



7 October 2022

Australian Government
The Treasury

Email: FAR@treasury.gov.au

Financial Accountability Regime Minister Rules 2022

Brief

AIST supports the Minister Rules that support the Financial Accountability Regime.

About AIST

Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds. As the principal advocate and peak representative body for the \$1.7 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research. AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

Submission

AIST welcomes the opportunity to respond to the consultation on exposure draft Financial Accountability Regime (FAR) Minister Rules (the Rules).

The Rules will support the operation of the FAR, the establishing legislation of which was introduced to parliament in early September via the Financial Accountability Regime Bill 2022 (FAR Bill).

AIST had previously sought clarification of some areas of the prior legislation and while we note that the Bill tabled is not materially different to the version introduced under the former Government, the Explanatory Memorandum has been amended to include more substantive (but limited) detail within certain clauses. The clarification around what constitutes a Significant Related Entity in the superannuation industry, along with the detail of prescribed roles and responsibilities contained in the Rules are valuable updates that address some of our prior feedback.

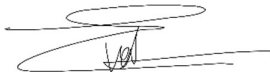
We note that paragraph 6(2) of the Rules clarifies that the position of member of the Board of directors is prescribed but it is still ambiguous as to whether this extends to shadow or de facto directors, observers and consultants. We presume that active involvement in Board functions is what prescribes accountability under the regime but this would benefit from further clarification.

We reiterate some of our prior comments on the Regime in general for consideration in future: Page | 2

- the threshold for 'material contravention' be made clear as it is neither defined nor linked to the Corporations Act;
- the interaction with current breach reporting obligations be made clear as there may be multiple different liability provisions for the same behaviour. Funds would benefit from further guidance in what, when and how to report breaches, ensuring that breach reporting for FAR should not duplicate existing breach reporting. There is also potential for overlap or duplication of existing reporting obligations if an 'accountable person' is involved in the investigation and resolution of a material (per FAR) reportable situation (per Corps Act);
- a facility be developed to enable accountable entities to check if potential accountable person candidates have been deregistered; and
- the scope of the secrecy provisions related to the direction powers be reconsidered in light of the APRA Capability Review which recommended that APRA depart from a 'closed door' approach.

For further information regarding our submission, please contact Kate Brown, Senior Manager, Advocacy & Research via email at kbrown@aist.asn.au.

Yours sincerely,



Eva Scheerlinck

Chief Executive Officer