

House of Representatives Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Review into APRA's Annual Report 2019-20

10 September 2021

Division/Agency: Australian Prudential Regulation Authority
Question No: APRA15QON
Topic: Whistleblower complaints
Reference: Hansard pg. 14
Member: Ms Celia Hammond MP

Question:

Ms HAMMOND: Do you review whistleblowing policies and whistleblowing practices at the banks, industry, insurance or super industries?

Mr Lonsdale: I think short answer is not so much a review, but we certainly have visibility and from time to time we do see whistleblower complaints arise.

Ms HAMMOND: Do you have any concerns about the way that whistleblowing policies or practices are working at any organisations?

Mr Lonsdale: On the banking side, I would say from a prudential side, no, but that does not mean that from time to time issues don't arise that we need to examine.

Ms HAMMOND: Have issues arisen in recent times?

Mr Lonsdale: Whistleblower complaints do happen, yes, and they're treated very seriously. They might raise issues about culture or governance and they would be looked at very closely.

Ms HAMMOND: By who, by APRA or by the bank or institution?

Mr Lonsdale: Both.

Ms HAMMOND: Are they made public?

Mr Lonsdale: To my knowledge, no.

Ms HAMMOND: The reason for that? Given that you are just putting in place remuneration practices which are going to make a whole lot of other things public, for that whole accountability reason, is there a reason why whistleblowing practices or whistleblowing examples are not made public?

Mr Lonsdale: It often depends on the whistleblower themselves, so some whistleblowers will want anonymity. Clearly there is a reason there why they may not. So for others, typically they will come through the bank itself and we will have a look at those. If you would like more information on that we're very happy to come back to you.

Ms HAMMOND: Thank you. Yes, that would be great.

Answer:

The Corporations Act 2001 (Cth) (**Corporations Act**) gives certain people legal rights and protections as whistleblowers.

The whistleblower provisions of the Corporations Act are administered by the Australian Securities and Investments Commission (ASIC). ASIC also provides guidance to company officers regarding their obligations regarding Whistleblowers ([Information Sheet 247](#)¹) and to companies to inform the creation of appropriate Whistleblower policies ([Regulatory Guide 270](#)²). ASIC also has information gathering powers to ensure compliance with the Corporations Act (including the whistleblower provisions) and investigate suspected contraventions.

APRA is an authorised recipient of disclosures of information from individuals who are eligible under the provisions of the Corporations Act for whistleblower protection (Corporations Act section 1317AA). APRA is responsible for the appropriate handling of whistleblower disclosures made directly to APRA by eligible whistle-blowers. A whistleblower's identity must not be disclosed unless an exemption applies: the exemptions are relatively narrow and include disclosure to APRA, ASIC or the Australian Federal Police or disclosure with the whistleblower's consent (Corporations Act section 1317AA). Failure to comply with section 1317AAE is an offence.

APRA will therefore refer potential breaches of statutory Whistleblower protections or other Whistleblower provisions to ASIC.

APRA has a Whistleblower Policy and Procedure that govern the proper handling of whistleblower disclosures made directly to APRA. The policy and procedure ensure compliance with whistleblower requirements set out in the Corporations Act and also allow APRA to identify the potential value of such disclosures to assist in the prudential supervision of an APRA-regulated institution.

Whistleblower disclosures are also made to APRA regulated entities and then referred to APRA in certain cases. APRA still ensures it complies with the whistleblower provisions of the Corporation Act when dealing with whistleblower information referred by APRA-regulated institutions.

How APRA investigates information provided by whistleblowers:

- a. A central whistleblower function, managed by the Investigations team within APRA Legal, receives and records qualifying whistleblower disclosures made directly to APRA and the actions taken by APRA in respect of those disclosures.
- b. Whistleblower disclosures made in relation to APRA-regulated institutions are primarily managed by the responsible supervisory team, with assistance from specialist APRA teams as appropriate.
- c. Issues will be dealt with and, if appropriate, escalated in line with APRA's supervisory philosophy and enforcement approach. (For further information, see publications available at <https://www.apra.gov.au/apras-supervision-philosophy> and <https://www.apra.gov.au/enforcement>). This may include a consideration of whether enforcement action is necessary to prevent and address serious prudential risks or to hold entities and individuals to account.
- d. APRA does not publish whistleblower disclosures, in part due to the requirements of the Corporations Act which are aimed at protecting whistleblowers, but also because of the secrecy provisions set out in Section 56 of the Australian Prudential Regulation Authority Act 1998.
- e. Where appropriate and permissible, APRA will share information provided by whistleblowers with other regulators and law enforcement agencies if the information is relevant to their mandate.

¹ Available at <https://asic.gov.au/for-business/running-a-company/company-officer-holder-duties/company-officer-obligations-under-the-whistleblower-protection-provisions>

² Available at <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-270-whistleblower-policies/>.