



APRA'S ENFORCEMENT APPROACH

03 September 2019

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Contents

Executive summary	4
1. Background	6
2. The role of enforcement	6
3. APRA's approach to enforcement	7
• Enforcement objective	7
• Enforcement criteria	8
• Guiding principles	8
4. Others factors in assessing seriousness	9
5. Working with other agencies	10
6. APRA's approach to enforcement for data submissions	11
7. Transparency and financial stability	12

Executive summary

APRA's mandate is to protect the Australian community by establishing and enforcing prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by institutions it supervises are met within a stable, efficient and competitive financial system. APRA also acts as a central statistical agency for the Australian financial sector, plays a role in preserving the integrity of Australia's retirement incomes policy and administers the Financial Claims Scheme.¹

APRA is a forward-looking regulator that seeks to identify prudential risks proactively and take action to prevent harm *before* it occurs.² APRA's remit involves regulating financial entities in accordance with the prudential laws of the Commonwealth, setting prudential standards for those entities, monitoring compliance with those laws and standards through day-to-day supervision, and intervening early to resolve issues.

In seeking to deliver on its mandate, APRA has a range of formal and non-formal tools available. Non-formal approaches include supervisory methods and tools such as prudential and thematic reviews, financial analysis, heightened engagement and reporting requirements. APRA also has a broad range of formal enforcement powers that it can use to deliver its mandate. Enforcement in this context is not limited to taking court-based action, rather it refers to the use of APRA's range of formal powers – such as powers to direct entities to take or cease particular actions, or impose license conditions on the way in which a business must operate.³

Much of APRA's work is achieved through using non-formal approaches and working cooperatively with entities to identify and rectify problems before they threaten the ability of an entity to meet its financial promises. However, APRA is prepared to take enforcement action to deliver its prudential mandate when appropriate, including where non-formal approaches are not delivering satisfactory outcomes due to a lack of cooperation from an entity or individual.

This means that APRA will be prepared to use enforcement to **prevent and address serious prudential risks** and to hold entities and individuals to account. APRA may do this well before the risks (whether financial, operational or behavioural⁴) present an imminent threat to financial viability. Where entities or individuals are failing to meet prudential obligations, APRA will act quickly and forcefully, and be willing to set public examples to deter unacceptable practices from occurring in the future. APRA will also use enforcement where appropriate to ensure that the data it collects remains fit for purpose for its users.

¹ APRA Statement of Intent – September 2018 <https://www.apra.gov.au/statement-intent-september-2018>

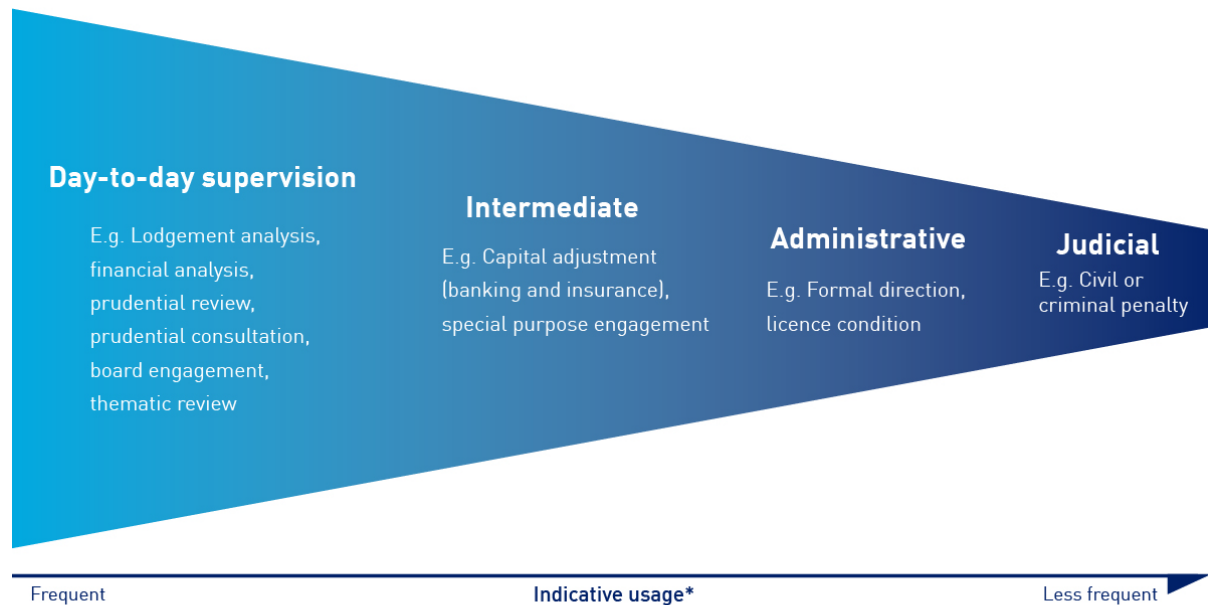
² For these purposes, 'prudential risks' include financial, operational, and behavioural risks.

³ Enforcement (also referred to as 'formal enforcement' or 'enforcement action') refers to the use of APRA's legal powers to compel the remediation of prudential risks, to hold entities and individuals to account for their actions, and to achieve deterrence.

⁴ For example risks in relation to governance, culture and remuneration.

APRA will be deliberately strategic in how it uses its formal enforcement powers and innovative in using the full extent of its toolkit to deliver prudential outcomes, including through the increased deployment of intermediate and administrative tools. APRA expects that court-based enforcement action will represent a relatively limited proportion of overall regulatory activity, as illustrated by figure 1 below which shows indicative usage of types of supervisory tools.

Figure 1: Indicative usage of supervisory tools



* APRA uses a wide range of tools. Those listed are only examples. APRA chooses the most appropriate tool or combination of tools from anywhere along the spectrum (i.e. it is not a sequential ladder of intervention).

1. Background

APRA uses its enforcement powers where appropriate to fulfil its mandate.

The purpose of this document is to provide guidance on how APRA will approach its decisions to use enforcement action in relation to prudential risks⁵. This guidance is not exhaustive and nothing in this document should be taken as limiting APRA's discretion to take enforcement action where it is appropriate to do so within the terms of APRA's responsibilities and in accordance with the powers given to it. Enforcement powers may have different tests or triggers, depending on the precise provision that creates the power. Before using a power APRA must be satisfied that the provisions of the relevant test or trigger are met.

2. The role of enforcement

In most circumstances, non-formal tools are effective in achieving APRA's prudential outcomes in a resource-efficient and timely manner. This is particularly the case where regulated entities are willing to work in an open and cooperative manner with APRA.

However, the effectiveness of prudential supervision depends on regulated parties knowing that APRA will take firm action where prudential risks are not being properly addressed. Enforcement is therefore an integral part of APRA's supervisory toolkit. In support of this, APRA has a number of formal legal powers which range from simple information gathering powers to more coercive and intrusive tools that enable APRA to investigate, direct entities to take action, impose license conditions, ban individuals, and refer matters for civil or criminal court action. APRA may select a combination of tools from anywhere along the spectrum to suit the circumstances with which it is dealing.

APRA's focus is on preventing and mitigating harm, and its enforcement actions will be aimed at the proactive remediation of prudential risks, as well as holding institutions and individuals to account for their actions. Enforcement action can also have a positive deterrent effect beyond the immediate target of the action. Public enforcement action can send a strong message to the wider regulated community to encourage compliance across the industry. Therefore, APRA may use enforcement to achieve the strategic benefits of general deterrence, including through public enforcement action to deliver wider prudential outcomes where appropriate.

⁵Section 6 provides guidance on how APRA will approach its decision to use enforcement action in relation to data submissions under its mandate as a central statistical agency for the Australian financial sector.

3. APRA's approach to enforcement

APRA's approach to using enforcement to address prudential issues can generally be broken down into three broad components as set out in the table below:

Figure 2: Enforcement Framework Table

1. Objective	To prevent and address serious prudential risks and hold entities and individuals to account			
2. Criteria <i>The issues that will lead APRA to consider enforcement action</i>	Where an entity or individual has not: <ul style="list-style-type: none"> adequately prevented or addressed prudential risks; or conducted business with honesty and integrity, or with due skill, care and diligence; or dealt with APRA in an open, cooperative and constructive way; 	and in such cases:	<ul style="list-style-type: none"> there has been an adverse impact on financial soundness, stability or, in the case of superannuation, the interests of members; or the risk or behaviour could have, or could have had, an adverse impact on financial soundness, stability or, in the case of superannuation, the interests of members. For example, actions that do not promote prudent risk management; or APRA's ability to make an accurate and timely assessment of an entity's prudential risk profile has been, could be or could have been impeded. 	
3. Principles	Risk-based	Forward-looking	Outcomes-based	Deterrence
<i>Guiding APRA's strategic decisions on when and how to take enforcement action</i>	APRA's appetite for enforcement should prioritise the issues and entities that pose the most serious prudential risks.	APRA should use enforcement to prevent serious prudential risks from having a realised impact.	APRA should use enforcement when appropriate to achieve desired prudential outcomes.	APRA should actively consider the need to deter similar practices from occurring in the future, including by making its enforcement actions public, where appropriate.

Enforcement objective

APRA will use enforcement where appropriate to **prevent and address serious prudential risks** and to hold entities and individuals to account. As a preventative, safety-based regulator, APRA may do this well before the risks (including financial, operational and behavioural risks) present an imminent threat to financial viability. APRA will use enforcement action to achieve its mandate of protecting the interests of depositors, policyholders and superannuation fund members and to deter unacceptable practices from occurring in the future - this includes taking public enforcement action for wider deterrence purposes.

Enforcement criteria

APRA will use the enforcement criteria, set out below, to identify matters for potential enforcement action. However the criteria are not exhaustive: APRA may consider enforcement action whenever it might be appropriate for achieving its mandate.

Issues that will lead APRA to consider enforcement action will include instances where an entity or individual has not:

- adequately prevented or addressed prudential risks; or
- conducted business with honesty and integrity, or with due skill, care and diligence; or
- dealt with APRA in an open, cooperative and constructive way;

and in such cases:

- there has been an adverse impact on financial soundness, stability or, in the case of superannuation, the interests of members; or
- the risk or behaviour could have, or could have had, an adverse impact on financial soundness, stability or, in the case of superannuation, the interests of members; or
- APRA's ability to make an accurate and timely assessment of an entity's prudential risk profile has been, could be or could have been impeded.

Guiding principles

Meeting the enforcement criteria set out above will not automatically lead to APRA taking enforcement action - APRA will use its enforcement powers strategically to achieve its prudential objectives. In deciding what action to take APRA will always take into account the facts, matters and circumstances of the particular case under consideration. APRA will also have regard to the following principles:

- **Risk-based.** APRA will assess the seriousness, nature and circumstances of the matter and prioritise the issues and entities that pose the most serious prudential risks. APRA's use of enforcement will not be limited to financial risks: where there are operational or behavioural risks that could have a material prudential impact, APRA will be equally prepared to use enforcement powers. Regulatory or thematic priorities (as updated from time-to-time, for example in the APRA Corporate Plan) will also be taken into account to inform APRA's use of enforcement powers and its selection of cases for public enforcement action. Further details of factors which are likely to be considered by APRA are set out in section 4 below.
- **Forward-looking.** APRA's appetite for enforcement will support its supervisory focus on preventing harm, mitigating risks and achieving *ex ante* remedial actions. APRA will use enforcement to prevent or mitigate the impact of serious prudential risks. The principle of deterrence will be an important forward-looking component of APRA's decision making.

- **Outcomes-based.** APRA's appetite for enforcement action will be driven by the prudential outcomes that it is trying to achieve. There will be circumstances where non-formal supervisory approaches are a more appropriate response to a serious prudential risk. This could include, for example, where non-formal approaches can result in timelier and more comprehensive remediation of risks.
- **Deterrence.** In determining when and how to take enforcement action, APRA will actively consider the need to deter a recurrence of serious prudential risks both at the entity concerned and also more widely across the industry. Taking enforcement action to hold entities and individuals to account when they do not meet their prudential obligations can have significant deterrent impacts, through demonstrating clear consequences for poor prudential outcomes. This includes both in respect of the specific entity or individual concerned and, where the action is made public, by the message it sends to other industry participants. However, as a prudential regulator APRA must always balance the benefits of public action against any immediate risks to financial stability - see section 7 below.

4. Others factors in assessing seriousness

There are likely to be a number of others factors which APRA will take into account when considering the use of enforcement powers. These include:

- **Proportionality:** APRA decision makers will have regard to the need to ensure that where APRA uses its enforcement powers, the action taken is proportionate and properly reflects the nature and seriousness of the matter under consideration and its potential impact on APRA's prudential objectives. Considerations can include:
 - the nature of any provision engaged (criminal, civil or administrative);
 - the actual or potential prudential impact of the matter, which may include a consideration of the actual or potential:
 - o value involved,
 - o number of people involved,
 - o impact on any regulated entity,
 - o damage to confidence in the financial system, or
 - o risks to financial stability;
 - the duration or frequency of the matter and whether it reveals potential weaknesses in an entity's governance, business model, financial strength, risk management systems and/or internal controls;
 - whether any person (entity or individual) derived any economic benefit or avoided any kind of loss or detriment as a result of the matter;
 - whether any acts or omissions were deliberate, reckless or negligent; and

- the degree of knowledge, belief or suspicion involved and whether matters were disclosed to relevant authorities including APRA in a complete, accurate and timely manner.
- **History and behaviour:** APRA decision makers will have regard to the conduct of the entity or individual before, during and after the matter or event under consideration, including:
 - the general supervisory record of the entity or individual;
 - how promptly, comprehensively and effectively the entity or individual brought the current matter to the attention of APRA;
 - the nature, extent and effectiveness of any remedial action taken or offered and the extent to which such remedial action was voluntary and proactive;
 - any previous adverse finding or settlement in proceedings or enforcement action brought by any regulatory or law enforcement agency; any previous agreement, attestation or undertaking relating to their behaviour and their compliance with it; and
 - the degree of cooperation the entity or individual has shown with APRA and other relevant agencies, including during any investigation.
- **Other agencies:** APRA decision makers will have regard to any relevant action proposed or being taken by other domestic and/or international regulatory or law enforcement agencies - including whether, if such agencies are taking action, it is necessary or desirable for APRA also to take its own action.

These factors are not exhaustive. Not every factor will be relevant to every situation. Each case will be considered on its own merits taking into account all the relevant facts and circumstances of the matter.

5. Working with other agencies

APRA liaises closely with other domestic and international regulators and government agencies on prudential regulatory issues. This includes maintaining a close working relationship with ASIC in relation to entities regulated by both ASIC and APRA.

As appropriate, APRA will also work closely with other regulators and law enforcement agencies on matters of common interest. In some cases it will be appropriate for APRA to work jointly with other agencies. In other instances it will be more appropriate for APRA to refer a matter to another agency. In every case, APRA will continue to consider its objectives and will assess which agency is best placed to deal with any particular issue, and will co-ordinate with other regulators and agencies where appropriate.

6. APRA's approach to enforcement for data submissions

In addition to its prudential mandate, APRA acts as a central statistical agency for the Australian financial sector under the Financial Sector (Collection of Data) Act 2001 (FSCODA). APRA collects data for its own supervision and policy purposes and also on behalf of a number of other agencies.

Failure to submit data within the timeframes set out in reporting standards made under FSCODA constitutes an offence. APRA has the power to issue infringement notices that impose fines on entities that do not comply with FSCODA. If an entity elects not to pay, APRA can brief the Commonwealth Director of Public Prosecutions to take legal action.

APRA will use enforcement action where appropriate to ensure that APRA's data remains fit for purpose for its users. The value of an entity's data to APRA and to the agencies it collects on behalf of is impacted by three key characteristics:

- Timeliness
- Quality
- Proportionality of the entity's data to the collection

These characteristics form the basis of APRA's approach to enforcement for data submissions as set out in the table below:

Figure 3: Enforcement Approach For Data Submissions

1. Objective	To ensure APRA's data is fit for purpose for its users, and hold entities and individuals to account			
2. Criteria <i>The issues that will lead APRA to consider enforcement action</i>	<div>Where an entity or individual has not:</div> <ul style="list-style-type: none">• Submitted data on time; or• Submitted data of required quality levels; or• Dealt with APRA in an open, co-operative and constructive way; <div>and in such cases:</div> <ul style="list-style-type: none">• The user's ability to make an accurate and timely assessment of an entity's prudential risk profile has been, could be or could have been impeded; or• The impact of the data is significant in informing the accurate and timely assessment of financial stability, monetary policy or other policy decisions; or• The data is required to allow APRA to meet its obligations to share data through external publication and/or to provide to third party users.			
3. Principles <i>Guiding APRA's strategic decisions on when and how to take enforcement action</i>	Risk-based APRA will prioritise action on those matters where the impact of the data is most serious for its user e.g. prudential and policy purposes.	Forward-looking APRA will consider the impact of its actions in ensuring future usability of data.	Outcomes-based APRA should use enforcement when appropriate to achieve the desired outcomes with respect to its data.	Deterrence APRA should actively consider the need to deter similar practices from occurring in the future, including making its enforcement actions public where appropriate.

Meeting the criteria set out above will not automatically lead to APRA taking enforcement action. In deciding what action to take APRA will always take into account the facts, matters and circumstances of the particular case under consideration.

APRA's approach to enforcement on data submissions is complementary to its approach to enforcement more broadly, as set out in this document. In instances where data breaches or issues are indicative of prudential risk at a regulated entity, APRA will also consider the need to take enforcement action to address the prudential risks under the approach set out in section 3.

7. Transparency and financial stability

Through making its enforcement actions public, APRA can influence industry behaviours far beyond the immediate targets of the actions. However, in some cases, financial stability could be harmed by making APRA's enforcement actions public. As a prudential regulator, APRA must always balance the benefits of making action public against any immediate risks to financial stability. This will not preclude APRA from holding entities and/or individuals to account where it is appropriate to do so. However, financial stability considerations will influence when and how APRA publicises enforcement action.

APRA will consider when and how to publicise the enforcement actions it takes on a case by case basis. However, unless there are likely to be risks to beneficiaries' interests and / or financial stability from publicising an action, APRA will typically make public:

- administrative enforcement actions taken by APRA, such as formal directions and licence conditions or infringement notices;
- acceptance of an enforceable undertaking received from a regulated entity or an individual;
- disqualifications of accountable persons under the Bank Executive Accountability Regime, or other responsible persons under the prudential framework; and
- court-based enforcement actions commenced by APRA.

For reasons of natural justice, procedural steps in respect of potential enforcement actions, including the issuance of 'show cause' notices will generally not be made public.



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