

Re: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Written Submissions of the Australian Prudential Regulation Authority (APRA) in response to the Interim Report

A. Summary

1. This submission provides APRA's views on issues and questions posed by the Interim Report that are relevant to APRA's mandate.
2. In summary, there are three overarching questions posed by the Commission with respect to the regulators:
 - First, have the regulators' responses to misconduct been appropriate?
 - Second, how should regulators respond to conduct and compliance risk?
 - Third, should the regulatory architecture change or the law be simplified?
3. In response to the first question, APRA believes its response to misconduct and misconduct risk has been broadly appropriate given its core prudential mandate and risk-focused approach. That is, APRA has largely focused its response to matters that relate to prudential risks and on issues that may have a material impact on the regulated entity concerned. APRA's response to misconduct has focused on strengthening the governance and practices of regulated entities, and taking action to protect the interests of beneficiaries. Public examples of such responses include APRA's recent inquiry into the Commonwealth Bank of Australia (CBA), and its interventions in the residential mortgage lending sector.
4. In response to the second question, APRA agrees with the premise that identified prudential risk drivers, notably governance, culture and incentives, also drive conduct outcomes, and that there is scope to take further action in these areas. In its recently published *Statement of Intent*, APRA has committed to continue to facilitate the improvement of accountability, governance and risk culture within financial institutions.¹
5. Greater regulatory attention to these areas by APRA can be part of the solution to misconduct in the industry. While historically APRA's regulatory focus has largely been concentrated on prudential risk taking and long-term financial soundness, the evidence before the Royal Commission highlights the need for APRA to examine the means by which it can more actively contribute to a regulatory framework that limits the potential for misconduct to occur in the future.
6. Ultimately behavioural change will only occur if boards take ownership for the actions of their organisations and the consequences of those actions. There is a role for APRA

¹ APRA, *Statement of Intent*, September 2018 (SOI): <https://www.apra.gov.au/statement-intent-september-2018>

(and the Australian Securities and Investments Commission (ASIC)) here as the regulators in setting and enforcing standards of governance, accountability and risk culture. However, solutions to past problems must involve industry taking more responsibility, not less, for maintaining appropriate standards of conduct and guarding against misconduct.

7. Regulatory responses to conduct and compliance risk also need to be appropriately tailored having regard to the circumstances of the breach - for example, an operational failure or outage may not warrant formal legal action. To take formal legal action on every occasion may result in financial institutions becoming wary of all but the most simple and low-risk transactions with a much reduced incentive to innovate. This would potentially limit access to, and increase costs of, all financial services.
8. This submission sets out how APRA has taken, or is taking, actions on drivers of misconduct, including governance, culture and incentives. Specific actions include:

- Reviewing its enforcement strategy and related internal procedures and governance, including the potential to give greater weight to the strategic use of formal enforcement powers;
- Strengthening prudential governance requirements, particularly around remuneration, accountability and conflicts of interest (including through the implementation of the Banking Executive Accountability Regime);
- Utilising the lessons from the CBA Inquiry more broadly by, for example, requiring larger regulated entities to perform self-assessments against the findings of the CBA Inquiry and report those self-assessments to APRA;
- Deepening its supervisory approach, including focusing on clear accountability, making more regular use of external resources to provide assurance over entities' practices, and bringing to bear wider sources of information (such as reported breaches and customer disputes);
- Collaborating more closely with ASIC and other regulators on matters of misconduct, particularly in relation to investigations and enforcement activities.

9. With respect to the third question concerning regulatory architecture, APRA's view, as set out in its submission on Round 5, is that the current broad structure of prudential and conduct regulation and responsible regulators should be maintained. Under this structure, APRA's core mandate is focused on safety and soundness while ASIC's is focused on consumer protection. The regulatory architecture which emanates from this structure may at times be complex, but given the nature of the financial services sector, some degree of complexity is inevitable. There are trade-offs between simplicity, on the one hand, and clarity and enforceability, on the other. Some laws, such as the *Superannuation Industry (Supervision) Act 1993 (Cth)* (SIS Act), which reflects an accumulation of specific requirements in a piecemeal fashion over time, may in fact be due for an overhaul. An alternative approach may be to focus on regulated institutions understanding and internalising the principles behind regulatory requirements, than on changing these requirements or how they are presented.

10. In summary, the Commission's activities have, to date, provided valuable lessons which generate important opportunities for APRA, other regulators and the industry to improve practices.
11. There is not likely to be a single or straightforward solution to the problem of misconduct in the financial industry. The way forward is likely to involve a range of complementary measures, involving constructive interaction between institutions, industry bodies, regulators and Government. These measures are likely to include:
 - institutions being committed to incentive structures that reward outcomes for meeting broader community expectations as much as they do financial targets;
 - a clearer regulatory and institutional focus on individual accountability, through incentive structures and appropriate responses to poor outcomes;
 - regulatory powers and resources dedicated to detecting misconduct and taking action, including formal enforcement where appropriate; and
 - stronger industry codes, self-regulation and dispute resolution mechanisms.

B. Regulatory framework

12. The Commission has asked whether the regulatory architecture could be improved. This includes:
 - whether the law governing financial services is too complicated and should be radically simplified with exceptions eliminated;
 - whether some regulatory tasks should be reallocated to or from APRA or ASIC; and
 - whether the regulators should be subject to external review.
13. Financial services is an inherently complex industry. The set of laws and regulations is (unfortunately) very likely no more complex than in a number of other developed countries; nor are the issues encountered unique to Australia. As in other countries, Australian laws and regulations have evolved over time with ever-growing layers in response to recurring episodes of community dissatisfaction with particular outcomes, whether prudential or conduct-focused. Although some level of prescription is a necessity for a regulatory framework, complexity often develops in response to requests from regulated institutions for more clarity, or to address specific changes in business practices. Simplifying this structure is likely to be no small task, particularly as it is not possible to start with a clean slate.
14. In addition, regulatory change introduces more, rather than less, complexity. While some legislation (notably the SIS Act) could potentially be streamlined, with obsolete provisions removed and other provisions consolidated, APRA does not see simplification of laws and regulations as in itself likely to drive materially better practices.
15. APRA has previously provided its views on the regulatory architecture to the Commission.² The functional system of regulation under the 'twin peaks' model has

² APRA, *Submission: Royal Commission Round 5 Superannuation Policy and General Questions*, 21 September 2018:

served Australia well in terms of economic outcomes, although it is not without its challenges.

16. The Commission's investigation has highlighted areas of common interest across prudential and conduct regulators. This necessitates strong coordination to achieve systemic improvement and avoid areas of duplication of effort or wasted resources. In APRA's view, it is also important that each regulator stays true to its mandate and uses powers for their intended, legislated purpose.
17. Prudential supervision is also relevant to conduct outcomes, and through examples such as the CBA Inquiry, the Commission makes the case that prudential supervision could be better leveraged to address and prevent poor conduct. APRA accepts this point.
18. Conduct and prudential regulators need to ensure strong ongoing coordination regardless of which agency is leading on a particular matter. With respect to APRA and ASIC's relationship, the interagency process has evolved to become considerably closer and more collaborative over the last several years. This includes:
 - quarterly liaison meetings between senior executives of both agencies, as well as regular staff-level liaison on key industry-specific issues;
 - a regular program of meetings between APRA supervisors and ASIC officers to share information and assessments on major banks and other large financial institutions;;
 - consultation, information sharing and mutual assistance on matters of joint interest, including, for example, the work of both regulators on residential mortgage lending standards and life insurance claims, through the Council of Financial Regulators (CFR) working group as well as bilaterally.
19. Also, as outlined in Round 5 submissions, following the recent introduction of the Banking Executive Accountability Regime (BEAR), APRA and ASIC are exploring the potential for closer cooperation in the investigation of individual cases. Work is underway to remove, wherever possible, impediments to the disclosure and use of protected information by each agency, which will streamline this process.
20. More generally, APRA has committed in its 2018-22 Corporate Plan to a more deliberate approach to collaborating with peer regulatory agencies.³ APRA intends to identify and manage the approach, mechanisms, and relationships required for peer agency collaboration on a broader range of risks. As part of this approach, supervisors will be expected to adopt a 'whole of system' mindset, rather than focus on narrowly defined prudential concerns. APRA has also:
 - increased its information sharing and cooperation with the Australian Competition and Consumer Commission (ACCC), formalising regular executive level meetings at Chairman level and establishing operational level communication on areas of mutual interest including sharing workplans. The agencies have agreed to update their Memorandum of Understanding (MoU) as a foundation for the stronger relationship; and

https://www.apra.gov.au/sites/default/files/submission_royal_commission_round_5_superannuation_policy_and_general_questions.pdf

³ APRA, *2018-22 Corporate Plan* (2018-22 Corporate Plan):

https://www.apra.gov.au/sites/default/files/Documents/corporate-plan-2018-22_1.pdf

- commenced planning for a supervisory college in 2019 amongst domestic regulators (both prudential and conduct) to share and coordinate regulatory plans for a large Australian ADI..
21. The Government has also confirmed APRA's prudential role, noting that APRA should focus on preventative aspects to safeguard Australia's financial system.⁴
 22. The Interim Report asked whether there should be annual reviews of APRA's and ASIC's performance against their mandates, such as through the Financial Regulator Assessment Board proposed by the Financial System Inquiry or equivalent body reporting to Parliament.
 23. APRA is already subject to a range of oversight mechanisms. A detailed assessment of APRA's performance in meeting expectations can be found in Chapter 4 of APRA's 2017/18 Annual Report⁵.
 24. Performance and accountability mechanisms include the following:
 - APRA's Annual Report is tabled in Parliament and includes performance measures.
 - APRA is required to publish a corporate plan and reports annually against it in its Annual Performance Statement.
 - APRA is required to publish an externally validated self-assessment against the Government's Regulator Performance Framework.
 - The APRA Members and senior executives regularly appear before, and answer questions from, Senate and House of Representatives Standing Committees, and also before *ad hoc* Parliamentary Committees and Inquiries, to discuss and explain APRA's activities.
 - The Australian National Audit Office audits APRA's annual financial accounts and undertakes *ad hoc* reviews of APRA's performance. These reports are tabled in Parliament and are publicly available.
 - In 2018, Australia has been subject to an extensive, independent assessment of financial stability issues and regulatory oversight via the Financial Sector Assessment program (FSAP) program conducted by the International Monetary Fund. This is the third FSAP, with previous FSAPs conducted in 2006 and 2012. APRA, together with other CFR agencies, has been subject to a comprehensive assessment against globally accepted international prudential principles covering banking and insurance. FSAPs focus primarily on prudential and market regulation, rather than consumer protection or conduct.
 - Although focused primarily on prudential safety, the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision each conduct periodic peer reviews of the implementation and effectiveness of financial sector standards and policies.

⁴ *Statement of Expectations*, September 2018: <https://www.apra.gov.au/statement-expectations-2018>

⁵ APRA, *Annual Report 17/18*: https://www.apra.gov.au/sites/default/files/2017-18_apra_annual_report.pdf

25. APRA has no in principle concerns with proposals that require regulators to demonstrate their performance and accountability – it is essential to the maintenance of APRA’s independence as a statutory agency that it is willing to submit itself to corresponding scrutiny by the Parliament that grants that independence. There has, however, been a tendency over the years to add new layers of reporting and additional accountability mechanisms on regulators, rather than assess whether/how existing mechanisms might be deficient and, if so, propose how they might be improved. Hence, the accountability framework for regulators may be made by more efficient and more effective by looking at the entire framework in a holistic manner.
26. APRA has welcomed reviews such as those by the IMF and other international bodies referred to above, because they bring expertise to prudential regulation to the task, and assess APRA against internationally agreed standards. APRA’s experience has been that these reviews have provided valuable insights into how APRA’s operations can be improved.
27. APRA would be open to having more frequent such reviews, or other reviews of its operations, and stands ready to work with Treasury and others as appropriate on the most effective approach, noting that annual reviews are unlikely to provide sufficiently new information to justify the cost. APRA strongly supports any such reviews being focused on its delivery against its prudential mandate and using external experts who can advise on the process of prudential supervision and regulation.

C. Regulatory practices

28. The Commission has asked whether APRA’s regulatory practices are appropriate and how it should respond to misconduct.
29. APRA considers the relevant issues to consider in answering these questions are:
 - Are APRA’s regulatory practices satisfactory given the regulatory framework in which APRA operates and the role for which it has been established?
 - Should APRA’s regulatory practices relevant to the issues identified by the Commission change?

This section responds by setting out APRA’s practices with respect to supervisory assurance and enforcement and how APRA intends to enhance them, and then covers specific areas of focus raised in the Interim Report, including conduct, culture, accountability and remuneration. The approach taken in the CBA Inquiry and associated lessons is then discussed. This section also provides APRA’s responses on certain of the policy questions following Module 6 (Life and General Insurance) regarding compliance risk management and culture of financial institutions.

APRA’s approach to assurance

30. The case studies investigated by the Commission exposed a range of issues that APRA was aware of at regulated entities, as well as some it was not aware of, such as unreported breaches of other regulators’ rules and material deficiencies in the implementation of policies that were not evident from representations made to APRA.
31. That some information was not known to APRA is not surprising. APRA has approximately 200 front-line supervisors, supervising approximately 600 entities. APRA’s supervision work is necessarily risk-focused and involves day-to-day balancing of resources across a range of thematic and institution-specific issues that need to be addressed. As a result, APRA relies to some extent on assurances from

regulated institutions (or third parties such as external auditors) that their controls are effective and in compliance with APRA's requirements. The Commission has shown instances where these types of oversight mechanisms were not of sufficient quality or depth to uncover deficiencies. In particular, it appears that there were instances where institutions had adopted sound policies and frameworks, but in practice the policies and frameworks had not been implemented effectively.

32. APRA has similarly found, through its work on residential mortgage lending practices, that high-level assurances about lending practices often did not translate into prudent practices within lending operations.⁶ APRA's review and uplift of ADIs' serviceability methodologies which began in 2014 was much more detailed, intrusive and resource-intensive than supervisory practice in the past. It uncovered many areas where ADIs' practices were not effective, which was concerning given the importance of mortgage lending to most ADIs' business models.
33. As part of its review of supervision processes, APRA intends to consider other areas where changes to supervision methodologies are needed to gain greater assurance that policy frameworks within entities are actually being applied effectively in practice.⁷ This will require judgements about resourcing and capabilities, however, and trade-offs between depth and breadth of supervision.
34. APRA's submissions on Round 5 identified areas for improvement in regard to regulation and supervision of superannuation. For example, APRA noted the need to consider its supervision of related party and conflicts management. As described in Mrs Rowell's witness statement,⁸ APRA's thematic review on related party arrangements concluded that there were a number of areas for improvement with respect to how trustees are managing their outsourcing arrangements. In light of the matters raised in hearings, APRA will be looking at how it can deepen its supervision of related party arrangements, particularly within conglomerate groups. This may involve more detailed assurance testing of frameworks, either by external parties or by APRA directly.
35. More broadly, while APRA has also traditionally had requirements for financial institutions in managing conflicts of interest, APRA accepts that these have not been implemented effectively in practice. APRA has stated in its Round 5 submission that it intends to focus additional resources on conflict of interest risks across all industries.

Compliance risk management

36. The Commission asked in its policy questions following Module 6 whether there is sufficient external oversight of the adequacy of the compliance systems of financial services entities and whether ASIC and APRA should do more to ensure that financial services entities have adequate compliance systems.
37. APRA's prudential standard on risk management (CPS 220) requires that entities have:
 - policies and procedures that include mechanisms 'for monitoring and ensuring ongoing compliance with all prudential requirements' [Par 35 (f)]; and

⁶ W Byres, *Sound lending standards and adequate capital: preconditions for long-term success*, speech to the COBA CEO & Director Forum, Sydney, 13 May 2015: <https://www.apra.gov.au/media-centre/speeches/sound-lending-standards-and-adequate-capital-preconditions-long-term-success>

⁷ 2018-22 Corporate Plan, page 15

⁸ Statement of Helen Rowell, 14 August 2018, Exhibit 5.298 [DOC ID WIT.0001.0116.0001], paragraphs 128-138

- an independent adequately resourced designated compliance function that ‘assists senior management of the institution in effectively managing compliance risks’” [Par 43]

38. As outlined above, APRA’s supervision approach allocates attention to areas of greatest prudential risk. APRA supervisors may assess compliance risk management frameworks as part of operational risk assessments of the entity. As part of these assessments, APRA will review the material risks identified by the institution; for the major banks, this means using both operational risk scenarios and operational risk profiling and reporting. If key compliance-related risks are not included (e.g. sanctions, mis-selling; anti-money laundering (AML)) this would be raised with the entity.

39. APRA’s most recent stress test of banks in 2017 included a scenario of non-compliance with responsible lending requirements, in order to require banks to assess the potential extent and impacts of these risks⁹.

40. APRA recognises there is the potential for deeper consideration of compliance risk management frameworks as part of supervision, including coordination with other regulators on compliance issues within their remit (e.g. anti-money laundering).

APRA’s enforcement practices

41. In Closing Submissions on Round 5 and in its Interim Report, the Commission has expressed the view that APRA’s lack of formal court action has contributed to the misconduct identified by the Commission, by not delivering sufficient specific or general deterrence to industry participants.

42. In Chapter 8 of the Interim Report, the Commission discusses Braithwaite’s Enforcement Pyramid and similar analysis undertaken by the US Consumer Financial Protection Bureau (p286-289). The Commission contends that ‘Enforcement generates the moral suasion that underpins regulatory authority’ and that ‘persuasion of the major players has not had the effect of changing behaviour across the industry’.

43. The Commission criticises regulatory actions such as negotiated outcomes (4.1.2), focus on remediation (4.1.3) and insufficient financial penalties (4.1.4), taken in the absence of court-based litigation.

44. As outlined in APRA’s submissions on Rounds 2 and 5, proactive *ex ante* supervision is the core element of APRA’s role as a prudential regulator, rather than *ex post* enforcement. Even without the use of formal enforcement powers, APRA’s supervisory actions take a range of forms and escalate from routine supervision activities to more intrusive and punitive actions that have the impact of specific deterrence. These include heightened supervision actions, such as requirements of entities or increases in regulatory capital. However, APRA acknowledges that because they are not undertaken publicly they will not have a strong general deterrent effect.

45. APRA’s enforcement tools are used by to suit its prudential role; with an emphasis on tools such as directions that can be used flexibly to achieve a range of outcomes. Reflecting this, APRA’s enforcement actions have primarily been used as a last resort, and mainly where financial promises or stability are at risk. In the context of the recent

⁹ <https://www.apra.gov.au/insight-issue-3-2018-testing-resilience>

history of Australia's economic environment, the need to use enforcement actions to address such concerns has been small.

Reviewing APRA's approach

46. A number of recent developments, including the Royal Commission, the introduction of the BEAR, and APRA's own refresh of its corporate strategy, have highlighted the appropriateness of APRA reviewing its approach to enforcement, including in relation its use of public enforcement action for achieving general deterrence effects where appropriate. This aligns with APRA's strategic plan, reflected particularly in its strategic priority on increasing transparency to promote better prudential outcomes.
47. The introduction of the BEAR for banks is necessitating revisions to APRA's practices and procedures for taking enforcement action to hold relevant individuals to account. In addition, while APRA already liaises closely with ASIC on a wide range of regulatory matters, BEAR has highlighted the opportunity to improve practices in relation to joint investigative work. This is consistent with APRA's strategic priority on strengthening collaboration with peer agencies.
48. Consistent with these developments, the Royal Commission has added further impetus for APRA to review and implement any appropriate changes to its enforcement practices. As such, APRA has now commenced a formal review of its appetite and processes for using enforcement action to achieve its prudential objectives. APRA expects this review to be completed by early 2019.
49. APRA has identified the following preliminary propositions to be tested by the review:
 - a) APRA should increase the breadth of issues it seeks to address through public enforcement action;
 - b) APRA should take more enforcement action to hold individuals to account, including under and the BEAR and other powers;
 - c) APRA should take more public enforcement action, including litigation, to achieve general deterrence effects in appropriate cases and publicly disclose enforcement priority areas.
50. Effective implementation of a revised approach will require various changes, both internal and external. Some of these can and will be led by APRA, such as revising internal processes and seeking to strengthen further interagency relationships. Others will require government facilitation, such as additional resourcing and funding to deal with any increases in investigatory and litigation work, and legislative changes to improve current investigatory powers. Details of the required changes will be considered as part of the review.
51. Following the outcomes of the review, APRA will work to implement the necessary changes to its enforcement practices, noting that APRA's role as a prudential regulator will continue to be the cornerstone of any revised approach.

D. Conduct, culture and governance

52. The Commission has asked:

- how APRA should respond to conduct and compliance risk;
- whether APRA's prudential standards on governance should be reconsidered; and
- given the findings of the CBA Report, what steps APRA can take in relation to the issues of governance, culture and accountability at other regulated institutions.

53. In Australia and other jurisdictions, prudential regulation and supervision has evolved from a traditional financial analysis focus to placing greater emphasis on assessing board governance responsibilities for prudent operations of an entity, and more recently to recognise the criticality of culture as a driver of good risk management and the need for supervision to adapt accordingly. APRA has adapted its prudential framework and approach to take account of this evolution, but more remains to be done, as discussed below.

54. APRA accepts that it has traditionally examined cases of poor conduct through a prudential risk lens, and has primarily relied on ASIC to ensure that specific cases of misconduct and consumer harm were properly remediated. Conduct has been viewed as an indicator of risk, but not a direct prudential risk in and of itself unless it was likely to jeopardise the stability of the system or an individual institution.

55. Regulatory attitudes and approaches have evolved since APRA first issued prudential standards on governance (2006) and remuneration (2010) and prudential regulators are turning a closer eye to areas of systemic misconduct.

56. APRA's work to date has taken it some way in this direction.

57. For example, APRA's actions to improve mortgage lending standards, consistent with responsible lending obligations, over the last several years has been well documented.¹⁰ APRA's supervisory program has led to a significant improvements in the practices of ADIs. As outlined in APRA's submission to the Commission on Round 1, ADIs more consistently discount certain sources of income, apply larger interest rate buffers and make greater efforts to collect meaningful expense data. ASIC has also taken formal action on mortgage lending standards, but APRA's prudential program of work has in our view had a timely and significant impact, demonstrating the value of APRA's supervision-led engagement style.¹¹ This has a very direct bearing on the issues arising from the cases and behaviours examined by the Commission.

58. APRA has taken a proactive role in resolving other systemic conduct issues, including working closely with ASIC on issues that have arisen in the handling of life insurance claims at particular entities. This has resulted in APRA collecting and publishing

¹⁰ See, for example, Reserve Bank of Australia, 'Assessing the Effects of Housing Lending Policy Measures', , *Financial Stability Review*, October 2018, chapter 5: <https://www.rba.gov.au/publications/fsr/2018/oct/pdf/05-effects-of-housing-lending-policy-measures.pdf>

¹¹ See, for example, ASIC media releases 15-125: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2015-releases/15-125mr-asic-concerns-prompt-bank-of-queensland-to-improve-lending-practices/>; 18-225: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-225mr-westpac-admits-to-breaching-responsible-lending-obligations-when-providing-home-loans-and-a-35-million-civil-penalty/>

detailed information on performance of the life insurance industry with respect to claims and disputes.¹²

59. In both of the above examples, ongoing coordination between APRA and ASIC was critical to avoid duplication of effort, inconsistent messages to the industry or confusion about the role of the respective agencies. This also has resource implications for both regulators, but clearly can yield very positive outcomes.
60. The Commission has demonstrated how poor culture together with weak governance within organisations can allow incentives for misconduct to persist undetected within an organisation's business operations. APRA agrees that culture is a key driver of an institution's operations but notes that regulatory oversight of culture is a relatively new and developing field. Clearly this is an area where more work is required; APRA's current focus in this area is on accountability and remuneration.
61. Reflecting the importance of culture to an institution's risk management, in 2015 APRA introduced a specific requirement into the prudential framework the board to form a view on its institution's risk culture and how it aligns with its risk appetite.
62. In 2015, recognising the need to develop technical specialty in this area, APRA also created a new team focusing on governance, culture and remuneration. The role of this team is primarily to work with frontline supervisors on specific institutions, as well as leading thematic industry-level investigations. The practice and capabilities of this function is still maturing. A product of this work was the Risk Culture Information Paper in 2016.¹³
63. APRA's program of work in this area over the next 1-2 years includes among other things:
 - implementation of the BEAR regime across all ADIs, including an enforcement regime. This will increase clarity within banks of the responsibilities and accountabilities of their senior executives and provide the foundation for regulator action in the event of breach of the regime;
 - assessing the self-assessments by larger entities against the CBA Inquiry Report and taking supervisory action on deficiencies identified. This will also inform APRA's consideration of future policy development;
 - on-site reviews of risk culture and risk governance, to continue to assess individual entities and pre-emptively deal with weaknesses; and
 - strengthening of the prudential standards and guidance for governance and risk management (including but not limited to fitness and propriety, risk culture, remuneration, and conflicts of interest).
64. The review of prudential standards on governance and risk management will take account of the issues identified by the Commission, among other developments.¹⁴ APRA intends to strengthen the prudential standards to focus not only on policies and frameworks, but their implementation in practice and the outcomes achieved.

¹² See <https://www.apra.gov.au/life-claims-data-collection>

¹³ APRA, *Risk Culture*, October 2016: <https://www.apra.gov.au/sites/default/files/161018-information-paper-risk-culture1.pdf>

¹⁴ For example, amendments to the ASX Corporate Governance Principles

Accountability

65. The Commission has considered the operation of the BEAR and in particular questioned whether it should be altered or extended. In APRA's view, the BEAR will play a role in helping prevent incentives from leading to poor conduct. It makes specific executives within organisations accountable for specific functions and outcomes achieved within those functions. Individuals are also accountable for acting with integrity, due skill care and diligence and for taking reasonable steps to prevent matters arising which would affect the prudential standing or prudential reputation of the entity. The legislation also sets out direct and proportionate consequences for entities and individuals of failing to meet these obligations.
66. The BEAR came into effect from 1 July 2018 for the four major banks. The regime requires ADIs to establish specific accountability statements for board members and senior executives, detailing the responsibilities of each executive. APRA is currently implementing the BEAR regime across all ADIs, with the objective of ensure that BEAR is operationalised and effective in practice, and is not just a paper exercise. APRA will use the clarified and heightened accountability of BEAR to drive better outcomes by embedding supervision of the accountability regime into its existing supervisory approach, as well as enforcing breaches where obligations are not met. APRA intends in its supervision of the BEAR to ensure that accountabilities are well defined in practice (by testing them), that accountable persons understand their accountabilities and have put in place "reasonable steps" to be able to deliver on them, and by confirming that the banks have structures in place to monitor and deliver on their BEAR obligations (including notification of breaches and any administrative updates required to run the regime)
67. APRA's implementation work to date has already delivered outcomes. APRA has reviewed multiple rounds of submission of draft accountability statements and maps from each institution. This has resulted in significant refinement and clarification of accountability statements. Key areas of APRA's feedback included:
- submitting an individual accountability statement for each board member, reflecting their individual role in the oversight of the institution, such as through contribution as a member or Chair of a key board committee; and
 - incorporating significant detail on key prudential concepts including funding and liquidity operations as well as the specific role of each area of accountability, for example, owning and managing the risk, establishing risk management controls, or providing independent assurance; and
 - conducting review and challenge of the accountability statements for clarity and consistency as a transparent and accurate representation of how accountability works in practice within the institution.
68. APRA considers that the regime will perform a strong preventive role by providing stronger incentives for good behaviour. It will also permit APRA to identify and where appropriate take formal action against individuals or ADIs for their role in behaviour that jeopardises the ADI's prudential standing or prudential reputation.¹⁵
69. Although it is too early to assess the impact of BEAR in practical terms, APRA's engagement with the major banks in the process of registration of accountable persons and articulation of accountability statements has already led to some banks

¹⁵ Sections 37G and 37JA of the Banking Act 1959.

reassessing the way in which executive responsibilities have been allocated and clearly understood and communicated.

70. While BEAR strengthens and builds on the existing prudential framework, it will be implemented consistently with APRA's supervisory approach. As a mechanism to empower supervisors, the regime is supervision-led and is most effective by being closely embedded into APRA's existing operational structures and practices.
71. Where obligations under the BEAR regime are not met, the BEAR regime is an additional avenue by which APRA may undertake enforcement action.
72. While the BEAR provides important new enforcement powers, APRA would not expect to use these powers for minor breaches. The Government's expectation is that APRA would only seek a civil pecuniary penalty for significant breaches.¹⁶ This is particularly where a case can be made that the entity or individual took 'reasonable steps' to prevent the poor outcome and where action is taken to prevent recurrence. Coupled with its limited scope, the BEAR is thus not an answer to all types of misconduct identified by the Commission, but may form part of a multi-faceted solution.
73. The BEAR was modelled on the UK Senior Managers' Regime. However, the BEAR is narrower in coverage: the BEAR applies only to ADI groups, and deals primarily with matters related to the prudential standing and prudential reputation of the ADI. For this reason alone, the BEAR is unlikely to address the full range of conduct issues identified by the Royal Commission.
74. In its current form, the BEAR is naturally administered by APRA. The joint administration between the Prudential Regulation Authority and the Financial Conduct Authority that occurs in the UK reflects the wider range of institutions and behaviours that are covered by the SMR. Were the BEAR to be broadened at some stage in the future to more directly deal with conduct-related matters, a similar joint administration would be appropriate in Australia.
75. In APRA's view, there would be benefits to adopting a similar accountability regime (appropriately tailored to each sector as needed) across other sectors of the financial system. This could be done either through legislation or, for insurers and superannuation funds, in a simplified form through APRA's prudential standards.
76. In addition, the regime could be extended to cover all types of misconduct, including conduct affecting individual consumers. The BEAR currently covers conduct that is systemic and prudential in nature, which could include some types of misconduct investigated by the Commission.¹⁷ This approach was taken deliberately to avoid blurring the lines of responsibility across regulators.¹⁸ A broadened (or parallel) regime could cover conduct as well as prudential breaches, and be jointly administered with ASIC. However, this would need to be done without creating duplication of effort, such as multiple regulators pursuing action on the same offence.
77. Even without a legislated regime, financial institutions can use the same concepts and tools as mandated under the BEAR, including accountability statements for key individuals and accountability maps, to provide appropriate incentives and support a strong risk culture.

¹⁶ Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2018 *Revised Explanatory Memorandum* (Revised EM), para 1.158.

¹⁷ Revised EM, para 2.10.

¹⁸ Revised EM para 2.67.

Incentives and remuneration

78. The Commission has asked whether APRA's prudential standards on governance (particularly *Prudential Standard CPS 510 Governance*, which contains the remuneration requirements) need to be reconsidered.
79. APRA agrees that a sharper focus on incentive structures is needed, both by regulators and financial institutions. As outlined below, APRA intends to strengthen and modernise its governance standards on remuneration to reflect experience to date and current expectations of good practice.
80. The Commission notes that 'banks seek to maximise profit' (p. 269) and 'annual profit has become the measure of success in Australian banks'. In APRA's view, this is not surprising and is the case for financial institutions around the world (other than mutually owned entities). In many institutions, profit targets drive remuneration and other incentives as all remuneration needs to be funded by financial performance if the institution is to be sustainable in the long-term. If not balanced by strong risk culture, internal controls and governance structures, however, these incentives can lead to behaviour focused on generating short-term revenue at the expense of long-term sustainability. It can also lead to underinvestment in and undervaluing of sustainable processes and systems, including risk management.
81. As the Commission has highlighted, remuneration of line staff tied to financial or sales targets can drive poor outcomes for customers and contribute to a culture that tolerates misconduct. In fact, the Interim Report has questioned whether incentive remuneration is necessary at all.
82. APRA agrees that incentive remuneration can lead to perverse incentives, but it would seem premature to call for abolition of any incentives throughout an organisation.¹⁹ Incentive structures have a longstanding role across many industries. Removing them altogether could have unintended consequences, such as the conversion of variable costs into fixed costs.
83. The core objective of APRA's prudential requirements in relation to remuneration is that performance-based components of remuneration should encourage behaviour that supports the effective risk management and long-term financial soundness of the institution. This is also the focus of the newly legislated BEAR remuneration requirements, which mandate minimum amounts of variable pay to be deferred for certain periods of time for senior executives.
84. The Commission noted that APRA has confined its interest in remuneration largely to prudential risks. This is correct, reflecting the nature of APRA's standards as being directed towards long-term financial soundness.
85. However, APRA's requirements and guidance direct entities to consider both financial and non-financial risks in setting their remuneration structures. For example, APRA's prudential standard on risk management (*Prudential Standard CPS Risk Management (CPS 220)*) defines material risks as 'those that could have a material impact, both financial and non-financial, on the institution or on the interests of depositors and/or policyholders.'²⁰ APRA's remuneration guidance also notes 'It is important for an institution to recognise and adjust remuneration for non-financial measures, such as

¹⁹ *Prudential Practice Guide PPG 511 Remuneration* (PPG 55), paragraph 47:

https://www.apra.gov.au/sites/default/files/PPG511_REM_revised-Dec-09.pdf

²⁰ CPS 220 paragraph 20: <https://www.legislation.gov.au/Details/F2017L00973>

compliance with risk management and internal audit frameworks, management of staff, adherence to corporate values and displaying acceptable corporate citizenship.²¹

86. In addition, APRA has primarily focused on senior executives and material risk takers, and in particular aligning their interests with long-term financial soundness of the institution, as these executives will be the primary drivers of risk-taking throughout the organisation, and have the greatest impact on long-term financial soundness in their decision-making. APRA has not actively considered sales staff or others at lower levels within an organisation, given the lesser prudential risk they pose.
87. The historical context is important in this regard. Remuneration requirements were not a feature of the financial regulatory landscape until the global financial crisis. Even then, the focus has been on parameters around bonus structures and deferral of variable remuneration for a period of time for senior staff, to allow sufficient time for outcomes to crystallise.
88. As indicated in its submission on Round 1, in 2017, APRA undertook a review of remuneration policies and practices across a sample of large APRA-regulated entities. The review examined in particular how the stated remuneration frameworks and policies were translating into outcomes for senior executives. Early in 2018, feedback sessions were held bilaterally with the institutions assessed to present the observations from the review and to provide insights into the assessment of each individual institution relative to others in the sample. In April 2018 an information paper setting out the findings from the review was published.²²
89. The review found that remuneration frameworks and practices across the sample did not always meet APRA's objective of encouraging behaviour that supports risk management frameworks and institutions' long-term financial soundness. Though all institutions had in place remuneration structures that satisfied the minimum requirements of APRA's prudential standards, the frameworks and practices often fell short of the sound practices set out in the relevant prudential guidance, and were therefore some way from better practice.
90. There are several areas for improvement highlighted in the remuneration information paper but three key areas were in relation to:
 - Outcomes – APRA's review noted multiple examples where employees at lower levels received downward adjustments to their remuneration, but these were not always matched by corresponding adjustments at an executive level to recognise overall line or functional accountability. In this respect, a sound remuneration regime works in tandem with clear accountability (as per the BEAR) for poor outcomes.
 - Metrics – measures by which performance was judged were too focused on shareholder metrics such as return on equity and total shareholder return.
 - Oversight – the review also found shortcomings in the oversight by board remuneration committees of remuneration practices and framework.

²¹ PPG 511, paragraph 53.

²² APRA information paper, *Remuneration practices at large financial institutions*, April 2018: <https://www.apra.gov.au/sites/default/files/180328-Information-Paper-Remuneration-Practices.pdf>

91. APRA will review these matters as part of its review of institutions' self-assessments against the CBA Inquiry Report.
92. In its paper on the findings of the remuneration review, APRA also indicated that it intends to review the prudential framework to support a more robust and credible implementation of the objectives of the prudential requirements and guidance on remuneration, supported by ongoing supervision. Potential enhancements to the prudential framework include improved design of remuneration frameworks, more effective implementation and assessment of outcomes, strengthened board oversight, and enhanced reporting and disclosure.
93. In light of the Interim Report, and the findings of the CBA Report, the scope and objectives of APRA's requirements could be broadened, for example, to include a focus on incentives across an institution, and the impact of those incentives on risk-taking and financial and non-financial outcomes. APRA will also look to incorporate the *Supplementary Guidance to the FSB Principles and Standards on Sound Compensation Practices*, which addresses the use of compensation tools to address misconduct risk.²³ The FSB Supplementary Guidance recommends better practice to address the full range of responsibility from boards to senior management for conduct issues; the integration of non-financial considerations into compensation; the alignment of compensation incentives to the longer time that misconduct risk may take to materialise, and the use of transparent, consistent and fair compensation policies.
94. The industry should also be expected to take the lead on improving remuneration structures to prevent misconduct from recurring. Institutions looking to enhance conduct-related performance measures should ensure these are implemented in practice.

CBA Inquiry Report

95. APRA's Inquiry into CBA provides a comprehensive analysis of governance failings within the bank. APRA's understanding is that it is being used as a template for many institutions to examine their own governance, even outside the financial industry.
96. The Commission has rightly asked whether other financial institutions may have the same issues, and if so what actions APRA will take.
97. APRA's Inquiry is relevant to many of the questions posed by the Commission. The report demonstrates APRA's evolving supervisory approach in these areas and has been the impetus for further work across a range of areas, including governance, conduct, culture, compliance and other non-financial risks, and remuneration practices. Discussions with boards of a number of regulated entities indicates that they are taking the findings of the CBA Inquiry Report very seriously for their own operations.
98. The CBA Inquiry was established after a series of incidents that called into question the bank's governance and culture and severely damaged its reputation and public standing. While CBA was responding to individual issues and matters of concern raised by APRA in the preceding years, progress had been slow. The issues raised by AUSTRAC crystallised a need for a deeper investigation into the governance, culture and accountability within CBA.

²³ FSB, *Supplementary Guidance to the FSB Principles and Standards on Sound Compensation Practices: The use of compensation tools to address misconduct risk*, 9 March 2018: <http://www.fsb.org/wp-content/uploads/P090318-1.pdf>

99. APRA established a separate panel of experts, supported by a large dedicated project team using external consultants as well as APRA supervisors. This team conducted over 90 interviews with current and former CBA directors and staff, surveyed 6,000 staff and reviewed over 10,000 documents.
100. On 30 April 2018, APRA received the Final Report from the Panel. The report highlighted deficiencies in practices across governance, accountability and culture. This included the role of the board, risk culture within business lines, monitoring of compliance and non-financial risks, and remuneration practices. A detailed remediation plan is in place and is being monitored by APRA under the terms of the Enforceable Undertaking.
101. Following the release of the CBA Report, APRA asked 36 larger regulated entities to submit their own self-assessment against the findings of the CBA Report. Once these are received in November 2018, APRA's key focus will be on how each entity assesses itself against the report, as well as how they went about forming their views.
102. APRA will review and benchmark the individual self-assessments to identify both institution-specific actions needed as well as areas requiring improvement industry-wide. This review is expected to be completed by the end of the first quarter of 2019. APRA plans to publish the industry-level results of these self-assessments focusing on thematic issues, to identify areas requiring industry and supervisory attention going forward.
103. The CBA Inquiry has also highlighted areas for APRA to consider as part of its ongoing supervisory practices. This includes the need for greater assurance to ensure that whatever the quality of frameworks that entities have established, understanding the effectiveness of these frameworks in practice, and what outcomes they produce, is critical.
104. For example, the use of case studies in the CBA Inquiry showed how governance works in practice by following issues from start to end and providing additional insight into how decision making and behaviours operate in practice. Conclusions from the Inquiry indicate that APRA supervisors need greater engagement with first line business unit management. In addition, one-on-one interviews at different levels and across the three lines of defence was a useful technique in the CBA Inquiry for understanding various perspectives on how issues were managed in the CBA. The Panel also focused its attention on non-financial risks, which have historically not been APRA's supervisory approach to a major bank.
105. While acknowledging the insight afforded by an approach as detailed and intensive as the CBA Inquiry, APRA emphasises that the scale and depth of the investigation undertaken (including an external panel and use of consultants) went well beyond APRA's normal capacity and resourcing for responding to prudential concerns. APRA has a tradition of using external or 'tripartite' reviews where an external audit or consulting firms performs a deep dive into an area of concern under an engagement defined by APRA. APRA has used this approach in a thematic sense, for example in its work on residential mortgage lending, and where entities have exhibited particular deficiencies where an external expert is better placed to assess the root causes and appropriate remediation. APRA will continue to use this model, and indeed will look for opportunities to extend it, using versions of the CBA Inquiry approach, within the supervisory process.

E. Specific issues raised in the Interim Report

Lending practices

106. The Commission's investigations have revealed specific instances of poor conduct by financial institutions, particularly in areas of lending and financial advice.
107. APRA supervisors focus considerable attention on lending practices, particularly in residential mortgages and business banking given the scale of the potential risks to regulated institutions arising in these businesses. APRA's regulatory focus in recent years has been on residential lending, including through heightened on-site and off-site reviews, the targeted review conducted by external auditors and revisions to *Prudential Practice Guide APG 223 Residential Mortgage Lending*.
108. The Commission notes, correctly, that APRA's focus is more on the credit risk to the bank rather than on individual loan suitability. That said, there are strong complementary objectives between APRA's prudential focus and ASIC's oversight of responsible lending obligations.
109. The Interim Report questions the steps that a lender should take to meet its responsible lending obligations, whether the Household Expenditure Measure (HEM) should continue to be used as a benchmark for borrowers' living expenses and whether existing processes meet these obligations.
110. APRA's expectations of ADIs' approach to borrowers' living expenses were set out in its Round 1 submission.²⁴ Sound banking and good credit risk management require a lender to make reasonable inquiries into a borrower's actual living expenses; a sensible borrower also applies for a loan that they know they can afford and is appropriate for their circumstances. There is, however, a role for a benchmark to address borrowers' difficulties in estimating expenses and instances where expenses appear to be too low—the intention of the HEM benchmark.
111. Benchmarks provide efficiencies in the lending decision, which is time-critical for many borrowers, and also not an exact science. A lender is attempting to project a borrower's future uncertain income and expenses into an uncertain future, over the life of the loan. For this reason, prudent buffers are generally built into these calculations.
112. Such a benchmark should be used as additional to, not as replacement for, reasonable inquiries, as reflected in APRA's guidance on mortgage risk management. As set out in its previous submission, APRA also supports work currently underway by the major banks to refine the calibration of expense benchmarks.
113. The Interim Report raised a number of issues relating to security valuations and supported APRA's intention to incorporate requirements for independent valuations in its prudential standard for credit risk management.
114. APRA is currently revising its now outdated prudential standard on credit quality and expects to consult on a revised version of this standard in early 2019.²⁵ APRA will consult on incorporating these requirements, including that appraisals should be undertaken independently of an ADI's loan origination, processing and decision

²⁴ Written submissions of the Australian Prudential Regulation Authority Round 1: Consumer Lending: <https://financialservices.royalcommission.gov.au/public-hearings/Documents/Round-1-written-submissions/Australian-Prudential-Regulation-Authority-APRA.pdf>

²⁵ APS 220 *Credit Quality*. See also APRA's *policy priorities*, 31 January 2018, p1: https://www.apra.gov.au/sites/default/files/policy_agenda_2018.pdf

processes. APRA does not intend to mandate a valuation methodology but notes that, where there is no open and transparent market for a collateralised asset, other means may be appropriate to determine value, such as discounted cash flows or alternative use valuation. In addition, a 'security lending margin' is typically applied to a market valuation to reflect the possibility of external shocks.

115. This review is also likely to formalise APRA's expectations regarding an ADI's assessment of a borrower's capacity to repay, proportionate to the nature, type and size of the exposure and would require the ADI to obtain sufficient information to be comfortable that the borrower can meet its obligations to the ADI.
116. Other good practices that APRA will consider including in the updated prudential requirements include ensuring appropriately experienced credit risk personnel commensurate with the size and complexity of the transaction in which they are involved, and the segregation of the workout function from loan origination. Prudential guidance may also assist an ADI in balancing loan recovery objectives with the substantial body of law and reputational impact in treating troubled borrowers or counterparties fairly and appropriately.
117. Following from its work focusing on residential mortgages over the last few years, APRA is now commencing a review of business banking practices within the major banks. This review process will start with an on-site review to one of the major banks focusing on business banking and will include a specific session on agribusiness and an examination of a sample of business banking files.

Industry codes of conduct

118. The Commission has asked whether industry codes of practice should be given legislative recognition and application, particularly given the important role codes play in protecting consumers in some sectors (e.g. SME and agricultural lending).
119. Industry codes, such as the Australian Banking Association's Code of Banking Practice, play an important ownership and accountability role by articulating norms of industry conduct.²⁶ APRA remains supportive in principle of comprehensively adopted and robust industry codes, which are effectively implemented and enforced by industry bodies and institutions that are signatories to the relevant code. Codes supplement legislation and regulation that is enforced by regulators, and so can establish a number of layers of protection for consumers.
120. Self-regulation through codes delivers flexibility within the regulatory architecture to respond to emerging risks and evolving community expectations. Industry participants see value in reducing the need for additional legislation and regulation. By establishing a norm of conduct for industry participants on an emerging risk, codes can potentially avoid perceived 'first mover disadvantage' that might otherwise constrain change.
121. In practice, not all entities subscribe to relevant industry codes and adherence to industry codes is not required by legislation or regulation. However, APRA observes in practice that most large and medium sized prudentially regulated entities have voluntarily subscribed to the relevant industry code, and this results in industry codes having significant coverage in the Australian financial sector.
122. Unlike ASIC, APRA does not have any direct responsibility with respect to industry

²⁶ Other codes relevant for prudentially regulated entities include: The General Insurance Industry Code, the Life Insurance Industry Code, and the Insurance in Superannuation Code.

codes. Where appropriate, APRA's practice entails engaging with industry bodies about the design of industry codes and their consistency with prudential requirements. APRA's view is that its current engagement with industry bodies strike a reasonable balance between engagement about the robustness of industry codes, and ensuring that industry bodies and institutions that are code signatories remain accountable for effective adherence to relevant codes.

123. A number of case studies considered by the Commission have identified instances where a financial institution has not fulfilled its duties under the relevant industry code. In these cases, APRA's view is that industry bodies and the institution that is the code signatory should be accountable for effectively adhering to the code in practice, and that there is timely remediation of individual consumers where an institution has not met its obligations under the code.²⁷

Processing errors

124. The interim report noted administrative and information technology failures in interest rates and fees charged to home loan customers, which entities described as processing errors. It is difficult to dispute the principle that entities should have operational capabilities to provide products before they offered, and to remedy any default and the consequences of default as soon as reasonably practicable. However, there may be some instances where errors arise because, in the interests of efficiency and competition, some manual processes are required to facilitate new products. APRA cautions against establishing an expectation that all mistakes should be penalised, particularly in the absence of any evidence of a lack of good faith. Small errors, provided quickly rectified to the customers satisfaction may be a necessary cost within the system to balance competition and efficiency considerations

Funeral insurance

125. The Commission has asked whether funeral policies should be subject to ASIC's jurisdiction. As set out in its submissions on Round 4, APRA sees merit in consistent treatment of funeral products to facilitate a consistent level of consumer protection such as licensing of the provider, disclosure and dispute resolution, regardless of the specific product or structure involved. APRA notes, for example, that funeral expenses policies are not life policies under the *Life Insurance Act 1995 (Cth)* as indicated on page 263 of the interim report. APRA also supports addressing concerns that entities involved in the case studies, while not undertaking insurance business, appear to have represented themselves, or been represented, as insurers.

APRA's funding

126. At pages 106-107, the report records the respective actual and estimated budgets of ASIC, ACCC and APRA for the years 2016/17, 2017/18 and 2018/19. The amounts for APRA include Private Health Insurance Risk Equalisation receipts, which do not form part of APRA's operating budget. The correct amounts are:

	2016/2017 - \$'000	2017/2018 - \$'000	2018/2019 - \$'000
APRA	\$129,744 (actual) ²⁸	\$144,012 (actual) ²⁹	\$145,552 (estimate) ³⁰

²⁷ For example, the ABA has established the Code Compliance Monitoring Committee to investigate individual breaches of the code. Courts have previously found that promises made by a bank under the ABA's Code of Banking Practice may be enforced as terms of contract.

²⁸ APRA 16/17 Annual Report, page 80: https://www.apra.gov.au/sites/default/files/apra_annual_report_2016-17_0.pdf

²⁹ APRA, 17/18 Annual Report, page 72

³⁰ Treasury, *Portfolio Budget Statements 2018-19: Treasury Portfolio* (Commonwealth of Australia, 8 May 2017) page 129