

7 October 2022

Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Inquiry into the Financial Accountability Regime Bill 2022

Thank you for the opportunity to provide comments to the Senate Economics Legislation Committee (the **Committee**) on the Financial Accountability Regime Bill 2022 (**the Bill**).

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 49,000 reflects the diversity of Australia's director community, comprised of directors and leaders of not-for-profits, large and small businesses and the government sector.

The AICD supports measures to strengthen governance and accountability practices across financial services industries, including implementing the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**).

The AICD has engaged extensively in the consultation on the development of the Financial Accountability Regime (**FAR**), providing submissions on the Exposure Draft (available [here](#)), the initial Proposal Paper in February 2020 (available [here](#)) and the Committee's inquiry of the Financial Accountability Regime Bill 2021 (**2021 Bill**) under the previous Parliament (available [here](#)).

The AICD's policy positions on the FAR have been informed by extensive engagement with our members who sit on the boards of Australian Prudential Regulation Authority (**APRA**) regulated entities (**APRA entities**), including from the AICD's standing policy committee - the APRA Regulated Entities Forum.

Key points

The AICD supports passage of the Bill in its current form and considers that, on balance, the FAR will result in accountability and broader governance improvements across APRA entities. Given the proposed reforms have been contemplated for some time, the AICD encourages swift passage of the Bill to provide certainty to the financial services sector and allow for the expected benefits to commence as quickly as possible.

The AICD welcomed the Committee's report on the 2021 Bill, published in February 2022, that recommended the 2021 Bill be passed. We note that there was a consensus from Senators that the 2021 Bill was acting on the Royal Commission recommendations and was satisfied that it would:

deliver on their intent with regard to strengthening accountability and transparency in the financial services sector...¹

The AICD welcomes that there have been no substantive changes to the Bill from the 2021 Bill that was considered by the previous Parliament. Consistent with our previous submission to the Committee on the 2021 Bill, we make the following key points:

- the AICD supports the minor changes made to the Bill from the 2021 Bill, including simplifying the commencement timeline for all APRA entities;
- the Bill appropriately reflects the important strategic and oversight function of the Board and broadly avoids an unrealistic compliance focus by directors in meeting the accountable person obligations;
- the AICD strongly supports the Bill not containing direct civil penalties on accountable persons. The Bill as drafted is already more stringent than what was contemplated in the recommendations of the Royal Commission in both scope and burden. To introduce direct personal liability would not only be unsupported by the Royal Commission, but also unnecessary in light of the existing extensive enforcement and penalty powers available to APRA and the Australian Securities & Investment Commission (**ASIC**); and
- the AICD encourages the Committee to communicate an expectation to APRA and ASIC that comprehensive practical guidance is needed for APRA entities and accountable persons to meet the FAR obligations in a manner consistent with the objectives of the regime. APRA to date has released very limited public guidance on its expectations for meeting the Banking Executive Accountability Regime (the current accountability regime to be superseded by the FAR) requirements and this has increased the burden and uncertainty that banks and accountable persons face in complying with the obligations. We would be concerned if this approach was replicated with the FAR, particularly given its much broader application (to superannuation trustees and insurers, in addition to banks) including to entities of relatively limited scale.

Next Steps

We hope our submission will be of assistance. If you would like to discuss any aspects further, please contact Simon Mitchell, Senior Policy Adviser at [REDACTED].

Yours sincerely,

[REDACTED]

Christian Gergis GAICD

Head of Policy, Governance & Policy Leadership

¹ The Senate, Economics Legislation Committee, Report into the Financial Accountability Regime Bill 2021 [Provisions], Financial Sector Reform (Hayne Royal Commission Response No.3) Bill 2021 [Provisions], and Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions], February 2022, paragraph 2.125.