

Joint Committee of Public Accounts and Audit

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into Probity and Ethics in the Australian Public Sector

Division/Agency: Australian Prudential Regulation Authority
Question No: APRA01QW
Topic: **Right and Proper**
Reference: Written

Question:

According to the Department of Finance, probity is evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. While agencies can often demonstrate the absence of fraud, corruption, illegal activity or conflicts of interest, does a mere absence of illegality, fraud, conflicts or corruption actually indicate probity? How does APRA assess whether it is acting in a way that is right and proper, not just in a way that is technically and legally correct?

Answer:

APRA's Integrity Review Group examines probity related metrics to ascertain whether behaviours are in line with APRA's expectations.

Insights or thematic observations are then reported to APRA's Audit and Risk Committee, which is an independent Committee.

Operationally, right and proper behaviour is also supported through APRA's Code of Conduct. APRA employees must review the code annually and acknowledge that they have read and understood the expected standards of conduct.

To further elevate transparency and highlight the intent of the policies, APRA's senior management team also communicates regularly with staff to remind them of both the probity related procedures (e.g., declaring conflicts of interest), APRA's expectations, why it is important (both real or perceived probity risks) and its impact on APRA's reputation.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into Probity and Ethics in the Australian Public Sector

Division/Agency: Australian Prudential Regulation Authority
Question No: APRA02QW
Topic: **Acting consistent with intent of law**
Reference: Written

Question:

The ANAO has found evidence the Australian public sector regularly fails to comply with both the intent and the requirements of its regulatory frameworks. How does APRA evaluate how it is positively acting according to the intent of the law and thus demonstrating probity?

Answer:

In addition to the Probity Review conducted recently by the ANAO, APRA utilises the three lines of defence approach to evaluating that it is acting in accordance with the intent of the law. Operationalising adherence to probity procedures and ensuring the intent is understood is carried out by Management as Line 1 of the organisation. This is supported by the independent Risk team, acting as Line 2. The Risk team own the probity related policies and examines a series of metrics (e.g., incidents) to monitor the effectiveness of Management activities in achieving the desired probity outcomes and regularly review the policies to ensure they align to changes in the legislation and/or Commonwealth guidance. On a periodic basis, Internal Audit acting as Line 3 performs independent controls testing on whether key controls are adequately enabling policy expectations. The results are communicated to the independent Audit & Risk Committee for oversight who will advise the APRA Chair accordingly.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into Probity and Ethics in the Australian Public Sector

Division/Agency: Australian Prudential Regulation Authority
Question No: APRA03QW
Topic: **Outcomes-based Performance Management**
Reference: Written

Question:

Does APRA have an outcomes-based performance management system? How does APRA balance the focus on outcomes with the risk this brings for compliance with the intent of the law?

Answer:

In 2022 APRA implemented a capability based pay and progression model which ties remuneration outcomes to attainment of a capability level on the APRA Capability Framework. Capability is the long-term impact of short-term high performance that has converted into a fundamental uplift in skills, and therefore a more appropriate metric upon which to base long-term reward such as remuneration.

APRA does focus on delivery of outcomes linked to the APRA corporate plan. Our people will have an APRA goal plan which includes: outcome goals linked to the corporate plan; and development goals linked to the capability framework.

APRA ensures that the behaviour to achieve the outcome goals is compliant and lawful with a number of controls. The performance framework works in concert with the broader risk framework designed to support all employees to meet their risk related obligations.

The APRA Code of Conduct outlines the standards expected of all employees and contractors at all times and is underpinned by our Values and our regulatory mandate under the APRA Act. The Code of Conduct is signed by all new employees and contractors and then re-confirmed annually. Where an employee or contractors behaviour is not in line with expected standards this is managed through the APRA consequence management framework.

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ANSWERS TO QUESTIONS ON NOTICE

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Division/Agency: Australian Prudential Regulation Authority
Question No: APRA04QW
Topic: **Good Faith**
Reference: Written

Question:

What is APRA's view on how acting in 'good faith' mitigates the probity concerns that might arise from contraventions of the law?

Answer:

APRA takes its legal obligations seriously. APRA seeks to act in good faith at all times in performing its functions.

APRA does not consider that acting in good faith provides an excuse for not complying with legal obligations.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into Probity and Ethics in the Australian Public Sector

Division/Agency: Australian Prudential Regulation Authority
Question No: APRA05QW
Topic: **Opportunities for Improvement**
Reference: Written

Question:

Further to the evidence provided at the public hearing on 8 September 2023, please detail how APRA has progressed each of the ‘opportunities for improvement’ identified by the ANAO.

Answer:

APRA’s response to each of the five opportunities for improvement identified by the ANAO is outlined in the table below:

Opportunity	Status and Action
2.36 There is an opportunity for the Australian Prudential Regulation Authority to consider including references to regulatory capture risk and how it is managed in the entity corporate plan.	Addressed. APRA’s 2023/24 Corporate Plan explicitly identifies risk of inadequate supervisory practices (risk 6), which could be caused by regulatory capture. APRA has strong controls in place to manage this risk embedded in our supervisory risk frameworks including rotations of supervisors at designated times. Regulatory capture is also identified in the Supervision Division risk registers and as a risk within APRA’s Enterprise Risk Profile overseen by the Chief Risk Officer, Executive and Members.
2.72 There is an opportunity for the Australian Prudential Regulation Authority to improve consistency in its identification and management of probity risks in procurement by establishing guidance that details: <ul style="list-style-type: none">• probity management requirements applicable to all procurements; and• the circumstances that require additional probity management measures, and what those additional probity management measures are.	Addressed. APRA has uplifted its procurement guidelines and introduced additional controls, including lowering the threshold for mandatory system enforced checks for conflicts of interest to any procurement with an estimated value of greater than \$10,000.

Opportunity	Status and Action
<p>2.86 There is an opportunity for the Australian Prudential Regulation Authority to reduce positional authority risk by providing that all APRA Member expenses are approved by the APRA Chair.</p>	<p>Addressed. Alternate approach in place. APRA determined that a matrix approval process would best suit its operational needs. In part, this is because of the challenges that present with acting arrangements; additional segregation and avoidance of overlapping expense approvals.</p>
<p>4.42 There is an opportunity for the Australian Prudential Regulation Authority to consider ways to better meet the intent of the CFI provision regarding the acceptance of gifts or offers of hospitality of a repetitive nature.</p>	<p>Addressed. APRA’s risk team reviews risk declarations as they are made and reviews the entire register on a quarterly basis, including identification of any repeat offers.</p>
<p>4.52 The Australian Prudential Regulation Authority could record in its internal register whether gifts were retained by individuals accepting them, surrendered to APRA or disposed of in some other way.</p>	<p>Addressed. APRA’s risk team receives an alert to the lodgement of a gift form. The risk team completes a field in the system noting the action taken regarding the gift.</p> <p>In addition, a register of gifts surrendered to APRA is retained by APRA’s Risk Team.</p>