

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017 [Provisions]

17 November 2017

Division/Agency: Australian Prudential Regulation Authority

Question No: 1

Topic: Imposition of Fines

Reference: Hansard, page 21

Senator: Gallagher, Katy

Senator GALLAGHER: ... can you give an example, in the very public and well-understood scandals that have occurred in, say, the last five years, where not only would the BEAR have been enacted but penalties could have quite reasonably been applied?

Mr Brennan: I'd have to take that on notice, on the basis of whatever comment we make, because, whenever we talk about a specific case, it's a specific entity and we would want to be very careful about what we say.

Answer:

APRA can confirm that if the types of circumstances and cases noted in the Explanatory Memorandum were to occur with the BEAR regime in place at the time, APRA would have considered whether action under the BEAR regime was appropriate. This would have involved consideration of the circumstances to establish the nature and materiality of instances where individual accountable executives, or an ADI, failed to meet the requirements of the regime.

However, it is not possible for APRA to definitively state that penalties would, or would not, have been applied in any individual case because:

1. APRA did not undertake such investigations, given the BEAR regime was not in place;
2. as articulated in page 4 of APRA's submission to the Senate Economics Legislative Committee, any action undertaken by APRA under the BEAR regime will be governed by the legislation and affected individuals will have protections and rights to procedural fairness - given there has been, by definition, no investigation into past cases under the BEAR regime, there has also been no opportunity for procedural fairness; and
3. making any retrospective judgement more difficult is the fact that, even had such investigations (including provision for procedural fairness) occurred, the imposition of any financial penalties are ultimately a matter for the Federal Court (not APRA) to determine.

APRA therefore does not consider it possible or appropriate to opine on the likely outcome of individual historical cases.