Transitioning from the BEAR to the FAR

What does this mean for ADIs?

Overview

All Authorised Deposit-taking Institutions (ADIs) are already required to comply with the Banking Executive Accountability Regime (BEAR) governed by APRA. In response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the Financial Accountability Regime (FAR) is proposed to be an extension of the BEAR to all APRA-regulated entities, and will ultimately supersede the BEAR. Therefore, there are some additional requirements under the FAR that ADIs need to be aware of and comply with. A link to the FAR Proposal Paper issued by Treasury on 22 January 2020 can be found here.

Similar to the BEAR, the FAR will impose the following:

- accountability obligations;
- key personnel obligations;
- accountability map and accountability statement obligations;
- notification obligations; and
- deferred remuneration obligations.

Timing

Treasury sought submissions and facilitated industry roundtables on the FAR Proposal Paper in February 2020. However, in response to COVID-19, APRA announced that consultations on FAR and other regulatory agendas would be postponed until at least 30 September 2020. Further, the Treasurer announced a 6 month deferral on the Financial Services Royal Commission Implementation Roadmap which includes FAR.

Given the postponements, it is anticipated that the draft FAR legislation will be released as an Exposure Draft in early 2021 and presented at the Winter 2021 Parliamentary sitting. While the implementation date remains unknown, it is possible that the implementation date could be 1 January 2022 and ideally align with CPS 511. For more information on CPS 511, please see the following link.

From the BEAR…

"By effectively implementing the BEAR, ADIs will genuinely enhance their governance and risk management through much clearer understanding and agreement on individual accountabilities."

Wayne Byres, APRA chairman

…to the FAR

The FAR intends to improve risk culture and governance for both prudential and conduct purposes and will be jointly administered by APRA and ASIC.

Scope of the FAR

Entities subject to the FAR

Beyond all ADIs that are subject to the BEAR, the FAR will be extended to all other APRA regulated entities:

- all general and life insurance licensees;
- all private health insurance licensees;
- all RSE licensees; and
- licensed non-operating holding companies.

Classification of entities

Under the FAR regime, entities will be classified as *Core compliance entities* or *Enhanced compliance entities*.

The classification is based on the size and complexity of the entity, with total assets used as a metric to determine Enhanced Compliance:

- **ADIs and RSE*** - > $10bn
- **Life insurance** - > $4bn
- **General insurance and private health insurers** - > $2bn

** for RSE, it's the combined total assets of all RSEs under the trusteeship of a given RSE licensee.*

This will replace the small, medium and large classification of ADIs under the BEAR. ADIs will transition to the FAR and be classified as core or enhanced compliance entities depending on size and complexity. Classification under the FAR will drive additional regulatory obligations.

pwc

What does FAR mean for ADIs and how does it compare to the BEAR?

The FAR Proposal Paper released by Treasury adopts the similar provisions to the BEAR, although there are some differences to reflect as set out below:

Key area	Requirement under BEAR	Requirement under FAR
Executive **Registration** with APRA and ASIC	BEAR is governed only by **APRA** with all '**Accountable Persons**' (APs) registered with APRA. Under BEAR, APRA is not able to veto the appointment or reappointment of senior executives and directors.	FAR will be governed by both **APRA and ASIC**. All current **'Accountable Persons'**, which include certain senior executives and all Board members, **are required to be registered with APRA or ASIC**, and need to be advised prior to any future senior appointments. APRA will be able to veto the appointment or reappointment of senior executives and directors.
Obligations: Increased expectations	Under BEAR, Accountable Persons are obliged to: • Act with **honesty and integrity**, and with due **skill, care and diligence**. • Deal with APRA in an **open, constructive and co-operative** way. • Take **reasonable steps** to prevent matters arising that would **negatively impact the organisation's 'prudential standing'** or **'prudential reputation'**.	Under FAR, there are **heightened obligations** for **both the organisation and Accountable Persons**. In addition to the Accountable Person obligations under BEAR, Accountable Persons obligations also include: • Deal with ASIC in an **open, constructive and co-operative** way. • **Take reasonable steps** in conducting their responsibilities as an accountable person to ensure that the entity complies with **its licensing obligations**.
Accountability mapping	Under the BEAR, all ADIs, regardless of size and complexity, are required to provide an **accountability map** and **accountability statements** to APRA.	Under FAR only **enhanced compliance entities** will be required to provide an accountability map and accountability statements to APRA and ASIC, showing which Accountable Person is responsible for the various activities of the entity's business. Although **core compliance entities** will not be required to submit accountability statements and maps it is expected that they undertake a process to identify and register their accountable persons to cover all aspects of their business.
Particular responsibilities	The BEAR legislation includes a set of **particular responsibilities**. These are allocated to Accountable Persons and **form the basis** of drafting the accountability map and accountability statements.	The FAR Proposal Paper includes an **indicative list of particular responsibilities**. This includes additional responsibilities that are not captured under the BEAR. ADIs will **need to allocate these additional particular responsibilities** and revise the accountability map and accountability statements accordingly.
APRA powers over **Remuneration** policy and Remuneration deferral	APRA has been given stronger powers to require ADIs to **review and adjust their remuneration policies** when APRA believes these policies are not appropriate. **ADIs are required to defer a minimum** of 40%-60% of bank executives' variable pay or 10%-40% of total pay to be deferred for a minimum of four years. Additionally, ADIs must allow for a reduction in variable remuneration in proportion to a failure.	All **core compliance and enhanced compliance entities will be required to defer 40% of executives variable remuneration for at least four years**. Entities will be required to have a **remuneration policy that allows for a reduction in variable remuneration**. It is unclear at this stage whether there will be a prescriptive requirement around the reduction that should be applied. **Entities subject to CPS 511** will need to comply with those heightened requirements including for deferred remuneration arrangements. For a deeper look into the impact FAR will have on remuneration please see our separate publication here.
Sanctions: Penalties for the organisation and individual APs	**Penalties are tiered** based on the size of the ADI's. The maximum penalty for a) large ADI's is 1 million penalty units b) medium ADI's is 250,000 penalty units c) small ADI's is 50,000 penalty units **APRA has a disqualification power to remove an individual from their role** and in extreme cases, prevent them from taking any similar role in the industry in the future.	**The maximum penalties for an entity under the FAR** will be the greater of the following: • 50,000 penalty units (currently $10.5m) • 3x the benefit derived or detriment avoided by the body corporate because of contravention • 10% of annual turnover of the body corporate, to a maximum of 2.5m penalty units (current $525m) Similar to BEAR, APRA holds a disqualification power. Unlike BEAR, **Accountable Persons will be liable for civil penalties** under the FAR. The **maximum penalties** will be the greater of: • 5,000 penalty units (currently $1.05m); or • 3x the benefit derived or detriment avoided because of the contravention.

Regulatory investigations

APRA announced on 17th June 2020 that it commenced an investigation in December last year into possible breaches of the Banking Act 1959 (including the BEAR) by Westpac, its directors and senior executives following allegations by AUSTRAC that Westpac failed to monitor and report millions of international fund transfer instructions. This is the first publicly announced investigation under BEAR. ASIC is also investigating certain conduct in connection with the matters alleged by AUSTRAC in its proceeding against Westpac. ASIC will consider whether the conduct that it is investigating also gives rise to contraventions of the accountability obligations under the BEAR and standards of fitness and propriety under the Banking Act. The investigations further reinforce the importance of Reasonable Steps and the need to have an effective framework in place to support an Accountable Person(s) in discharging their accountability obligations.

Calls to action - Considerations for ADIs when transitioning to the FAR

Although ADIs have already completed much of the groundwork to establish the foundations of the FAR through, the following considerations are designed to assist ADIs in determining the next steps to ensure compliance with, and embedding of the FAR.

What does COVID-19 mean for FAR?

What does the FAR look like in a post COVID-19 environment? How does this align with the broader strategy or the organisational changes you may be implementing? What impact does the new way of working have on the FAR, governance arrangements, risk and control processes, delegation and supervision and the demonstration of reasonable steps? A strategic review should incorporate FAR as it clarifies roles and responsibilities even within agile and dynamic environments.

Move now, get ahead

Have you considered what the FAR will mean for your organisation?
Identify early what documents, processes and information needs to be updated to comply with FAR.

Identify Accountable Persons population

Have you considered who your AP population could be in light of the additional proposed particular responsibilities? Consider reflecting on whether these can be appropriately allocated to existing APs before creating new APs.

Accountability Statements and Maps

Have you considered how your existing Accountability Statements and Map can be extended to capture the new particular responsibilities?

Reasonable steps framework

Have you considered whether your reasonable steps framework is fit-for-purpose and aligns with the reasonable steps obligations under FAR? Are your governance, operational and functional structures set up for success?

Consider compliance with deferred remuneration obligations

Have you previously relied on the total remuneration test (ie 10% - 40% of total remuneration) to meet BEAR requirements? If so, how will the organisation meet the 40% variable remuneration test.

Cultural check-in

Did BEAR cause a positive cultural shift in exercising accountability or is it viewed as a compliance exercise? Consider whether communications can be strengthened across the organisation and if FAR can be used as a cultural reset.

Managing risk through controls

Have you considered who is giving assurance as to the design and operating effectiveness of key controls that mitigate risks that you are responsible for?

BEAR post implementation review

How embedded is BEAR across the ADI? Is BEAR seen as a compliance exercise or used as a strategic advantage? A post implementation review can identify gaps to address to effectively support the implementation of the FAR.

Contacts

Please reach out to any of the below contacts should you wish to obtain further information on the proposed FAR.

Sydney

Sarah Hofman
Partner – Regulatory Assurance
T: 02 8266 2231
E: sarah.hofman@pwc.com

Katy Waterhouse
Director – Culture and Accountability
T: 0450 713 894
E: katy.b.waterhouse@pwc.com

Emma Grogan
Partner – Remuneration
T: 02 8266 2420
E: emma.grogan@pwc.com

Melbourne

Sam Garland
Partner – Financial Services
T: 03 8603 0639
E: sam.garland@pwc.com