

# Annexure A

In relation to Annexure A, the following classification applies when comparing the Bill to the Revised Bill:

- (a) **Green** – addition to the Revised Bill;1
- (b) **Yellow** – amendment and changes made to the section in the Revised Bill; and
- (c) **Red** – removed from the Revised Bill.

Draft	Final
<b>Links to Bill and Explanatory Memorandum</b>	
<a href="https://www.treasury.gov.au/financial-accountability-regime-bill-2021-exposure-draft">Financial Accountability Regime Bill 2021 - Exposure Draft (treasury.gov.au)</a>	<a href="#">Financial Accountability Regime Bill 2021 (First Reading)</a>
<a href="https://www.treasury.gov.au/financial-accountability-regime-bill-2021-exposure-draft-explanatory-materials">Financial Accountability Regime Bill 2021 - Exposure Draft Explanatory Materials (treasury.gov.au)</a>	<a href="#">Financial Accountability Regime Explanatory Memorandum 2021 (accompanied First Reading)</a>
<b>Changes to Table of Contents</b>	
	<p><b>Chapter 1 – Introduction</b></p> <p><b>Part 1 – Preliminary Provisions</b></p> <p>+ S 4 - simplified outline of Act</p>
	<p><b>Chapter 2 – Obligations under the FAR</b></p> <p>+ Part 1 Introduction</p>
	<p><b>Chapter 3 – Administration</b></p> <p>+ Part 1 – Introduction</p> <p>+ S 35 – simplified outline of this Chapter</p>
<p><b>Part 4 – Regulatory powers and enforcement</b></p> <p><b>Division 1 – Investigations</b></p> <p>! S 42 - Regulator may arrange for investigation and report</p> <p><b>Division 5 – Regulator's power to issue directions</b></p> <p><b>Subdivision C – Secrecy and disclosure provisions relating to directions</b></p> <p>! S 67 – Disclosure to legal representative for purpose of seeking legal advice</p>	<p><b>Part 4 – Regulatory powers and enforcement</b></p> <p><b>Division 1 – Investigations</b></p> <p>+ S 45 – Regulator may appoint an investigator</p> <p>+ S 46 – Requirement to assist investigator</p> <p><b>Division 5 – Regulator's power to issue directions</b></p> <p><b>Subdivision C – Secrecy and disclosure provisions relating to directions</b></p> <p>+ S 71 – Disclosure for the purpose of seeking review or legal advice</p> <p><b>Division 6 – Civil Penalties</b></p> <p>+ S 81 – Ancillary contravention of civil penalty provisions</p>

<p><b>Part 6 – Miscellaneous</b></p> <p>■ S 98 – Review of operation of this Act</p>	<p><b>Part 6 – Miscellaneous</b></p> <p>■ S 96 – Disclosure for the purpose of seeking review or legal advice</p>
<p><b>Changes to Content of Bill</b></p>	
<p>~ "A Bill for an Act to provide for strengthened accountability obligations for certain financial entities, and for related purposes"</p>	<p>~ "A Bill for an Act to provide for a strengthened accountability framework for financial entities in the banking, insurance and superannuation industries, and for related purposes."</p>
<p><b>~ S 3 – Objects of Act</b></p> <p>The objects of this Act are:</p> <ul style="list-style-type: none"> <li>(a) To provide for accountability obligations for certain financial entities; and</li> <li>(b) To provide for accountability obligations for persons who hold certain positions, or have certain responsibilities, related to those financial entities.</li> </ul>	<p><b>~ S 3 – Objects of Act</b></p> <p>The objects of this Act are:</p> <ul style="list-style-type: none"> <li>(a) To provide for a strengthened accountability framework for: <ul style="list-style-type: none"> <li>(i) Financial entities in the banking, insurance and superannuation industries; and</li> <li>(ii) Persons who hold certain positions, or have certain responsibilities, related to those financial entities; and</li> </ul> </li> <li>(b) To confer on APRA and ASIC functions and powers (including information gathering, investigation and enforcement powers) that: <ul style="list-style-type: none"> <li>(i) Relate to obligations under that framework; and</li> <li>(ii) Can be performed and exercised in aid of their functions and powers under other laws.</li> </ul> </li> </ul>
	<p><b>■ S 4 – Simplified outline of the Act</b></p> <p>The Act establishes a strengthened accountability framework for financial entities in the banking, insurance and superannuation industries that are regulated by Acts under which APRA is the prudential or principal regulator. These entities are called accountable entities.</p> <p>The framework is intended to ensure that accountable entities take reasonable steps:</p> <ul style="list-style-type: none"> <li>(a) To conduct their business with honesty and integrity, and with due skill, care and diligence; and</li> <li>(b) To deal with APRA and ASIC in an open, constructive and cooperative way; and</li> <li>(c) To prevent adverse effects on their prudential standing or prudential reputation; and</li> <li>(d) To ensure that their senior executives and other key personnel (called accountable persons) meet those same standards of conduct, and take reasonable steps to ensure compliance with applicable laws; and</li> </ul>

	<p>(e) To ensure that related entities whose business and activities materially and substantially affect the accountable entities (called significant related entities) comply with the framework in the same way as the accountable entities themselves.</p> <p>Note: Other entities that hold financial services licences or Australian credit licences are not covered by the framework in this Act.</p> <p>Accountable entities are subject to a series of obligations that enable oversight and enforcement by APRA and ASIC (together called the Regulator). These are enforced mainly through civil penalties for non-compliance.</p> <p>Accountable persons are also subject to obligations, which can be enforced by accountable entities through reduction of deferred remuneration, or by the Regulator through disqualification.</p> <p>A range of compliance and enforcement powers are provided for, including by applying the <i>Regulatory Powers (Standard Provisions) Act 2014</i>.</p>
<p><b>S 6 – Extra-territorial application</b></p> <p>This Act extends to acts, omissions, matters and things outside Australia.</p>	<p><b>S 7 – Extra-territorial application</b></p> <p>This Act extends to acts, omissions, matters and things outside Australia.</p> <p>Note: The expression <b>this Act</b> includes the Regulatory Powers Act as it applies in relation to this Act (see section 8).</p>
	<p>S 8 – Definitions</p> <p><b>+</b> Accountability map: Subsections 31(2), 34: For the purposes of paragraph 31(2)(c), an accountability map of an accountable entity must contain:</p> <ul style="list-style-type: none"> <li>(c) the names of all of the accountable persons of the accountable entity and each of its significant related entities;</li> <li>(d) details of the reporting lines and lines of responsibility of those accountable persons;</li> <li>(e) sufficient information to identify an accountable person for each of the responsibilities to which paragraph 23(1)(a) or subsection 23(3) applies, as the case requires;</li> <li>(f) information (if any) prescribed by the Regulator rules.</li> </ul> <p><b>+</b> Accountability statement: Subsections 31(2), 33: If the accountable entity meets the enhanced notification threshold under subsection (3), then the notification obligations of the accountable entity are to give the regulator:</p>

	<p>(a) a comprehensive statement containing:(i) the part or aspect of the operations of the accountable entity, or of the significant related entity, for which the accountable person has actual or effective responsibility for management or control; and (ii) the responsibilities of the accountable person, including any responsibilities to which paragraph 23(1)(a) or subsection 23(3) applies, as the case requires; and (iii) the matters (if any) prescribed by the Regulator rules; and</p> <p>(b) include a statement by the accountable person declaring that:</p> <p>(i) the content of the accountability statement is accurate; and (ii) the accountable person understands their accountability obligations under section 21.</p>
<p><b>~ S 8 – Meaning of accountable entity</b></p> <p>(2) The ADI or authorised NOHC is an accountable entity from the start of the later of:</p> <ul style="list-style-type: none"> <li>(a) 1 July 2022; and</li> <li>(b) the day that is 6 months after the commencement of this Act.</li> </ul> <p><b>!</b> (3)(c) it is included in a class of bodies corporate specified in an instrument made under subsection (5).</p> <p><b>!</b> <i>Minister may declare classes of bodies corporate</i></p> <p>(5) The Minister may, by legislative instrument:</p> <ul style="list-style-type: none"> <li>(a) declare one or more classes of bodies corporate for the purposes of paragraph (3)(c); and</li> <li>(b) specify a day from which bodies corporate in that class are accountable entities for the purposes of paragraph (4)(b).</li> </ul>	<p><b>~ S 8 – Meaning of accountable entity</b></p> <p>(2) The ADI or authorised NOHC is an accountable entity from the start of the latest of:</p> <ul style="list-style-type: none"> <li>(a) 1 July 2022; and</li> <li>(b) the day that is 6 months after the commencement of this Act; and</li> <li>(c) the day on which it becomes an ADI or authorised NOHC, as the case may be.</li> </ul>
	<p><b>S 10 – Meaning of <i>accountable person</i></b></p>
	<p><b>Chapter 2 – Obligations under the Financial Accountability Regime</b></p> <p><b>Part 1 – Introduction</b></p> <p><b>+ S 14 – Simplified outline of this Chapter</b></p> <p>Entities of the following kinds are accountable entities:</p>

	<ul style="list-style-type: none"> <li>(a) an authorised deposit-taking institution (ADI);</li> <li>(b) An authorised non-operating holding company (NOHC) of an ADI;</li> <li>(c) A general insurer;</li> <li>(d) An authorised NOHC of a general insurer;</li> <li>(e) A life company;</li> <li>(f) A registered NOHC of a life company;</li> <li>(g) A private health insurer;</li> <li>(h) An RSE licensee.</li> </ul> <p>NOTE: RSE is short for registrable superannuation entity.</p> <p>An accountable person is primarily someone who has actual or effective senior executive responsibility for management or control of an accountability entity, or of a significant or substantial part or aspect of the operations of the entity or its corporate group. Rules made by the Minister can prescribe other responsibilities and positions that cause a person to be an accountable person.</p> <p>An accountable entity must comply with:</p> <ul style="list-style-type: none"> <li>(a) Accountability obligations under Part 3; and</li> <li>(b) Key personally obligations under Part 4; including to ensure that responsibilities covering all part of the business are appropriately allocated to accountable persons who are registered with the Regulator and not disqualified; and</li> <li>(c) Obligations under Part 5 to defer a prescribed portion of the variable remuneration of its accountable persons to ensure compliance with their obligations: and</li> <li>(d) Obligations under Part 6 to notify the Regulator of matters relating to accountable persons and their responsibilities.</li> </ul> <p>An accountable entity that fails to comply with any of these obligations is liable to a civil penalty.</p> <p>Accountable persons also have accountability obligations under Part 3. Failure by an accountable person to comply with any of these obligations may lead to reduction of their variable remuneration or disqualification by the Regulator.</p> <p>A foreign accountable entity is subject to obligations only to the extent that it operates a branch of the foreign accountable entity in Australia.</p>
	<p><b>Part 2 – Obligations of accountable entities and accountable persons</b></p> <p><b>Division 2 – Accountable persons</b></p> <p><b>S 18 Obligations of accountable persons</b></p> <p>■ (3) Subsection(1) applies to an accountable person of a foreign accountable entity only in relation to a branch of the accountable entity that is operating in Australia.</p> <p><b>S 21 – The accountability obligations of an accountable person</b></p>

	<p>† Note 2: For protection for whistleblowers, see Part 9.4AAA of the <i>Corporations Act 2001</i>.</p> <p><b>S 22 – Taking reasonable steps</b></p> <p>Without limiting what constitutes the taking of reasonable steps in relation to a matter for the purposes of this Part, the taking of reasonable steps in relation to that matter includes:</p> <p>(d) taking appropriate action to ensure compliance in relation to that matter.</p>
<p><b>Part 4 – Key personnel obligations</b></p> <p>‡ S 21 – They key personnel obligations of an accountable entity</p> <p>(1) The key personnel obligations of an accountable entity are:</p> <p>(a) Subject to subsections (2) and (3), to ensure that the responsibilities of the accountable persons of the accountable entity and its significant related entities cover:</p> <p>(i) All parts or aspects of the operations of the accountable entity's relevant group; and</p> <p>(ii) Each of the responsibilities to which subsection 9(2) applies; and</p> <p>(b) To ensure no accountable person of the accountable entity is prohibited under section 22; and...</p>	<p><b>Part 4 – Key personnel obligations</b></p> <p>‡ S 23 – They key personnel obligations of an accountable entity</p> <p>(1) The key personnel obligations of an accountable entity are:</p> <p>(a) Subject to subsections (2) and (3), to ensure that the responsibilities of the accountable persons of the accountable entity and its significant related entities cover:</p> <p>(i) All parts or aspects of the operations of the accountable entity's relevant group; and</p> <p>(ii) Each of the responsibilities to which subsection 10(2) applies; and</p> <p>(iii) Each of the responsibilities to which subsection 10(3) applies and;</p> <p>(b) To ensure that no accountable person of the accountable entity or any of its significant related entities is prohibited by section 24 from being an accountable person of the accountable entity or significant related entity; and...</p>
	<p><b>Section 24 – People prohibited from being an accountable person</b></p> <p>† (3) If a person becomes an accountable person of an accountable entity by being appointed a director of a body corporate at a general meeting of the body, paragraph (1)(a) does not apply to the person in respect of the accountable entity until the person has been an accountable person of the entity for:</p> <p>(a) 30 days; or</p> <p>(b) Such other period as is determined under subsection (5) of prescribed by the Regulator rules.</p> <p>† (4) If, because a body corporate first comes an ADI, an authorised NOHC of an ADI, a general insurer, an authorised NOHC of a general insurer, a life company, a registered NOHC of a life company, a private health insurer or an RSE licensee:</p>

	<p>(a) That or another body corporate becomes an accountable entity; and</p> <p>(b) A person becomes an accountable person of the accountable entity, or of a significant related entity of the accountable entity;</p> <p>Paragraph 1(a) does not apply to the person in respect of the accountable entity or significant related entity, as the case may be, until the person has been an accountable person of the entity for:</p> <p>(a) 30 days; or</p> <p>(b) Such other period as is determined under subsection (5) or prescribed by the Regulator rules.</p>
	<p><b>S 26 – Meaning of variable remuneration</b></p> <p>✚ (4) The Regulator must give a copy of a determination it makes under subsection (3) to each person who, when the determination is made, is an accountable person covered by the determination.</p> <p>✚ (5) If:</p> <p>(a) After a determination is made under subsection (3), a person becomes an accountable person of the accountable entity or significant related entity; and</p> <p>(b) The determination covers the person;</p> <p>The accountable entity or significant related entity must give a copy of the determination to the person.</p>
	<p><b>S 27 – Minimum amount of variable remuneration to be deferred</b></p> <p>✚ (4) The Regulator must give a copy of a determination it makes under subsection (3) to each person who, when the determination is made, is an accountable person covered by the determination.</p> <p>✚ (5) If:</p> <p>(a) After a determination is made under subsection (3), a person becomes an accountable person of the accountable entity or significant related entity; and</p> <p>(b) The determination covers the person;</p> <p>The accountable entity or significant related entity must give a copy of the determination to the person.</p>
<p>⚠ <b>S 28 – Exemption for variable remuneration payable for temporary performance</b></p> <p>(2) Paragraph 23(1)(a) does not apply in relation to the variable remuneration of the accountable person for the period</p>	<p>⚠ <b>S 30 – Exemption for variable remuneration payable for temporary performance</b></p> <p>(3) Paragraph 25(1)(a) does not apply in relation to the variable remuneration of the accountable person for the period during which, because of subsection 24(2), the person is not prohibited from being an</p>

<p>that starts when the person becomes an accountable person and ends after:</p> <ul style="list-style-type: none"> <li>(a) 90 days; or</li> <li>(b) If another period determined under subsection 22(3) or (4) applies in relation to the accountable person – that other period.</li> </ul>	<p>accountable person of the accountable entity or significant related entity.</p>
	<p><b>S 31 – The notification obligations of an accountable entity</b></p> <p>■ Incorporation by reference</p> <p>(5) Despite subsection 14(2) of the <i>Legislation Act 2003</i>, Minister rules made for the purposes of subsection (3) may provide for a matter by applying, adopting or incorporating any matter contained in an instrument or other writing, as in force or existing from time to time, if the instrument or other writing is published on a website maintained by the Regulator.</p>
	<p><b>Chapter 3 – Administration</b></p> <p><b>Part 1 – Introduction</b></p> <p>■ <b>S 35 – Simplified outline of this Chapter</b></p> <p>APRA and ASIC jointly administer this Act, and must agree about how to perform functions and exercise powers under it.</p> <p>Accountable persons must be registered, and may be disqualified for non-compliance with their obligations.</p> <p>The Regulator may issue a direction to an accountable entity:</p> <ul style="list-style-type: none"> <li>(a) To address non-compliance, or the risk of non-compliance, by the accountable entity or any of its significant related entities or accountable persons; or</li> <li>(b) To reallocate responsibilities among accountable persons.</li> </ul> <p>The Regulator has powers to ensure compliance with this Act, to investigate non-compliance and to enforce this Act. Enforcement mechanisms include civil and criminal penalties.</p>
	<p><b>S 36 – Administration of this Act</b></p> <p>*** Significant changes – please see Act and inclusion of table which details provisions under which ASIC has limited functions and powers ***</p>
	<p><b>S 39 – Disclosure of information and documents between APRA and ASIC</b></p> <p>■ (2) However, information or a document may only be shared with APRA or ASIC (<b><i>the recipient</i></b>) under subsection (1) for the purposes of the recipient performing or exercising its functions or powers.</p>



	<p>+ (6) A disclosure of personal information in accordance with this section is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of the Australian Privacy Principle 6.</p>
	<p><b>S 40 – Register of accountable persons</b></p> <p>(4) The register must contain, for each accountable person:</p> <p>+ (f) for each accountable entity, and each significant related entity, in respect of which the person is registered as an accountable person – details of the responsibilities that cause the person to be an accountable person of the entity; and</p> <p>+ (g) any information prescribed by the Regulator rules for the purposes of this paragraph; and</p> <p>+ (h) any other information that:</p> <p style="padding-left: 40px;">The regulator considers appropriate to include in the register; and</p> <p style="padding-left: 40px;">Is relevant to the person's registration as an accountable person.</p> <p>+ (5) The Regulator may make any of the information contained in the register available for public inspection on the internet.</p>
	<p><b>See changes to ss 45-46.</b></p>
	<p><b>S 64 – Direction dealing with non-compliance</b></p> <p>+ (4) If the Regulator gives a direction under paragraph (1)(c) or (d), the Regulator must give a copy of the direction:</p> <p style="padding-left: 40px;">(a) To the accountable person; and</p> <p style="padding-left: 40px;">(b) If the accountable person is an accountable person of a significant related entity or the accountable entity – to the significant related entity.</p>
	<p><b>S 65 – Direction to reallocate responsibilities</b></p> <p>+ (4) The Regulator must give a copy of the direction to each of the following:</p> <p style="padding-left: 40px;">(a) A person who currently has the responsibility,</p> <p style="padding-left: 40px;">(b) The person to whom the responsibility is to be reallocated,</p> <p style="padding-left: 40px;">(c) If the person referred to in paragraph (a) or (b) is an accountable person of a significant related entity of the accountable entity – the significant related entity.</p> <p>(5) Subsections 64(5) and (6) apply to a direction under this section in the same way as they apply to a direction under section 64.</p>

	<p><b>+ S 81 – Ancillary contravention of civil penalty provisions</b></p> <p>(see Bill for entire provision)</p>
	<p><b>S 83 – Civil penalty provisions – amount of penalty</b></p> <p><b>+ Maximum amount of civil penalty – other persons</b></p> <p>(3) For the purposes of subsection (1), the maximum penalty amount for a contravention by a person other than a body corporate of a civil penalty provision of this Act is the greater of the following:</p> <p>(a) 5,000 penalty units;</p> <p>(b) if the court can determine the benefit derived and detriment avoided because of the contravention – that amount multiplied by 3.</p> <p>Note 1: For the meaning of benefit derived and detriment avoided, see section 8.</p> <p>Note 2: section 81 is the only civil penalty provision of this Act that can be contravened by a person other than a body corporate.</p>
	<p><b>S 91 – Reviewable decisions</b></p> <p><b>+ Item 5: A decision under subsection 24(5) to determine for the purposes of paragraph 24(2)(b), 3(b) or 4(d) a period that is shorter than the period that would otherwise apply.</b></p>
	<p><b>Part 6 – Miscellaneous</b></p> <p><b>+ S 96 – Disclosure for the purpose of seeking review or legal advice</b></p> <p>See Bill for provision</p>
	<p><b>S 97 – Indemnifying accountable entities</b></p> <p><b>+ (4) Without prejudice to their effect apart from this subsection:</b></p> <p>(a) Subsection (1) applies to a related body corporate (other than a significant related entity) of an accountable entity in the same way as it applies to a significant related entity of the accountable entity; and</p> <p>(b) Subsections (2) and (3) have effect accordingly.</p>
	<p><b>S 103 – Protection from liability – provisions do not limit each other</b></p> <p><b>+ (d) section 246 of the <i>Australian Securities and Investments Commission Act 2001</i></b></p>