection (7L) (see subsection 13.3(3) of the *Criminal Code*).

14 **11 Paragraph 56(12)(a)**

15 Omit "and (7F)", substitute ", (7F), (7G), (7H), (7J), (7K) and (7L)".

16 **12 At the end of subsection 58(4)**

17 Add:

18 ; (d) section 95 or 96 of the *Financial Accountability Regime Act*
19 *2021*.

20 **13 After paragraph 59(2)(ba)**

21 Insert:

22 (bb) information about investigations (including joint
23 investigations) conducted by APRA under Division 1 of
24 Part 4 of Chapter 3 of the *Financial Accountability Regime*
25 *Act 2021* during the period;

26 **14 After subsection 59(3)**

27 Insert:

28 (4) Paragraph (2)(bb) does not authorise the inclusion in the annual
29 report of information with respect to the affairs of a particular
30 person.

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Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

1 ***Australian Securities and Investments Commission Act 2001***

2 **15 At the end of subsection 12A(1)**

3 Add:

4 (m) the *Financial Accountability Regime Act 2021*;

5 (n) the *Financial Accountability Regime (Consequential*
6 *Amendments and Transitional Provisions) Act 2021*.

7 **16 After paragraph 136(1)(d)**

8 Insert:

9 (da) information about investigations (including joint
10 investigations) conducted under Division 1 of Part 4 of the
11 *Financial Accountability Regime Act 2021* during the period;

12 **17 In the appropriate position**

13 Insert:

14 **Part 37—Transitional provisions relating to the**
15 **Financial Accountability Regime**
16 **(Consequential Amendments and**
17 **Transitional Provisions) Act 2021**
18

19 **337 Application—confidentiality**

20 The amendment of section 12A made by Part 1 of Schedule 1 to
21 the *Financial Accountability Regime (Consequential Amendments*
22 *and Transitional Provisions) Act 2021*, so far as it relates to the
23 definition of protected information in subsection 127(9), applies in
24 relation to any use or disclosure of information after the
25 commencement of that Part, whether ASIC obtained the
26 information before or after that commencement.

27 **337A Information to be included in ASIC’s annual report**

28 The amendment of section 136 made by Part 1 of Schedule 1 to the
29 *Financial Accountability Regime (Consequential Amendments and*

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Consequential amendments **Schedule 1**
Amendments for the start of the financial accountability regime **Part 1**

1 *Transitional Provisions) Act 2021* applies to reports on ASIC’s
2 investigations during the financial year ending on 30 June 2023,
3 and later financial years.

4 ***Banking Act 1959***

5 **18 After subparagraph 9A(2)(b)(ii)**

6 Insert:

7 (ia) a requirement of the *Financial Accountability Regime*
8 *Act 2021*;

9 **19 After subparagraph 11AB(2)(a)(ii)**

10 Insert:

11 (ia) a requirement of the *Financial Accountability Regime*
12 *Act 2021*;

13 **20 Paragraph 15D(1)(a)**

14 After “the *Financial Sector (Collection of Data) Act 2001*”, insert “or
15 the *Financial Accountability Regime Act 2021*”.

16 **21 Paragraph 15D(1)(b)**

17 Omit “that Act”, substitute “those Acts”.

18 **22 Subsection 16B(1)**

19 After “functions under this Act”, insert “or the *Financial Accountability*
20 *Regime Act 2021*”.

21 **23 Subparagraph 16BA(6)(a)(i)**

22 Omit “the regulations or the *Financial Sector (Collection of Data) Act*
23 *2001*”, substitute “the regulations, the *Financial Sector (Collection of*
24 *Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

25 **24 Section 16C**

26 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
27 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
28 or the *Financial Accountability Regime Act 2021*”.

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Part 1 Amendments for the start of the financial accountability regime

1 **25 After subparagraph 20(1)(a)(ii)**

2 Insert:

3 (ia) the *Financial Accountability Regime Act 2021*; or

4 **26 Section 69BA**

5 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
6 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
7 or the *Financial Accountability Regime Act 2021*”.

8 ***Financial Regulator Assessment Authority Act 2021***

9 **27 Subparagraph 40(3)(a)(iv)**

10 Omit “or”.

11 **28 At the end of paragraph 40(3)(a)**

12 Add:

13 (v) subsection 68(1) or section 69 of the *Financial*
14 *Accountability Regime Act 2021*; or

15 ***Financial Sector (Transfer and Restructure) Act 1999***

16 **29 At the end of paragraph 36B(1A)(a)**

17 Add:

18 (iv) section 60 of the *Financial Accountability Regime Act*
19 *2021*;

20 ***Insurance Act 1973***

21 **30 After subparagraph 15(1)(a)(ii)**

22 Insert:

23 (iaa) a requirement of the *Financial Accountability Regime*
24 *Act 2021*; or

25 **31 After subparagraph 21(1)(a)(ii)**

26 Insert:

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Amendments for the start of the financial accountability regime **Part 1**

1 (iiaa) a requirement of the *Financial Accountability Regime*
2 *Act 2021*; or

3 **32 After subparagraph 25(1)(a)(ii)**

4 Insert:

5 (iia) the *Financial Accountability Regime Act 2021*; or

6 **33 After paragraph 43(2)(a)**

7 Insert:

8 (aa) has failed to comply with a requirement of the *Financial*
9 *Accountability Regime Act 2021*; or

10 **34 After subparagraph 44(1)(a)(i)**

11 Insert:

12 (ia) the person has failed to comply with a requirement of
13 the *Financial Accountability Regime Act 2021*;

14 **35 Paragraph 44(4)(a)**

15 Omit “this Act and the prudential standards”, substitute “this Act, the
16 prudential standards and the *Financial Accountability Regime Act*
17 *2021*”.

18 **36 After subparagraphs 48(1)(a)(i) and (2)(a)(i)**

19 Insert:

20 (ia) the *Financial Accountability Regime Act 2021*; or

21 **37 Subsection 49(1)**

22 After “functions under this Act”, insert “or the *Financial Accountability*
23 *Regime Act 2021*”.

24 **38 Subparagraph 49A(6)(a)(iv)**

25 Omit “this Act or a requirement under the *Financial Sector (Collection*
26 *of Data) Act 2001*”, substitute “this Act, a requirement under the
27 *Financial Sector (Collection of Data) Act 2001* or a requirement of the
28 *Financial Accountability Regime Act 2021*”.

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Part 1 Amendments for the start of the financial accountability regime

1 **39 Section 49B**

2 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
3 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
4 or the *Financial Accountability Regime Act 2021*”.

5 **40 After subparagraph 62M(1)(a)(iv)**

6 Insert:

7 (ivaa) the general insurer has failed to comply with a
8 requirement of the *Financial Accountability Regime Act*
9 *2021*; or

10 **41 Subsection 62W(1)**

11 Repeal the subsection, substitute:

12 (1) None of the matters mentioned in subsection (2) affect:

13 (a) the continued operation of other Parts of this Act in relation
14 to a general insurer; or

15 (b) the operation of the *Financial Sector (Collection of Data) Act*
16 *2001* or the *Financial Accountability Regime Act 2021* in
17 relation to a general insurer; or

18 (c) the obligation of a general insurer to comply with those other
19 Parts and those Acts.

20 **42 Subsection 62ZOY(1)**

21 Repeal the subsection, substitute:

22 (1) None of the matters mentioned in subsection (2) affect:

23 (a) the continued operation of other provisions of this Act in
24 relation to a body corporate; or

25 (b) the operation of the *Financial Sector (Collection of Data) Act*
26 *2001* or the *Financial Accountability Regime Act 2021* in
27 relation to a body corporate; or

28 (c) the obligation of a body corporate to comply with those other
29 provisions and those Acts.

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Amendments for the start of the financial accountability regime **Part 1**

1 **43 Section 129AA**

2 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
3 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
4 or the *Financial Accountability Regime Act 2021*”.

5 ***Life Insurance Act 1995***

6 **44 Paragraph 21(3)(e)**

7 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
8 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
9 or the *Financial Accountability Regime Act 2021*”.

10 **45 After subparagraph 26(1)(a)(ii)**

11 Insert:

12 (ia) a requirement of the *Financial Accountability Regime*
13 *Act 2021*; or

14 **46 After subparagraph 28C(1)(a)(ii)**

15 Insert:

16 (iaa) a requirement of the *Financial Accountability Regime*
17 *Act 2021*; or

18 **47 After paragraph 85(1)(b)**

19 Insert:

20 (ba) the person has failed to comply with a requirement of the
21 *Financial Accountability Regime Act 2021*; or

22 **48 Paragraph 88(1)(a)**

23 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
24 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
25 or the *Financial Accountability Regime Act 2021*”.

26 **49 Subparagraph 88(3)(a)(i)**

27 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
28 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
29 or the *Financial Accountability Regime Act 2021*”.

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Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

1 **50 Section 88A**

2 Omit “this Act or under the *Financial Sector (Collection of Data) Act*
3 *2001*”, substitute “this Act, the *Financial Sector (Collection of Data)*
4 *Act 2001* or the *Financial Accountability Regime Act 2021*”.

5 **51 Subsection 88B(1)**

6 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
7 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
8 or the *Financial Accountability Regime Act 2021*”.

9 **52 Paragraph 89(2)(a)**

10 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
11 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
12 or the *Financial Accountability Regime Act 2021*”.

13 **53 After paragraph 94(1)(b)**

14 Insert:

15 (ba) the person has failed to comply with a requirement of the
16 *Financial Accountability Regime Act 2021*; or

17 **54 Paragraph 98(1)(a)**

18 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
19 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
20 or the *Financial Accountability Regime Act 2021*”.

21 **55 Subparagraph 98(3)(a)(i)**

22 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
23 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
24 or the *Financial Accountability Regime Act 2021*”.

25 **56 Section 98A**

26 Omit “this Act or under the *Financial Sector (Collection of Data) Act*
27 *2001*”, substitute “this Act, the *Financial Sector (Collection of Data)*
28 *Act 2001* or the *Financial Accountability Regime Act 2021*”.

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Consequential amendments **Schedule 1**
Amendments for the start of the financial accountability regime **Part 1**

1 **57 Subsection 98B(1)**

2 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
3 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
4 or the *Financial Accountability Regime Act 2021*”.

5 **58 Paragraph 99(2)(a)**

6 After “this Act”, insert “or the *Financial Accountability Regime Act*
7 *2021*”.

8 **59 Paragraph 125A(2)(c)**

9 Omit “the regulations or the *Financial Sector (Collection of Data) Act*
10 *2001*”, substitute “the regulations, the *Financial Sector (Collection of*
11 *Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

12 **60 Subsection 166(1)**

13 Repeal the subsection, substitute:

- 14 (1) None of the matters mentioned in subsection (2) affect:
- 15 (a) the continued operation of other Parts of this Act in relation
16 to a life company; or
 - 17 (b) the operation of the *Financial Sector (Collection of Data)*
18 *Act 2001* or the *Financial Accountability Regime Act 2021* in
19 relation to a life company; or
 - 20 (c) the obligation of a life company to comply with those other
21 Parts and those Acts.

22 **61 Subsection 179AY(1)**

23 Repeal the subsection, substitute:

- 24 (1) None of the matters mentioned in subsection (2) affect:
- 25 (a) the continued operation of other provisions of this Act in
26 relation to a body corporate; or
 - 27 (b) the operation of the *Financial Sector (Collection of Data) Act*
28 *2001* or the *Financial Accountability Regime Act 2021* in
29 relation to a body corporate; or
 - 30 (c) the obligation of a body corporate to comply with those other
31 provisions and those Acts.

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Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

1 **62 Paragraph 245(1)(a)**

2 Omit “this Act or the *Life Insurance Act 1945*”, substitute “this Act, the
3 *Life Insurance Act 1945* or the *Financial Accountability Regime Act*
4 *2021*”.

5 **63 Subsection 248(2)**

6 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
7 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
8 or the *Financial Accountability Regime Act 2021*”.

9 ***National Consumer Credit Protection Act 2009***

10 **64 Subsection 5(1) (definition of *large ADI*)**

11 Omit “has the same meaning as in the *Banking Act 1959*”, substitute
12 “means an ADI of a kind determined under subsection (1A)”.

13 **65 After subsection 5(1)**

14 Insert:

15 (1A) The Minister may, by legislative instrument, determine the kinds of
16 ADIs that are large ADIs.

17 ***Payment Systems and Netting Act 1998***

18 **66 Section 5 (after paragraph (b) of the definition of *direction***
19 ***stay provision*)**

20 Insert:

21 (baa) subsection 73(2) of the *Financial Accountability Regime Act*
22 *2021*;

23 **67 Section 5 (before paragraph (fc) of the definition of**
24 ***specified provisions*)**

25 Insert:

26 (fca) subsections 73(3) and (4) of the *Financial Accountability*
27 *Regime Act 2021*;

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Amendments for the start of the financial accountability regime **Part 1**

1 **68 Section 5 (after paragraph (e) of the definition of *specified***
2 ***stay provision*)**

3 Insert:

4 (eaa) subsection 73(2) of the *Financial Accountability Regime Act*
5 *2021*;

6 ***Private Health Insurance (Prudential Supervision) Act 2015***

7 **69 After subsection 21(1)**

8 Insert:

9 (1A) APRA may, in writing, cancel the registration of a private health
10 insurer if APRA is satisfied that the private health insurer has
11 failed to comply with a requirement of the *Financial*
12 *Accountability Regime Act 2021*.

13 **70 Subsections 84(1) and (2)**

14 Omit “or of the *Private Health Insurance Act 2007*”, substitute “the
15 *Private Health Insurance Act 2007* or the *Financial Accountability*
16 *Regime Act 2021*”.

17 **71 After paragraph 107(2)(c)**

18 Insert:

19 ; and (d) the *Financial Accountability Regime Act 2021*.

20 **72 Subsection 107(2) (note 2)**

21 Omit “paragraphs (b) and (c)”, substitute “paragraphs (b), (c) and (d)”.

22 **73 Paragraph 110(1)(a)**

23 Omit “the *Private Health Insurance Act 2007* or the *Financial Sector*
24 *(Collection of Data) Act 2001*”, substitute “the *Private Health*
25 *Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001*
26 or the *Financial Accountability Regime Act 2021*”.

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Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

1 **74 Subparagraph 110(5)(a)(i)**

2 Omit “the *Private Health Insurance Act 2007* or the *Financial Sector*
3 *(Collection of Data) Act 2001*”, substitute “the *Private Health*
4 *Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001*
5 or the *Financial Accountability Regime Act 2021*”.

6 **75 Subsections 111(1) and 112(1)**

7 Omit “the *Private Health Insurance Act 2007* or the *Financial Sector*
8 *(Collection of Data) Act 2001*”, substitute “the *Private Health*
9 *Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001*
10 or the *Financial Accountability Regime Act 2021*”.

11 **76 Paragraph 113(2)(a)**

12 Omit “the *Private Health Insurance Act 2007* or the *Financial Sector*
13 *(Collection of Data) Act 2001*”, substitute “the *Private Health*
14 *Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001*
15 or the *Financial Accountability Regime Act 2021*”.

16 **77 After subparagraphs 119(1)(a)(iii) and 120(4)(b)(iii)**

17 Insert:

18 (iia) the *Financial Accountability Regime Act 2021*; or

19 **78 Subsection 168(1) (after table item 3)**

20 Insert:

21

3A to cancel the registration of a private health subsection 21(1A)
insurer

22 ***Superannuation Industry (Supervision) Act 1993***

23 **79 Subsection 10(1) (after paragraph (c) of the definition of**
24 ***RSE licensee law*)**

25 Insert:

26 (ca) the *Financial Accountability Regime Act 2021*; and

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1 **80 Section 38A (before paragraph (ab) of the definition of**
2 **regulatory provision)**

3 Insert:

4 (aba) a provision of the *Financial Accountability Regime Act 2021*;
5 or

6 **81 Paragraph 126H(3)(a)**

7 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
8 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
9 or the *Financial Accountability Regime Act 2021*”.

10 **82 Subparagraph 129(1)(a)(ii)**

11 After “*Financial Sector (Collection of Data) Act 2001*”, insert “or the
12 *Financial Accountability Regime Act 2021*”.

13 **83 Section 130A**

14 Omit “the prudential standards or the *Financial Sector (Collection of*
15 *Data) Act 2001*”, substitute “the prudential standards, the *Financial*
16 *Sector (Collection of Data) Act 2001* or the *Financial Accountability*
17 *Regime Act 2021*”.

18 **84 At the end of paragraph 130D(4)(a)**

19 Add:

20 (iv) any duties required to be performed under the *Financial*
21 *Accountability Regime Act 2021*; or

22 **85 Paragraph 131AA(2)(c)**

23 Omit “the prudential standards or the *Financial Sector (Collection of*
24 *Data) Act 2001*”, substitute “the prudential standards, the *Financial*
25 *Sector (Collection of Data) Act 2001* or the *Financial Accountability*
26 *Regime Act 2021*”.

27 **86 At the end of paragraph 131A(1)(a)**

28 Add:

29 (iv) any duties required to be performed under the *Financial*
30 *Accountability Regime Act 2021*; or

EXPOSURE DRAFT

Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

1 **87 Subparagraph 313(1)(a)(ii)**

2 Omit “this Act or under the *Financial Sector (Collection of Data) Act*
3 *2001*”, substitute “this Act, or under the *Financial Sector (Collection of*
4 *Data) Act 2001* or the *Financial Accountability Regime Act 2021*,”.

EXPOSURE DRAFT

Consequential amendments **Schedule 1**
Amendments for the end of the banking executive accountability regime **Part 2**

1 **Part 2—Amendments for the end of the banking**
2 **executive accountability regime**

3 *Australian Prudential Regulation Authority Act 1998*

4 **88 Subsection 56(1) (paragraph (cb) of the definition of**
5 ***protected document*)**

6 Repeal the paragraph.

7 **89 Subsection 56(1) (paragraph (cb) of the definition of**
8 ***protected information*)**

9 Repeal the paragraph.

10 **90 Paragraph 56(2)(c)**

11 Omit “(7D), (7E), (7F),”.

12 **91 Subsections 56(7D), (7E) and (7F)**

13 Repeal the subsections.

14 **92 Paragraph 56(12)(a)**

15 Omit “(7D), (7E), (7F),”.

16 *Banking Act 1959*

17 **93 Paragraph 2A(2)(e)**

18 Repeal the paragraph.

19 **94 Subsection 5(1) (definition of *accountable person*)**

20 Repeal the definition.

21 **95 Subsection 5(1) (paragraph (g) of the definition of**
22 ***direction under this Act*)**

23 Omit “31F;”, substitute “31F.”.

EXPOSURE DRAFT

Schedule 1 Consequential amendments

Part 2 Amendments for the end of the banking executive accountability regime

1 **96 Subsection 5(1) (paragraph (h) of the definition of**
2 ***direction under this Act***

3 Repeal the paragraph.

4 **97 Subsection 5(1)**

5 Repeal the following definitions:

- 6 (a) definition of *large ADI*;
7 (b) definition of *medium ADI*;
8 (c) definition of *non-ADI holding company*;
9 (d) definition of *remuneration*;
10 (e) definition of *small ADI*;
11 (f) definition of *variable remuneration*.

12 **98 Subsection 11AF(1AC)**

13 Repeal the subsection.

14 **99 Paragraphs 11CG(1)(b) and (2)(a)**

15 Omit “, 29 or 37DB”, substitute “or 29”.

16 **100 Subsection 11CG(2A)**

17 Omit “, 29 or 37DB”, substitute “or 29”.

18 **101 Part IIAA**

19 Repeal the Part.

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Preliminary **Part 1**

Schedule 2—Application, saving and transitional provisions

Part 1—Preliminary

1 Definitions

(1) In this Schedule:

banking start time means the time when Part 2 of Schedule 1 commences.

BEAR means:

- (a) Part IIAA of the old Banking Act; and
- (b) any instruments made under that Part as in force immediately before the banking start time; and
- (c) any sections of the old Banking Act that apply in relation to a provision of that Part.

FAR Act means the *Financial Accountability Regime Act 2021*.

FAR start time for a body corporate that is an accountable entity under subsection 8(3) of the FAR Act means the time when the body corporate starts to be an accountable entity, as determined under subsection 8(4) of the FAR Act.

old Banking Act means the *Banking Act 1959*, and any instruments made under that Act, as in force immediately before the banking start time.

(2) Expressions used in this Schedule that are defined for the purposes of the FAR Act, and used in relation to that Act, have the same meaning as in that Act.

(3) Expressions used in this Schedule that were defined for the purposes of the old Banking Act, and used in relation to that Act, have the same meaning as in that Act.

2 Section 7 of the *Acts Interpretation Act 1901*

This Schedule does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeals made by this Act.

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 1 Preliminary

1 **3 Compensation for acquisition of property**

2 (1) If the operation of the old Banking Act, or of this Act or the FAR Act as
3 it applies under this Act, would result in an acquisition of property
4 (within the meaning of paragraph 51(xxxi) of the Constitution) from a
5 person otherwise than on just terms (within the meaning of that
6 paragraph), the Commonwealth is liable to pay a reasonable amount of
7 compensation to the person.

8 (2) Subitem (1) applies whether the acquisition of property occurred before
9 or occurs after the commencement time.

10 (3) If the Commonwealth and the person do not agree on the amount of the
11 compensation, the person may institute proceedings in:

12 (a) the Federal Court of Australia; or

13 (b) the Supreme Court of a State or Territory;

14 for the recovery from the Commonwealth of such reasonable amount of
15 compensation as the court determines.

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Banking sector **Part 2**

1 **Part 2—Banking sector**

2 **Division 1—Key personnel obligations**

3 **4 Persons registered under BEAR**

4 *When this item applies*

5 (1) This item applies in relation to a person and an ADI if, immediately
6 before the banking start time:

- 7 (a) the person is an accountable person of the ADI, or of a
8 subsidiary of the ADI under the old Banking Act; and
9 (b) the person is registered under section 37HA of the old
10 Banking Act.

11 *Accountable persons taken to be registered under FAR*

12 (2) If, at the banking start time, the person is an accountable person of the
13 ADI or the subsidiary under section 9 of the FAR Act, then the person
14 is taken from the banking start time to be registered under the FAR Act
15 as an accountable person.

16 Note 1: If the person was an accountable person of a subsidiary of the ADI, and the subsidiary is
17 not a significant related entity of the ADI under the FAR Act, then the person may not
18 be an accountable person of the ADI or the subsidiary under the FAR Act.

19 Note 2: See also item 13 (old accountability statement taken to be new accountability
20 statement).

21 *Persons ceasing to be accountable persons*

22 (3) If, at the banking start time, the person is *not* an accountable person of
23 the ADI or the subsidiary under section 9 of the FAR Act, then:
24 (a) the person is taken to have ceased to be an accountable
25 person of the ADI for the purposes of the paragraph 30(a) of
26 the FAR Act; and
27 (b) for the purposes of subparagraph 29(1)(a)(i) of the FAR Act,
28 that ceasing event is taken to have occurred at the banking
29 start time.

30 Note: Events mentioned under section 30 of the FAR Act must be notified to the Regulator in
31 accordance with section 29 of the FAR Act (notification obligations of an accountable

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 2 Banking sector

1 entity). Failure to comply with a notification obligation is a contravention of a civil
2 penalty provision (see section 76 of the FAR Act).

3 **5 Persons disqualified under BEAR**

4 *When this item applies*

- 5 (1) This item applies in relation to a person if:
- 6 (a) before the banking start time, the person is disqualified from
7 being, or acting as, an accountable person under section 37J
8 of the old Banking Act; and
- 9 (b) the disqualification is in effect immediately before the
10 banking start time.

11 *Persons are taken to be disqualified under FAR*

- 12 (2) The person is taken, from the banking start time, to be disqualified from
13 being or acting as an accountable person under section 39 of the FAR
14 Act.
- 15 (3) For the purposes of subsection 39(2) of the FAR Act, the
16 disqualification applies in accordance with the following table.

17

Disqualified accountable persons

	Column 1	Column 2
Item	If, before the banking start time, the person is disqualified under the old Banking Act in relation to ...	then, from the banking start time, the person is taken to be disqualified under the FAR Act in relation to ...
1	a particular ADI	the accountable entity that is the ADI
2	a particular subsidiary of an ADI	if the subsidiary is a significant related entity of the accountable entity that is the ADI—that significant related entity
3	a class of ADIs	a class of accountable entities that includes those ADIs
4	a class of subsidiaries of ADIs	a class of significant related entities of accountable entities that includes those subsidiaries of ADIs
5	any ADI	any accountable entity

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EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Banking sector **Part 2**

Disqualified accountable persons

	Column 1	Column 2
Item	If, before the banking start time, the person is disqualified under the old Banking Act in relation to ...	then, from the banking start time, the person is taken to be disqualified under the FAR Act in relation to ...
6	any subsidiary of an ADI	any significant related entity of an accountable entity

- 1 (4) The period of disqualification ends when the period of the
2 disqualification under the old Banking Act would have ended.
- 3 (5) Paragraphs 39(1)(a) and (b) and subsections 39(3) to (7) of the FAR Act
4 do not apply in relation to the disqualification.

Applications to vary or revoke disqualification

- 5
- 6 (6) If:
- 7 (a) before the banking start time, the person applies to APRA
8 under section 37JA of the old Banking Act to vary or revoke
9 the disqualification; and
- 10 (b) as at the banking start time, the application has not been
11 withdrawn by the applicant, or dealt with by APRA;
- 12 the application is taken, after the banking start time, as having been
13 made under section 40 of the FAR Act.

6 Pending applications to register a person under BEAR

When this item applies

- 14
- 15
- 16 (1) This item applies if:
- 17 (a) before the banking start time, an application is made to
18 APRA under section 37HA of the old Banking Act to register
19 a person as an accountable person; and
- 20 (b) as at the banking start time, the application has not been
21 withdrawn by the applicant, or dealt with by APRA.

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Banking sector **Part 2**

1 *When registration comes into force*

- 2 (4) The registration of the person as an accountable person comes into force
3 at the later of the following times:
4 (a) the banking start time;
5 (b) when the Regulator registers the person.

6 **9 Disqualification under FAR for non-compliance with BEAR**

7 APRA may, after the banking start time, disqualify a person from being,
8 or acting as, an accountable person under section 39 of the FAR Act if
9 APRA is satisfied that:

- 10 (a) the person has not complied with their obligations under
11 section 37CA of the old Banking Act; and
12 (b) having regard to the seriousness of the non-compliance, the
13 disqualification is justified.

14 Note: A decision to disqualify a person is a reviewable decision under Part 5
15 of Chapter 3 of the FAR Act.

16 **Division 2—Deferred remuneration obligations**

17 **10 Deferral of variable remuneration continues under BEAR** 18 **after FAR starts**

19 *When this item applies*

- 20 (1) This item applies in relation to a person if:
21 (a) immediately before the banking start time the person is an
22 accountable person of an ADI or of a subsidiary of an ADI
23 under the old Banking Act; and
24 (b) at the banking start time, the person is an accountable person
25 under section 9 of the FAR Act.

26 *Old Banking Act continues to apply for 6 months*

- 27 (2) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of
28 Schedule 1, the old Banking Act applies, after the banking start time, in
29 relation to the variable remuneration of the accountable person unless
30 Part 5 of Chapter 2 of the FAR Act applies to the variable remuneration
31 (see item 11).

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 2 Banking sector

1 Note: APRA may exercise powers etc. under repealed provisions for the purposes of this item:
2 see item 24.

3 **11 Deferral of variable remuneration under FAR**

4 *When this item applies*

5 (1) This item applies in relation to a person who is an accountable person
6 under section 9 of the FAR Act of an entity (the *deferring entity*) that
7 is:

- 8 (a) an accountable entity under subsection 8(1) of the FAR Act;
9 or
10 (b) a significant related entity of such an accountable entity.

11 *FAR applies to financial years starting 6 months after banking*
12 *start time*

13 (2) Part 5 of Chapter 2 of the FAR Act applies in relation to the variable
14 remuneration of the accountable person only if the minimum deferral
15 period for the variable remuneration (see section 26 of the FAR Act)
16 occurs in:

- 17 (a) the first financial year of the deferring entity that begins after
18 the end of the period of 6 months after the banking start time;
19 or
20 (b) a later financial year.

21 **12 Deferral of variable remuneration under BEAR—savings** 22 **provision**

23 *When this item applies*

24 (1) This item applies in relation to a person if:

- 25 (a) immediately before the banking start time:
26 (i) the person is an accountable person of an ADI or of a
27 subsidiary of an ADI under the old Banking Act; and
28 (ii) Division 4 of Part IIAA of the old Banking Act applies
29 in relation to the variable remuneration of the person;
30 and

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Banking sector **Part 2**

- 1 (b) at the banking start time, the person is *not* an accountable
2 person of the ADI or the subsidiary under section 9 of the
3 FAR Act.

4 Note: If the person was an accountable person of a subsidiary of the ADI, and the subsidiary is
5 not a significant related entity of the ADI under the FAR Act, then the person may not
6 be an accountable person of the ADI or the subsidiary under the FAR Act.

7 *Old Banking Act continues to apply*

- 8 (2) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of
9 Schedule 1, the old Banking Act continues to apply, after the banking
10 start time, in relation to the variable remuneration, as if that repeal had
11 not happened.

12 **Division 3—Notification obligations**

13 **13 Accountability statements under BEAR**

14 *When this item applies*

- 15 (1) This item applies if:
16 (a) before the banking start time, an ADI or a subsidiary of an
17 ADI gave APRA a document (the *old accountability*
18 *statement*) complying with section 37FA of the old Banking
19 Act for a person who was registered under section 37HA of
20 that Act; and
21 (b) at the banking start time, the person is an accountable person
22 of the ADI or of the subsidiary under section 9 of the FAR
23 Act.

24 Note: For transfer of registration of the person, see item 1.

- 25 (2) The old accountability statement (including any changes notified to
26 APRA before the banking start time) is taken, from the banking start
27 time, to have been given to the Regulator in accordance with section 31
28 of the FAR Act for the person.

29 Note: Any material change to the information contained in the accountability statement must
30 be notified to the Regulator: see subsection 29(2) of the FAR Act.

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 2 Banking sector

1 **14 Notification obligations under BEAR—savings provision**

- 2 (1) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of
3 Schedule 1, the old Banking Act continues to apply, after the banking
4 start time, in relation to an obligation covered by subitem (2) and
5 arising before that time, as if that repeal had not happened.
- 6 (2) For the purposes of subitem (1), the obligations are any of the
7 following:
- 8 (a) an obligation under paragraph 37F(1)(a) of the old Banking
9 Act to notify APRA of a change to an accountability
10 statement;
- 11 (b) an obligation under paragraph 37F(1)(b) of the old Banking
12 Act to notify APRA of a change to an accountability map;
- 13 (c) an obligation under paragraph 37F(1)(c) of the old Banking
14 Act to notify APRA of an event.

15 **Division 4—Regulatory powers and enforcement**

16 **15 Directions about reallocating responsibilities given under**
17 **BEAR**

18 *When this item applies*

- 19 (1) This item applies if:
- 20 (a) before the banking start time, APRA gives a body corporate a
21 direction under section 37DB of the old Banking Act in
22 relation to a responsibility; and
- 23 (b) as at the banking start time, APRA has not revoked the
24 direction.

25 *Direction under FAR Act taken to be given*

- 26 (2) After the banking start time, the direction continues in force (and may
27 be dealt with) as if it had been given by the Regulator under section 61
28 of the FAR Act.
- 29 (3) For the purposes of section 61 of the FAR Act:
- 30 (a) the requirements in paragraph 61(3)(a) and (c) are taken to be
31 met; and

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Banking sector **Part 2**

- 1 (b) if the direction under section 37DB of the old Banking Act
2 did not specify a period within which the direction is to be
3 complied with—paragraph 61(3)(b) does not apply to the
4 direction.

5 *Secrecy obligations*

- 6 (4) If, immediately before the banking start time, the direction was covered
7 by a determination under subsection 11CH(2) of the old Banking Act,
8 then it is taken after the banking start time as being covered by a
9 determination under subsection 63(2) of the FAR Act.
- 10 (5) If, immediately before the banking start time, the direction was covered
11 by a determination under subsection 11CK(2) or (5) of the old Banking
12 Act, then it is taken after the banking start time as being covered by:
13 (a) for a direction covered by a determination under
14 subsection 11CK(2) of the old Banking Act—a determination
15 under subsection 66(2) of the FAR Act;
16 (b) for a direction covered by a determination under
17 subsection 11CK(5) of the old Banking Act—a determination
18 under subsection 66(4) of the FAR Act.

19 **16 Directions under FAR for non-compliance with BEAR**

20 *When this item applies*

- 21 (1) This item applies if:
22 (a) APRA has reason to believe that a body corporate has
23 contravened a provision of Part IIAA of the old Banking Act
24 before the banking start time; and
25 (b) as at the banking start time, APRA has not given a direction
26 under section 11CA of the old Banking Act in relation to the
27 contravention; and
28 (c) immediately after the banking start time, the body corporate
29 is an accountable entity.

30 *APRA may give direction under FAR Act*

- 31 (2) Both of the following apply:

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 2 Banking sector

- 1 (a) APRA may give the body corporate a direction under section
2 60 of the FAR Act;
- 3 (b) for the purposes of paragraph 60(3)(b) of the FAR Act, the
4 ground for giving the direction is the contravention of the old
5 Banking Act provision.

17 Revocation of authority for non-compliance with FAR

6 The amendment of section 9A of the *Banking Act 1959* made by Part 1
7 of Schedule 1 applies in relation to a body corporate's authority under
8 section 9 of that Act whether the authority was granted before or after
9 the banking start time.
10

18 Contraventions under BEAR—savings provision

- 11 (1) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of
12 Schedule 1, the old Banking Act continues to apply, after the banking
13 start time, in relation to a contravention (or an alleged contravention) of
14 a provision of the BEAR that occurs before that time, as if that repeal
15 had not been made.
16
- 17 (2) This item does not limit any other item of this Schedule.
- 18 Note: As a result, APRA may have a choice as to whether to deal with BEAR non-compliance
19 under the old Banking Act or whether to take action under the FAR Act in reliance on
20 item 9 or 16.

19 Directions under BEAR for non-compliance with BEAR— savings provision

21 *When this item applies*

- 22 (1) This item applies if:
- 23 (a) before the banking start time, APRA gives a body corporate a
24 direction under section 11CA of the old Banking Act in
25 relation to a contravention of the BEAR; and
26 (b) as at the banking start time, APRA has not revoked the
27 direction.
28
29

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Banking sector **Part 2**

1 *Old Banking Act continues to apply*

2 (2) Despite the repeals and amendments of the *Banking Act 1959* made by
3 Part 2 of Schedule 1, the old Banking Act continues to apply, after the
4 banking start time, in relation to the direction, as if those repeals and
5 amendments had not been made.

6 **20 Review of decisions under BEAR—savings provision**

7 Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of
8 Schedule 1, Part VI (review of decisions) of the old Banking Act
9 continues to apply, after the banking start time, in relation to a decision
10 made under that Part:

- 11 (a) before the banking start time; or
12 (b) after the banking start time as a result of the operation of a
13 provision of this Schedule;

14 as if that repeal had not been made.

15 **21 Enforceable undertakings and injunctions under BEAR—** 16 **savings provision**

17 To avoid doubt, the repeal of Part IIAA of the *Banking Act 1959* by
18 Part 2 of Schedule 1 does not affect:

- 19 (a) an enforceable undertaking given under section 18A of the
20 old Banking Act before the banking start time; or
21 (b) an injunction granted under section 65A of the old Banking
22 Act before the banking start time.

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 3 Other sectors

1 **Part 3—Other sectors**

2 **Division 1—Key personnel obligations**

3 **22 Applications to register under FAR**

4 *When this item applies*

5 (1) This item applies to a body corporate if the body corporate is any of the
6 following:

- 7 (a) a general insurer;
8 (b) an authorised NOHC of a general insurer;
9 (c) a life company;
10 (d) a registered NOHC of a life company;
11 (e) a private health insurer;
12 (f) an RSE licensee.

13 *Early application for registration of accountable persons*

14 (2) The body corporate may apply to the Regulator under section 38 of the
15 FAR Act to register a person as an accountable person from 30 days
16 before the FAR start time for the body corporate.

17 (3) If the body corporate makes the application before the FAR start time,
18 section 38 of the FAR Act (and any other provision of the FAR Act that
19 applies in relation to that section) applies in relation to the body
20 corporate as if the body corporate were an accountable entity.

21 Note: Under paragraph 38(2)(d) of the FAR Act, if the accountable entity meets the enhanced
22 notification threshold under subsection 29(3) of the FAR Act, the application must
23 include an accountability statement for the person complying with section 31 of the
24 FAR Act.

25 *When registration comes into force*

26 (4) The registration of the person as an accountable person comes into force
27 at the later of the following times:

- 28 (a) the FAR start time for the body corporate;
29 (b) when the Regulator registers the person.

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
Other sectors **Part 3**

1 **Division 2—Deferred remuneration obligations**

2 **23 Deferral of remuneration under FAR**

3 *When this item applies*

- 4 (1) This item applies in relation to a person who is an accountable person
5 under section 9 of the FAR Act of:
6 (a) an accountable entity under subsection 8(3) of the FAR Act;
7 or
8 (b) a significant related entity of such an accountable entity.

9 *Deferred remuneration obligations apply when entity becomes an*
10 *accountable entity*

- 11 (2) Part 5 of Chapter 2 of the FAR Act applies in relation to the variable
12 remuneration of the accountable person only if the day referred to in
13 paragraph 26(2)(a) of the FAR Act in relation to the remuneration
14 occurs after the FAR start time for the accountable entity referred to in
15 paragraph (1)(a) or (b).

16 **Division 3—Insurance**

17 **24 Revocation of authorisation for non-compliance with FAR**

18 The amendment of section 15 of the *Insurance Act 1973* made by Part 1
19 of Schedule 1 applies in relation to a body corporate's authorisation
20 under section 12 of that Act whether the authorisation was granted
21 before or after the FAR start time for the body corporate.

22 **Division 4—Life insurance**

23 **25 Application for registration made but not decided before**
24 **commencement time**

25 *When this item applies*

- 26 (1) This item applies in relation to a body corporate if:
27 (a) before the FAR start time, the body corporate made an
28 application for registration as a life company under
29 section 20 of the *Life Insurance Act 1995*; and

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 3 Other sectors

1 (b) as at the FAR start time, APRA has not decided the
2 application;

3 *Life Insurance Act continues to apply*

4 (2) Despite the amendments to section 21 of the *Life Insurance Act 1995*
5 made by Part 1 of Schedule 1, the *Life Insurance Act 1995* as in force
6 immediately before the FAR start time, continues to apply in relation to
7 that application.

8 **26 Revocation of registration for non-compliance with FAR**

9 The amendment of section 26 of the *Life Insurance Act 1995* made by
10 Part 1 of Schedule 1 applies in relation to a body corporate's
11 registration under section 21 of that Act whether the registration was
12 made before or after the FAR start time for the body corporate.

13 **Division 5—Private health insurance**

14 **27 Cancellation of registration for non-compliance with FAR**

15 The amendment of section 21 of the *Private Health Insurance*
16 *(Prudential Supervision) Act 2015* made by Part 1 of Schedule 1 applies
17 in relation to a body corporate's registration under section 15 of that
18 Act whether the registration was made before or after the FAR start
19 time for the body corporate.

20 **Division 6—Superannuation**

21 **28 Cancellation of RSE licence for non-compliance with FAR**

22 The amendment of the definition of *RSE licensee law* in
23 subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*
24 made by Part 1 of Schedule 1 applies in relation to a body corporate's
25 RSE licence under section 29D of that Act whether the RSE licence was
26 granted before or after the FAR start time for the body corporate.

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
APRA and ASIC **Part 4**

1 **Part 4—APRA and ASIC**

2 **Division 1—Transition from the BEAR**

3 **29 Doing things under repealed provisions**

4 (1) The amendments of the *Australian Prudential Regulation Authority Act*
5 *1998* and the *Banking Act 1959* made by Part 2 of Schedule 1 are
6 disregarded for the purpose of APRA exercising any right or power,
7 performing any obligation or duty or doing any other thing (including
8 under a provision that is itself repealed or amended):

9 (a) in relation to variable remuneration of a person to which the
10 old Banking Act applies under item 10; or

11 (b) in relation to any other matter in relation to which an item of
12 this Schedule requires or permits APRA to do something
13 under the old Banking Act.

14 *Secrecy*

15 (2) In addition to subitem (1), despite the amendments of section 56 of the
16 *Australian Prudential Regulation Authority Act 1998* made by Part 2 of
17 Schedule 1, that Act as in force immediately before the banking start
18 time, continues to apply in relation to:

19 (a) information disclosed or obtained before or after the
20 commencement of that Part and relating to the affairs of a
21 person in relation to whom information is, or was, required to
22 be given under Part IIAA of the *Banking Act 1959* (including
23 that Part as it continues to apply under an item of this
24 Schedule); and

25 (b) a document given or produced before or after the
26 commencement of that Part and containing information
27 relating to the affairs of a person in relation to whom
28 information is, or was, required to be given under Part IIAA
29 of the *Banking Act 1959* (including that Part as it continues to
30 apply under an item of this Schedule).

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions
Part 4 APRA and ASIC

1 **30 Agreement about exercise of powers**

2 Section 35 of the FAR Act does not apply in relation to APRA
3 performing a function, or exercising a power, that an item of this
4 Schedule requires or permits APRA to perform or exercise.

5 **Division 2—Application of the FAR**

6 **31 Secrecy**

7 The amendments of sections 3 and 56 of the *Australian Prudential*
8 *Regulation Authority Act 1998* made by Part 1 of Schedule 1 apply in
9 relation to:

- 10 (a) any disclosure of information after the commencement of
11 that Part, whether the information was disclosed or obtained
12 under, or for the purposes of, a prudential regulation
13 framework law before or after that commencement; and
14 (b) any production of a document after the commencement of
15 that Part, whether the document was given or produced
16 under, or for the purposes of, a prudential regulation
17 framework law before or after that commencement.

18 **32 Information to be included in APRA's annual report**

19 The amendment of section 59 of the *Australian Prudential Regulation*
20 *Authority Act 1998* made by Part 1 of Schedule 1 applies to reports on
21 APRA's investigations during the financial year ending on 30 June
22 2023, and later financial years.

23 **33 Sharing information and documents between APRA and**
24 **ASIC**

- 25 (1) Section 36 of the FAR Act is taken to apply in relation to information
26 disclosed or obtained to APRA or ASIC, or a document that is given or
27 produced to APRA or ASIC, under or for the purposes of:
28 (a) the BEAR; or
29 (b) this Schedule.
30 (2) Section 36 of the FAR Act (including by the operation of subitem (1))
31 applies in relation to information disclosed or obtained, or a document

EXPOSURE DRAFT

Application, saving and transitional provisions **Schedule 2**
APRA and ASIC **Part 4**

1 that is given or produced, whether before or after the FAR Act
2 commences.

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 2 Application, saving and transitional provisions

Part 5 Transitional rules

1 **Part 5—Transitional rules**

2 **34 Transitional rules**

- 3 (1) ASIC and APRA may jointly, by legislative instrument, make rules
4 prescribing matters of a transitional nature (including prescribing any
5 saving or application provisions) relating to:
6 (a) the amendments or repeals made by this Act; or
7 (b) the enactment of this Act or the FAR Act.
- 8 (2) To avoid doubt, the rules may not do the following:
9 (a) create an offence or civil penalty;
10 (b) provide powers of:
11 (i) arrest or detention; or
12 (ii) entry, search or seizure;
13 (c) impose a tax;
14 (d) set an amount to be appropriated from the Consolidated
15 Revenue Fund under an appropriation in this Act;
16 (e) directly amend the text of this Act or the FAR Act.
- 17 (3) This Act (other than subitem (2)) does not limit the rules that may be
18 made.
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