

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

2017 - 2018

**Division/Agency:** Australian Prudential Regulation Authority

**Question No:** 71

**Topic:** Banking Executive Accountability Regime

**Reference:** Written

**Senator:** Ketter, Chris

**Question:**

1. According to the Treasurer's media release on 9 May 2017, in relation to the Banking Executive Accountability Regime, "additional expectations will be established for how banks and their executives conduct their business consistent with good prudential outcomes". What is APRA's understanding of what those expectations are?
2. Under section 21 of the Banking Act, APRA has the power to apply to the Federal Court to disqualify people from acting as directors, senior managers and auditors of ADIs. How often has this power been used in relation to ADIs?
3. Under section 11CA of the Banking Act 1959, APRA may direct an ADI to remove a director or senior manager of the body corporate from office (paragraph 11CA(2)(c)) if it has reason to believe that the body corporate that is conducting its affairs in an improper or financially unsound way (paragraph 11CA(1)(i)). Does APRA need to apply to a court to use this power? Can APRA provide examples of where this power has been used? In how many instances has this power been used over the last 10 years?
4. For the last 10 years, how many instances is APRA aware of in which banking executives were found guilty of crimes, but continued to work as banking executives?
5. For the last 10 years, how many instances is APRA aware of in which banking executives were caught in illicit activities, but continued to work as banking executives?
6. ASIC Media Release 17-095, dated 3 April 2017, states that "ASIC is also announcing that eight major lenders will provide remediation to consumers who suffer financial difficulty as a result of shortcomings in past lending practices." In the light of this media release, can APRA provide advice about:
  - a. the level of compliance with its serviceability requirements in relation to residential mortgages; and
  - b. action it is taking in relation to compliance with serviceability requirements in relation to residential mortgages.

**Answer:**

1. Since the Treasurer announced on 9 May 2017 the government's intent to introduce a Bank Executive Accountability Regime (BEAR), there have been meetings between Treasury and APRA regarding what will be contained in BEAR. These meetings are on-going. APRA understands that Treasury intends to release a consultation paper shortly, and until then it would be premature to comment on what will be contained in BEAR, including what will be the expectations to be put in place for banks and their executives.

2. Prior to 1 July 2008 APRA had the power to disqualify individuals across all industries. APRA has not disqualified anyone through the Federal Court process since the power was transferred from APRA on 1 July 2008.
3. APRA does not need to apply to a court to issue a direction under section 11CA of the *Banking Act 1959* (the Banking Act). APRA has not used its power under section 11CA(2)(c) to remove a director or senior manager from office. APRA has been successful in achieving its objectives using other prudential supervision measures. APRA would consider using the directions power if the other measures were unsuccessful.
- 4-5. APRA is not aware of any instances in which banking executives were found guilty of crimes, but continued to work as banking executives. The Banking Act automatically makes a person a 'disqualified person' if they are convicted of certain offences, including any offence relating to dishonest conduct or conduct relating to a company that carries on business in the financial sector. A disqualified person cannot be a director or senior manager of an authorised deposit-taking institution (ADI).

APRA's *Prudential Standard CPS 520 Fit and Proper* also requires that an ADI has a fit and proper regime that includes assessment of the competence, character, diligence, honesty, integrity and judgement of bank executives who are responsible persons under the Standard. A regulated institution must take all prudent steps to ensure that a person is not appointed to, or does not continue to hold, a responsible person position for which they are not fit and proper. APRA has the power to direct the ADI to remove an individual if they do not meet this criteria.

- 6a. APRA sets out its expectations for sound residential mortgage lending practices for ADIs in *Prudential Practice Guide APG 223 Residential Mortgage Lending* (APG 223). APRA expects all ADI's to undertake a self-assessment against the guidance in APG 223. These assessments are analysed and a more detailed review of lending practices is conducted, where appropriate, to ensure practices are consistent with APRA's expectations.

Recent exercises in ADI borrower and serviceability assessments have shown that the majority of ADIs have met requirements outlined in APG 223. Where outliers were observed, feedback was provided to the individual ADIs on where APRA would expect to see a strengthening in lending standards.

- 6b. APRA's prudential practice guides frequently discuss legal requirements from legislation, regulations or APRA's prudential standards, but do not themselves create enforceable requirements. The purpose of APG 223 is to provide guidance on APRA's view of sound residential mortgage lending practices.

APRA engages with ADIs on their mortgage lending practices as part of its regular supervisory activities, which includes focussing on areas where practices should be strengthened.