

EXPLANATORY STATEMENT

Financial Accountability Regime Act 2022

Financial Accountability Regime Minister Rules 2022

Section 104(1) of the *Financial Accountability Regime Act 2022* (the Act) provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 10(2) of the Act provides that an individual is an accountable person if the person holds a position in, or relating to an accountable entity, and because of that position has a responsibility that is prescribed by the Minister rules. Section 10(4)(a) of the Act provides that the Minister rules may prescribe such responsibilities.

Section 10(3) of the Act provides that an individual is an accountable person if the person holds a position in an accountable entity that is prescribed by the Minister rules. Section 10(4)(b) of the Act provides that the Minister rules may prescribe such positions.

Section 31(3) of the Act provides that the Minister rules may set out how to determine when an accountable entity meets the enhanced notification threshold.

Section 54(7) of the Act describes when a statement made in an examination is prima facie evidence, namely when it is signed by the person or is authenticated in a manner specified in the Minister rules.

On 4 February 2019, the Financial Services Royal Commission released its Final Report on Misconduct in the Banking, Superannuation and Financial Services Industry. The Final Report included recommendations to extend the Banking Executive Accountability Regime to other Australian Prudential Regulation Authority (APRA) regulated industries.

The Act implements the recommendations of the Financial Services Royal Commission by establishing the Financial Accountability Regime, which introduces a new accountability regime for institutions and their senior executives in the banking, insurance, and superannuation sectors. The regime will be jointly regulated by APRA and the Australian Securities Investments Commission (ASIC).

The Act sets obligations for institutions ('accountable entities', who fall under section 9 of the Act) and their senior executives ('accountable persons', who fall under section 10 of the Act or the Minister rules) in regulated sectors to foster a culture of accountability and transparency. Obligations of accountable entities include notification of key business information to APRA or ASIC (the 'Regulator' under section 8 of the Act). Accountable entities with assets above a certain threshold have enhanced notification obligations to give the Regulator more detailed information about the entity's personnel and structure.

The *Financial Accountability Regime Minister Rules 2022* (the Rules) support the establishment of the Financial Accountability Regime by:

- prescribing responsibilities and positions which cause an individual to be an accountable person of an accountable entity, and therefore subject to the regime;
- prescribing when an accountable entity meets the enhanced notification threshold based on total assets reported to APRA; and
- prescribing the manner in which a written record of an examination of a person can be authenticated and is admissible as prima facie evidence of the statements it records.

Consultation on exposure draft legislation establishing the Financial Accountability Regime was undertaken in July to August 2021 and September 2021, including provisions enabling Minister rules.

Details of the Rules are set out in Attachment A.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules commenced on the later of the day after they were registered on the Federal Register of Legislation, and the day the Act commenced.

Details of the *Financial Accountability Regime Minister Rules 2022*

Part 1 – Preliminary

Part 1 of the *Financial Accountability Regime Minister Rules 2022* (the Rules) provides fundamental information on the Rules, including the name, commencement date, authority by which the Rules are made, and relevant definitions.

Section 1 – Name

This section provides that the name of the instrument is the *Financial Accountability Regime Minister Rules 2022*.

Section 2 – Commencement

This section provides that the Rules commence on the later of the day after the instrument is registered on the Federal Register of Legislation; and the day the *Financial Accountability Regime Act 2022* (the Act) commences.

However, the Rules do not commence at all if the Act does not commence.

Section 3 – Authority

This section provides that the Rules are made under the *Financial Accountability Regime Act 2022*.

Section 4 – Definitions

This section sets out the definitions which are used in the Rules. The definitions of *final report*, *Reporting Standard*, *total asset size*, and *total assets value* contain cross-references to relevant sections in Part 3 of the Rules.

An explanatory note is included to remind readers that a number of expressions used in the Rules are defined in the Act, including but not limited to:

- accountable entity;
- ADI (short for authorised deposit taking institution, such as a bank);
- authorised NOHC (NOHC is short for non-operating holding company); and
- RSE licensee (RSE is short for registrable superannuation entity).

Part 2 – Accountable persons—prescribed responsibilities and positions

Part 2 prescribes responsibilities and positions which cause a person to be an accountable person of an accountable entity, with obligations under the Financial Accountability Regime.

A person with a senior executive role or responsibility for management of specified activities or functions of the accountable entity, rather than someone merely carrying out those activities or functions, is the intended focus of the Rules.

Words describing the prescribed responsibilities such as ‘activities’ and ‘functions’ have their ordinary meaning and are intended to cover all core matters of business such as operations, arrangements, and programs.

There are a number of prescribed responsibilities and positions which apply across all regulated sectors (sections 5 and 6), as well as additional responsibilities prescribed for each sector or particular types of accountable entity (sections 7 to 11).

One person may have multiple prescribed responsibilities and positions. Similarly, one prescribed responsibility or position may capture multiple individuals, such as the position of member of the board of directors, or in a job-share situation where each person is responsible for one part of the overall responsibility. Where two or more people have the same responsibility or position, each person will be held accountable to the extent of their involvement in and responsibility for any contravention, as if the position or responsibility were solely theirs (section 21(2) of the Act).

Section 5 – Prescribed responsibilities for accountable entities other than foreign accountable entities and NOHCs—all sectors

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity in the banking, insurance, and superannuation sectors, for the purposes of section 10(2)(b) of the Act.

This section only applies in relation to an accountable entity that is an ADI, general insurer, life company, private health insurer or an RSE licensee. It does not apply in relation to accountable entities that are foreign accountable entities or NOHCs; refer instead to sections 9 to 11.

Section 5(2) prescribes 13 responsibilities that cover senior executives with responsibility for management (and in some cases control) of specified activities and functions. These prescribed responsibilities are modelled on specific responsibilities listed in section 37BA(3) of the *Banking Act 1959*, to support a smooth transition from the Banking Executive Accountability Regime to the Financial Accountability Regime. The nature of a person’s responsibility determines whether a person is an accountable person under this section. A person’s position or title is not relevant to determining whether a person has a prescribed responsibility.

Senior executive responsibility for management or control of the business activities of the accountable entity, or of its significant related entity, are prescribed by sections 5(2)(a)(i) and (g). A ‘significant related entity’ is defined in sections 8 and 12 of the Act, and includes a subsidiary of the accountable entity. The reference to ‘business activities’ is intended to capture persons such as the Chief Executive Officer (or equivalent) of an accountable entity. Such persons may have overall responsibility for business activities as well as specific responsibilities such as allocating responsibility for all parts or aspects of the accountable entity and of its significant related entities to accountable persons, and reporting to the board of directors. These prescribed

responsibilities broadly align with the responsibilities specified by section 37BA(3)(b) of the *Banking Act 1959*.

Sections 5(2)(a)(ii) and (iii) prescribe senior executive responsibility for management or control of the accountable entity's financial resources or operations. This is intended to capture, for example, the Chief Financial Officer and Chief Operations Officer.

Other prescribed responsibilities relate to management of important arrangements and functions of the accountable entity, specifically:

- senior executive responsibility for management of the accountable entity's risk control and management arrangements, information management, client or member remediation programs (including hardship arrangements), or breach reporting; and
- senior executive responsibility for management of the accountable entity's functions of internal audit, compliance, human resources, anti-money laundering, or dispute resolution.

Examples of persons that may be captured by these other prescribed responsibilities include an accountable entity's Chief Risk Officer, Chief Information or Technology Officer, and the Head of Human Resources.

Section 5(3) clarifies that the prescribed responsibilities are intended to capture senior executive responsibility for management of an activity or function, distinct from a (typically lower level) responsibility for carrying out or executing the activity or function.

Section 6 – Prescribed positions for accountable entities other than foreign accountable entities and NOHCs—all sectors

This section prescribes positions that cause a person to be an accountable person of an accountable entity in the banking, insurance, and superannuation sectors, for the purposes of section 10(3) of the Act.

This section only applies in relation to an accountable entity that is an ADI, general insurer, life company, private health insurer or an RSE licensee. It does not apply in relation to accountable entities that are foreign accountable entities or NOHCs; refer instead to section 11, which prescribes an equivalent position for board members of NOHCs.

Section 6(2) prescribes the position of member of the accountable entity's board of directors (or equivalent). This means each member of the accountable entity's board of directors would be an accountable person under the Act. Such a person is likely to have oversight of the accountable entity's activities and functions and is therefore appropriate to be an accountable person.

Section 7 – Prescribed responsibilities for accountable entities other than foreign entities and NOHCs–insurance

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity that is a general insurer, life company, or private health insurer (and is not foreign accountable entity or NOHC), for the purpose of section 10(2)(b) of the Act. These responsibilities apply in addition to the responsibilities prescribed by section 5 across all regulated sectors, including insurance.

The two prescribed responsibilities are senior executive responsibility for management of the accountable entity's:

- actuarial function; or
- claims handling function.

This section is only intended to capture persons with senior executive responsibility for management of an activity or function. A person does not have that level of responsibility simply by carrying out the relevant activity or function. 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 claims handling function would be captured.

Section 8 – Prescribed responsibilities for accountable entities that are RSE licensees

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity that is a RSE licensee for the purposes of section 10(2)(b) of the Act.

The four prescribed responsibilities are senior executive responsibility for management of the accountable entity's:

- member administration operations;
- investment function;
- financial advice service; or
- insurance offerings.

This section is only intended to capture persons with senior executive responsibility for management of an activity or function. A person does not have that level of responsibility simply by carrying out the relevant activity or function.

Section 9 – Prescribed responsibilities for accountable entities that are foreign accountable entities

This section prescribes responsibilities which cause a person to be an accountable person of an accountable entity that is a foreign accountable entity for the purposes of section 10(2)(b) of the Act. A 'foreign accountable entity' means a foreign ADI, a foreign general insurer, or a registered, eligible foreign life insurance company as

defined by section 8 of the Act (and section 4 of the Rules, which also defines the specific foreign entities).

The four prescribed responsibilities are:

- senior executive responsibility for the conduct of the activities of a branch of the foreign accountable entity that is operating in Australia, for example the Head of Branch or Country, or similar;
- responsibility for overseeing the operation of the Australian branch of a foreign ADI or foreign general insurer, as a senior officer outside Australia with delegated authority from the board of directors (or equivalent). For example, a director or senior executive who is the accountable entity's senior officer outside Australia, consistent with APRA's *Prudential Standard CPS 510 Governance*;
- responsibility for oversight of an eligible foreign life insurance company entity as a member of its Compliance Committee. A person with such responsibility has powers of management over the Australian branch of the company to ensure its compliance with prudential standards and the *Life Insurance Act 1995* (refer section 16ZF(1) of that Act); and
- responsibility as a foreign general insurer's *agent in Australia*, consistent with requirements for such an agent in section 118 of the *Insurance Act 1973* and APRA's prudential standards. Typically, an agent in Australia has a senior manager or director role.

Section 10 – Prescribed responsibilities for accountable entities that are NOHCs

This section prescribes responsibilities that cause a person to be an accountable person of an accountable entity that is an authorised NOHC of an ADI, an authorised NOHC of a general insurer, or a registered NOHC of a life company for the purposes of section 10(2)(b) of the Act.

There are five prescribed responsibilities:

- senior executive responsibility for management or control of the business activities of the accountable entity;
- senior executive responsibility for management or control of the accountable entity's financial resources;
- senior executive responsibility for management of the accountable entity's overall risk controls or risk management arrangements;
- senior executive responsibility for management of the accountable entity's internal audit function; and
- senior executive responsibility for management or control of the business activities of a significant related entity of the accountable entity.

These prescribed responsibilities are intended to cover persons such as the accountable entity's Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, and Head of Internal Audit.

This section is only intended to capture persons with senior executive responsibility for management of an activity or function. A person does not have that level of responsibility simply by carrying out the relevant activity or function.

Section 11 – Prescribed positions for accountable entities that are NOHCs

This section prescribes positions that cause a person to be an accountable person of an accountable entity that is an authorised or registered NOHC in the banking or insurance sectors, for the purpose of section 10(3) of the Act. Specifically, this section applies to an authorised NOHC of an ADI, authorised NOHC of a general insurer, or registered NOHC of a life company.

Section 11(2) prescribes the position of a member of the accountable entity's board of directors (or equivalent). This means each member of an authorised or registered NOHC's board of directors would be an accountable person under the Act. Such a person is likely to have oversight of the accountable entity's activities and functions and is therefore appropriate to be an accountable person.

Section 12 – Relationship between provisions

This section provides that sections 5 to 11 (inclusive) do not limit each other. For instance, an accountable entity that is a general insurer may have accountable persons with responsibilities prescribed by both section 5 and section 7.

Part 3 – Accountable entities—enhanced notification threshold

All accountable entities have notification obligations under section 31 of the Act to provide core business information to the Regulator. A subset of accountable entities which meet the enhanced notification threshold set by these Rules have additional disclosure obligations to the Regulator.

Part 3 explains how to determine the enhanced notification threshold for each type of accountable entity regulated by the Financial Accountability Regime.

The methodology is based on total assets reported to APRA in earlier financial years. This approach is broadly consistent with the methodology used to determine the size of an ADI under the Banking Executive Accountability Regime in the *Banking Act 1959* and *Banking Executive Accountability Regime (Size of an Authorised Deposit-taking Institution) Determination 2021*. Consistency of approach across relevant financial sectors is intended to support understanding of, and compliance with, the Financial Accountability Regime.

The Rules have minor differences to the approach under the Banking Executive Accountability Regime, as follows:

- the base thresholds are not indexed, as requiring an entity to calculate new thresholds each year may impose a regulatory burden. Based on the history of

the Banking Executive Accountability Regime, it is not expected that the enhanced notification threshold would move significantly if the indexation amount was required to be rounded down to the nearest multiple of \$1 billion; and

- ‘total resident assets value’ is referred to as ‘total assets value’. This is to ensure the term is suitable for all accountable entities regulated under the Rules, beyond ADIs.

Division 1 – Accountable entities that are ADIs

Section 13 – Determining when accountable entity meets enhanced notification threshold–ADIs

This section sets out how to determine the enhanced notification threshold for ADIs, for the purposes of section 31(3) of the Act.

An ADI that is an accountable entity meets the enhanced notification threshold at a time during a financial year if its total asset size equals or exceeds \$10 billion at the start of the financial year.

A ‘financial year’ in relation to an accountable entity means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

An ADI’s total asset size is determined by reference to the total assets value in a final report, or final reports, an ADI has submitted to APRA (see sections 15 and 16).

Section 14 – Total asset size–ADIs

This section sets out the methodology to determine the ***total asset size*** of an accountable entity that is an ADI. The total asset size is determined by reference to the total assets value reported in a financial year, or the average total assets value across several final reports the ADI has submitted to APRA.

Where an accountable entity that is an ADI has submitted:

- a final report for only one financial year, its total asset size is the total assets value reported in that final report;
- final reports for only two financial years, its total asset size is the average of the total assets value reported in those two final reports; or
- final reports for three or more financial years, its total asset size is the average of the total assets value reported in each of the three most recent financial years.

The total asset size of an ADI is calculated on the first day of each financial year for the ADI. If the total asset size of the ADI equals or is greater than the enhanced

notification threshold at the start of the financial year, the ADI is subject to enhanced notification obligations for the duration of that financial year. Due to the fact that a final report is lodged in the year following the year to which the report relates, there is a lag between the financial year that a final report covers, and the financial year to which a designation of asset size based on that final report, and any previous final reports, applies.

The methodology in this section takes into account the fact that an ADI can have its own financial year, and this could differ from a standard financial year. Financial year is defined in section 8 of the Act (and section 323D of the *Corporations Act 2010*). A financial year is specific to an ADI and can include a financial year that begins before the commencement of the Rules in accordance with section 36. In most circumstances a financial year for an ADI will be a period of 12 consecutive months, with its first financial year commencing on the day the ADI is registered or incorporated. Being able to use its own financial year minimises the regulatory burden on an ADI and ties in with its existing reporting obligations to APRA.

Some ADIs have submitted, or currently submit, reports to APRA under Reporting Standard ARS 720.0 and Reporting Standard ARS 320.0, or Reporting Standard ARS 720.0 and Reporting Standard ARS 323.0, in the same financial year.

- If an ADI has submitted final reports for a financial year ending on or before 30 June 2019 under both Reporting Standard ARS 720.0 and Reporting Standard ARS 320.0, the amount reported under Reporting Standard ARS 320.0 is used for its total assets value under these Rules. While Reporting Standard ARS 320.0 is being phased out, it applies to reference periods up to and including 30 June 2019 so may be relevant to an entity seeking to apply the 3-year average methodology to determine its total asset size.
- If an ADI has submitted final reports for a financial year ending after 30 June 2019 under both Reporting Standard ARS 720.0 and Reporting Standard ARS 323.0, the amount reported under Reporting Standard ARS 720.0 is used for its total assets value under these Rules.
- For ADIs that only report under Reporting Standard ARS 323.0 after 30 June 2019 (and do not report under Reporting Standard ARS 720), the amount reported under Reporting Standard ARS 323.0 is used for its total assets value under these Rules.

Examples of how to calculate total asset size are set out below.

Example 1 – two-year average

It is currently financial year 2022–2023 for an ADI.

This ADI has submitted a final report for financial year 2020–21, and a final report for financial year 2019–20.

In the final report for financial year 2020–21, the total assets value reported is \$12 billion, while in the final report for financial year 2019–20, the total assets value reported is \$9 billion.

This ADIs total asset size for financial year 2022-23 is \$10.5 billion, the average of these two amounts:

$$(\$12 \text{ billion} + \$9 \text{ billion}) / 2 = \$10.5 \text{ billion}$$

As this ADI has a total asset size of \$10.5 billion, it meets the enhanced notification threshold for the 2022-23 financial year. Once this ADI has submitted a final report for financial year 2021–22, it would be able to recalculate its total asset size by taking the average of the three reported amounts for financial years 2021–22, 2020–21 and 2019–20. This three-year average amount will determine the size of this ADI for financial year 2023–24.

Example 2 – new ADI

It is currently financial year 2023–2024 for an ADI.

This ADI has not yet submitted any final reports because it is a newly formed ADI. It is not taken to meet the enhanced notification threshold for the duration of financial year 2023–2024 as there is no final report from which to determine its total asset size.

Section 15 – Final report–ADIs

This section explains that a **final report** in relation to an accountable entity that is an ADI is a report of the ADI’s financial position in a financial year of the entity that is submitted to APRA under Reporting Standard ARS 320.0 Statement of Financial Position (Domestic Books), Reporting Standard ARS 323.0 Statement of Financial Position (Licensed ADI), or Reporting Standard ARS 720.0 ABS/RBA Statement of Financial Position.

Section 16 – Total assets value–ADIs

This section provides the methodology for determining the **total assets value** of an ADI. Total assets value is the total assets amount in a final report submitted to APRA in a financial year, in accordance with particular Reporting Standards. Total assets value represents total assets for one financial year. It is used to calculate total asset size, which is generally the average total assets value across several financial years.

If the report is under:

- Reporting Standard ARS 320.0, the total assets value is the amount reported in Section A, item 10 Total assets in Form ARF 320.0;
- Reporting Standard ARS 323.0, the total assets value is the amount reported in Section A, item 11 Total assets in Form ARF 323.0;
- Reporting Standard ARS 720.0, using Form ARF 720.0A, the total assets value is worked out by taking the amount reported in Section A, item 13 Total assets including intra-group assets, and then subtracting assets due from non-residents (items 11.1 and 12.1); and

- Reporting Standard ARS 720.0, using Form ARF 720.0B, the total assets value is the amount reported in Section A, item 13 Total assets including intra-group assets of that form.

ADIs are required to use final reports submitted under Reporting Standard ARS 720.0 for financial years ending after 30 June 2019 for the purpose of the calculations. However, for ADIs that are not required to report under Reporting Standard ARS 720.0, the total assets value is found in item 11 in Section A: Assets in Form ARF 323.0.

Final reports submitted under Reporting Standard ARS 320.0 continue to be used to calculate the total assets value for financial years ending on or before 30 June 2019. This period may be relevant to entities using the 3-year average methodology in section 14 to determine total asset size. The total assets value under Reporting Standard ARS 320.0 is found in item 10 in Section A: Assets in ARF Form 320.0. Reporting Standard ARS 320.0 will not be relevant in the future once the multi-year calculations no longer apply historical data under Reporting Standard ARS 320.0 (see table below).

The following table summarises how and when each type of form should be used:

Form	Total Assets Value	For reference periods ending
ARF 320.0	Section A: Assets: Item 10 Total assets	Before and including 30 June 2019.
ARF 323.0	Section A: Assets: Item 11 Total assets	Before and including 30 June 2019. After 30 June 2019, only if not submitting reports under Reporting Standard ARS 720.0.
ARF 720.0A	Section A: Assets: Item 13 Total assets including intragroup assets, less: <ul style="list-style-type: none"> • item 11.1 Total assets excluding intra-group assets <i>of which</i>: Due from non-residents; and • item 12.1 : Total intra-group assets <i>of which</i>: Due from non-residents 	After 30 June 2019.
ARF 720.0B	Section A: Assets: item 13 Total assets including intragroup assets	After 30 June 2019.

Division 2 – Accountable entities that are general insurers

Section 17 – Determining when accountable entity meets enhanced notification threshold–general insurers

This section sets out the enhanced notification threshold for accountable entities that are general insurers, for the purposes of section 31(3) of the Act.

A general insurer meets the enhanced notification threshold at a time during a financial year if its total asset size equals or exceeds \$2 billion at the start of the financial year of the entity.

A ‘financial year’ in relation to an accountable entity means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

A general insurer’s total asset size is determined by reference to the total assets value in a final report, or final reports, submitted to APRA (see sections 19 and 20).

Section 18 – Total asset size–general insurers

This section sets out the methodology to determine the ***total asset size*** of an accountable entity that is a general insurer. Total asset size is determined by the total assets value reported in a financial year, or the average total assets value across several final reports the accountable entity has submitted to APRA.

Where a general insurer has submitted:

- a final report for only one financial year, its total asset size is the total assets value reported in that final report;
- final reports for only two financial years, its total asset size is the average of the total assets value reported in those two final reports; or
- final reports for three or more financial years, its total asset size is the average of the total assets value reported in each of the three most recent financial years.

For examples of how to apply this methodology please refer above to the equivalent provision and explanation for ADIs under section 14.

Section 19 – Final report–general insurers

This section provides that a ***final report*** in relation to an accountable entity that is a general insurer means a report in relation to the insurer’s final reporting period in a financial year of the entity that is submitted to APRA under Reporting Standard GRS 300.0.

Section 20 – Total assets value–general insurers

This section provides that **total assets value** in a general insurer’s final report is the amount reported in item 13 Total assets in Form GRF 300.0 in Reporting Standard GRS 300.0.

Division 3 – Accountable entities that are life companies

Section 21 – Determining when accountable entity meets enhanced notification threshold–life companies

This section sets the enhanced notification threshold for accountable entities that are life companies, for the purposes of section 31(3) of the Act.

A life company meets the enhanced notification threshold at a time during a financial year if its total asset size equals or exceeds \$4 billion at the start of the financial year of the entity.

A ‘financial year’ in relation to an accountable entity means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

A life company’s total asset size is determined by reference to the total assets value in a final report, or final reports, submitted to APRA (see sections 23 and 24).

Section 22 – Total asset size–life companies

This section sets out the methodology to determine the **total asset size** of an accountable entity that is a life company. Total asset size is determined by the total assets value reported in a financial year, or the average total assets value across several final reports the accountable entity has submitted to APRA.

Where a life company has submitted:

- a final report for only one financial year, its total asset size is the total assets value reported in that final report;
- final reports for only two financial years, its total asset size is the average of the total assets value reported in those two final reports; or
- final reports for three or more financial years, its total asset size is the average of the total assets value reported in each of the three most recent financial years.

For examples of how to apply this methodology please refer above to the equivalent provision and explanation for ADIs, under section 14.

Section 23 – Final report–life companies

This section provides that a **final report** in relation to an accountable entity that is a life company means a report in relation to the life company’s final reporting period in a financial year of the entity that is submitted to APRA under Reporting Standard LRS 300.0.

Section 24 – Total assets value–life companies

This section provides that the **total assets value** in a life company’s final report is the amount reported in item 12 Total assets in Form LRF 300.2 in Reporting Standard LRS 300.0.

Division 4 – Accountable entities that are private health insurers

Section 25 – Determining when accountable entity meets enhanced notification threshold–private health insurers

This section sets the enhanced notification threshold for accountable entities that are private health insurers, for the purposes of section 31(3) of the Act.

A private health insurer meets the enhanced notification threshold at a time during a financial year if its total asset size equals or exceeds \$2 billion at the start of the financial year of the entity.

A ‘financial year’ in relation to an accountable entity means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

A private health insurer’s total asset size is determined by reference to the total assets value in a final report, or final reports, submitted to APRA (see sections 27 and 28).

Section 26 – Total asset size–private health insurers

This section sets out the methodology to determine the **total asset size** of an accountable entity that is a private health insurer. Total asset size is determined by the total assets value reported in a financial year, or the average total assets value across several final reports the accountable entity has submitted to APRA.

Where a private health insurer has submitted:

- a final report for only one financial year, its total asset size is the total assets value reported in that final report;
- final reports for only two financial years, its total asset size is the average of the total assets value reported in those two final reports; or

- final reports for three or more financial years, its total asset size is the average of the total assets value reported in each of the three most recent financial years.

For examples of how to apply this methodology please refer above to the equivalent provision and explanation for ADIs, under section 14.

Section 27 – Final report–private health insurers

This section provides that a ***final report*** in relation to an accountable entity that is a private health insurer means a report in relation to the insurer’s final reporting period in a financial year of the entity that is submitted to APRA under Reporting Standard HRS 602.0.

Section 28 – Total assets value–private health insurers

This section provides the methodology to calculate the ***total assets value*** of an accountable entity that is a private health insurer, based on a final report.

Where a private health insurer has submitted Form HRF 602.6 under Reporting Standard HRS 602.0, the amounts reported for Section 1, Section 2, and Section 3 of that form should be added together. That total amount is the total assets value.

Division 5 – Accountable entities that are RSE licensees

Section 29 – Determining when accountable entity meets enhanced notification threshold–RSE licensees

This section sets the enhanced notification threshold for accountable entities that are RSE licensees, for the purposes of section 31(3) of the Act.

An RSE licensee meets the enhanced notification threshold at a time during a financial year if its total asset size equals or exceeds \$10 billion at the start of the financial year of the entity.

A ‘financial year’ in relation to an accountable entity, means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). Being able to use its own financial year minimises the regulatory burden on the entity and ties in with its existing reporting obligations to APRA.

An RSE licensee’s total asset size is determined by reference to the total assets value in a final report, or final reports, submitted to APRA (see sections 30 and 31).

Section 30 – Total asset size–RSE licensees

This section sets out the methodology to determine the ***total asset size*** of an accountable entity that is an RSE licensee. Total asset size is determined by the total assets value reported in a financial year, or the average total assets value across several final reports the accountable entity has submitted to APRA.

Where an RSE licensee has submitted:

- a final report for only one financial year, its total asset size is the total assets value reported in that final report;
- final reports for only two financial years, its total asset size is the average of the total assets value reported in those two final reports; or
- final reports for three or more financial years, its total asset size is the average of the total assets value reported in each of the three most recent financial years.

For examples of how to apply this methodology please refer above to the equivalent provision and explanation for ADIs, under section 14.

Section 31 – Final report–RSE licensees

This section provides that a ***final report*** in relation to an accountable entity that is an RSE licensee means a report in relation to the RSE licensee’s final reporting period in a financial year of the entity that is submitted to APRA under Reporting Standard SRS 320.0.

Section 32 – Total assets value–RSE licensees

This section provides the methodology to determine the ***total assets value*** of an accountable entity that is an RSE licensee.

The total assets value is the amount reported in item 11 Total assets in Form SRF 320.0 in Reporting Standard SRS 320.0.

Where the RSE licensee is trustee of more than one RSE, defined benefit RSE, PST (Pooled Superannuation Trust) or ERF (Eligible Rollover Fund), the RSE must separately provide information required by the form for each of those entities within its business operations. In this case, to determine its total assets value the RSE licensee should identify the Total assets amount reported for each entity of which the accountable entity is an RSE licensee, and add those amounts together.

Division 6 – Accountable entities that are in the same corporate group

Section 33 – Related accountable entity also taken to meet enhanced notification threshold

This section explains that where one accountable entity (the ***first accountable entity***) meets the enhanced notification threshold in a financial year of the entity, and it is related to another accountable entity (the ***second accountable entity***), the second accountable entity also meets the enhanced notification threshold at that time.

In accordance with section 8 of the Act, the question of whether 2 entities are related to each other is determined in the same way as the *Corporations Act 2001*.

Division 7 – Miscellaneous

Section 34 – Reporting Standards

This section provides that where a provision of the Rules refers to a particular kind of Reporting Standard with a specific identifier in relation to an accountable entity's final reporting period in a financial year, that provision is known as a ***referring provision***. An ***identifier*** means a combination of letters and numbers (with or without punctuation marks, and whether or not followed by a title). The referring provision is taken to refer to the version of the Reporting Standard with that identifier that applied to that reporting period because of a determination made under section 13 of the *Financial Sector (Collection of Data) Act 2001*.

However, if no version of that Reporting Standard applies to the final reporting period in a financial year because it has been replaced by a different Reporting Standard (with a different identifier and included in a different determination), then a reference to the Reporting Standard that has been replaced is taken to be a reference to the new Reporting Standard. A reference to any material in the Reporting Standard that has been replaced, for example, the reporting form, is taken to be a reference to the corresponding material in the applicable version of the new Reporting Standard.

The intention of this section is to 'future proof' the Rules so that if a new Reporting Standard is determined under the *Financial Sector (Collection of Data) Act 2001*, and accountable entities are required to report in accordance with that new Reporting Standard, the referring provisions in the Rules operate to refer to the new Reporting Standard.

Part 4 – Miscellaneous

Section 35 – Evidentiary use of certain material—manner of authentication of examination record

This section prescribes the manner in which a written record of an examination of a person can be authenticated for the purpose of subsection 54(7) of the Act. If a written record is authenticated in the prescribed manner, it is admissible as prima facie evidence of the statements it records.

A written record can be authenticated if all of the following circumstances are met:

- the written record is produced as soon as practicable after the conclusion of the examination;
- the written record is endorsed by a person (the ***endorser***) other than the person examined at the examination;
- the endorser was present throughout the examination; and reads and endorses the written record as soon as practicable after it is produced; and
- the endorsement is to the effect that the record is a true record of what was said in the examination and is signed and dated by the endorser.

This approach aligns with regulation 13.22 of the *Superannuation Industry (Supervision) Regulations 1994*, for consistency among regulated sectors.

Part 5 – Application and transitional provisions

Section 36 – Application provision–total asset size

This section clarifies how the enhanced notification thresholds in Part 3 apply in relation to the commencement of these Rules.

In accordance with sections 13(2) for ADIs, 17(2) for general insurers, 21(2) for life companies, 25(2) for private health insurers, and 29(2) for RSE licensees, an accountable entity meets the enhanced notification threshold at a time during a financial year if its total asset size equals or exceeds a certain threshold at the start of the financial year.

This section clarifies that in working out the total asset size of an accountable entity, the start of the financial year may be before the Rules commence, or before the time when the entity starts being an accountable entity.

This clarification is most relevant during the first year that the Rules apply. This is because, for many accountable entities, the financial year will have started before the commencement of the Rules. It may also be relevant in future years, when an entity becomes an accountable entity after the start of the financial year.

A ‘financial year’ in relation to an accountable entity, means the individual entity’s own financial year, which could differ from the standard financial year (see section 8 of the Act and section 323D of the *Corporations Act 2001*). In most circumstances a financial year will be a period of 12 consecutive months, with its first financial year commencing on the day the entity is registered or incorporated. This first day may be 1 July, as for other entities, but could also be any other day or month.

To avoid doubt, an entity cannot be deemed to meet the enhanced notification threshold until after the Rules have commenced.

Example 1 – first year of application

An ADI’s financial year begins on 1 November 2022. Assuming the Act commenced on 1 December 2022, the ADI becomes an accountable entity 6 months later on 1 June 2023, in accordance with section 9(2)(a) of the Act. In determining whether the ADI has enhanced notification obligations for the financial year under section 13(2), its total asset size on 1 November 2022 is used, as this is the start of the financial year for the ADI. It is inconsequential that the financial year began before the Rules commenced, and before the ADI became an accountable entity. Assuming the ADI has a total asset size that is over \$10 billion on 1 November 2022, and a 12 month financial year, the ADI will be obliged to comply with the enhanced notification obligations from 1 June 2023 until the end of the ADI’s financial year on 31 October 2023. On 1 November 2023, the total asset size for the ADI is recalculated.

Example 2 – future years of application

A general insurer's financial year begins on 1 July 2023. Assuming the Act commenced on 1 December 2023, the insurer becomes an accountable entity 18 months later on 1 June 2024, consistent with section 9(4)(a) of the Act. In determining whether the insurer has enhanced notification obligations under section 17(2) of the Rules, its total asset size at the start of the financial year on 1 July 2023 is used, even though that financial year began before the general insurer became an accountable entity.