

# SUBMISSION

Submission to Senate  
Economics Legislation  
Committee: *Financial  
Accountability Regime Bill  
2022*

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7 October 2022

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Committee Secretary  
Senate Economics Legislation Committee

Via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

7 October 2022

Dear Committee Secretary

***Financial Accountability Regime Bill 2022***

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Committee's inquiry into the *Financial Accountability Regime Bill 2022*.

**About ASFA**

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Maggie Kaczmarek, Senior Policy Advisor, on (02) 8079 0849 or by email [mkaczmarek@superannuation.asn.au](mailto:mkaczmarek@superannuation.asn.au).

Yours sincerely

Julian Cabarrus  
Director - Policy Operations, Member Engagement & External Relations

## Significant related entity

ASFA remains concerned about the definition of a 'significant related entity' of an RSE licensee within subsections 12(3) and 12(4) of the Financial Accountability Regime Bill 2022 (FAR Bill).

### Corporate entities

Corporate superannuation fund's parent companies that are not APRA regulated entities could be captured as 'significant related entities' depending on how the FAR Bill is interpreted. ASFA understands it is **not** the intention of the legislation to capture directors and executives in these organisations. However, to make this intention clear, ASFA recommends the Explanatory Memorandum clarify that parent companies of corporate superannuation funds are not captured by the FAR Bill.

ASFA considers that parent companies of corporate superannuation funds should be excluded because:

- The nature and scale of the parent company's business or activities have no impact on the RSE licensee.
- The nature and extent of the interdependency between the parent company and the RSE licensee is limited. For example, the parent company may nominate some directors of the RSE licensee but the appointment decision ultimately lies with the RSE licensee.
- There are no significant organisational, financial or administrative arrangements between the parent company and the RSE licensee. The parent company is not involved in making daily decisions of the RSE licensee.

### Foreign entities

A parent company operating in a foreign jurisdiction with no operational control of the RSE licensee could be inadvertently captured as a 'significant related entity' due to the shareholder relationship. Under the *Superannuation Industry (Supervision) Act 1993* (SIS Act), RSE licensee trustees are required to comply with a range of obligations that effectively ensure the trustee board exercises control over the RSE licensee's decisions. As such:

- The nature and extent of the interdependency between the foreign parent company and RSE licensee is limited; and,
- There would be no significant organisational, financial or administrative arrangements between the foreign parent company and the RSE licensee.

Foreign executives are also unlikely to have direct operational control over the activities of the RSE licensee. There should be a clear operational nexus (e.g. day to day decision making) between the foreign executive and the RSE licensee before they are deemed an accountable person under the FAR Bill.

As such, ASFA recommends the Explanatory Memorandum clarify that foreign parent companies of RSE licensees are not captured by the FAR Bill simply because of their shareholder relationship.

## Impact of FAR Bill and APRA CPS 511 on talent retention

It is likely that, in applying the FAR Bill and CPS 511, RSE licensees will face additional obstacles in attracting talent. Local and global talent has the option of working in entities that are outside the regulatory remit of APRA and may find the restrictions around the awarding of remuneration are a deterrent to taking up a role

within the Australian financial services sector. For example, there is currently high demand in the investment space for talent. Some RSE licensees are looking to internalise investment capabilities and potentially expand their investment offices offshore. These RSE licensees would be competing with entities in other industries that could create more favourable remuneration arrangements for employees because they are not required to comply with the FAR Bill and CPS 511.