



Reserve Bank
of New Zealand
Te Pūtea Matua

Enforcement Framework

Enforcement Guidelines

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Introduction

Where serious non-compliance by a regulated entity or individual is identified, our legislation allows us to investigate and take enforcement action where appropriate. The purpose of these Enforcement Guidelines is to outline our regulatory response model to enforcement.

These **Enforcement Guidelines** should be read in conjunction with our **Enforcement Principles and Criteria** and our **Investigation Guidelines** (collectively, our **Enforcement Framework**).

The Enforcement Guidelines provide further detail on how we apply our Enforcement Principles and Criteria when a matter of serious non-compliance is being dealt with by our enforcement function with a view to determining an appropriate response.

Different tools will be available for each of the areas for which we have regulatory responsibility: AML/CFT supervision, prudential supervision of registered banks, licensed insurers, non-bank deposit takers, and financial market infrastructure regulation. These Enforcement Guidelines (along with the other parts of the Enforcement Framework) are therefore necessarily high-level so that they can be applied to all of the legislation for which we are responsible.¹

The Enforcement Framework is not exhaustive and does not limit our discretion to take enforcement action where it is appropriate to do so and in the manner we choose. Practical issues arising on a case by case may on occasion mean departing from elements of the Enforcement Guidelines. However, the Enforcement Guidelines can be taken to reflect our overall approach.

A glossary of defined terms can be found at page 11 of this document.

Enforcement Framework and related publications

Our Enforcement Framework sets out the considerations that apply when we select matters for investigation, conduct investigations, and ultimately take decisions relating to serious non-compliance. It ensures we are consistent, robust, and transparent in our decision-making processes. The Enforcement Framework consists of:

- **Enforcement Principles and Criteria** which describe the fundamental considerations (principles and criteria) for the Enforcement Framework that we will work through and weigh when deciding on the appropriate response. This piece of the Enforcement Framework guides the direction of our investigation and informs our approach to applying our enforcement discretion.
- **Enforcement Guidelines** this document.
- **Investigation Guidelines** which describe our approach to investigations and how we apply the Enforcement Principles and Criteria throughout the lifecycle of an investigation. The Investigation Guidelines also describe our use of information gathering powers under our legislation when used as part of an investigation.

Our Enforcement Framework should also be read alongside our Statement of Prudential Policy, Financial Policy Remit, and Relationship Charter.

¹ Our legislation includes the Reserve Bank of New Zealand Act 2021, Banking (Prudential Supervision) Act 1989, Insurance (Prudential Supervision) Act 2010, Non-bank Deposit Takers Act 2013, Financial Markets Infrastructures Act 2021, and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

The [Statement of Prudential Policy](#) provides transparency about how we will act as a prudential regulator to achieve our financial stability objective. This statement also promotes public awareness and understanding of our activities and operations.

The statement outlines how we will act when:

- carrying out prudential supervision;
- imposing prudential standards or other requirements;
- monitoring and investigating compliance with our prudential framework; and
- taking appropriate enforcement and resolution actions.

The [Statement of Prudential Policy](#) covers the principles that we consider in making decisions, and tailors these for Prudential Policy, Supervision, Enforcement, and Resolution.

The [Financial Policy Remit](#) issued by the Minister of Finance outlines matters that the Minister considers are desirable for us to take into account when meeting our financial stability objective, including acting as prudential regulator.

Our [Relationship Charter](#) is a core part of how we manage our relationships. The charter itself provides the aspiration to build and maintain the best 'regulator/regulated' supervisory relationships possible with all the different regulated entities by outlining how we will behave and communicate with one another.²

Our regulatory response model

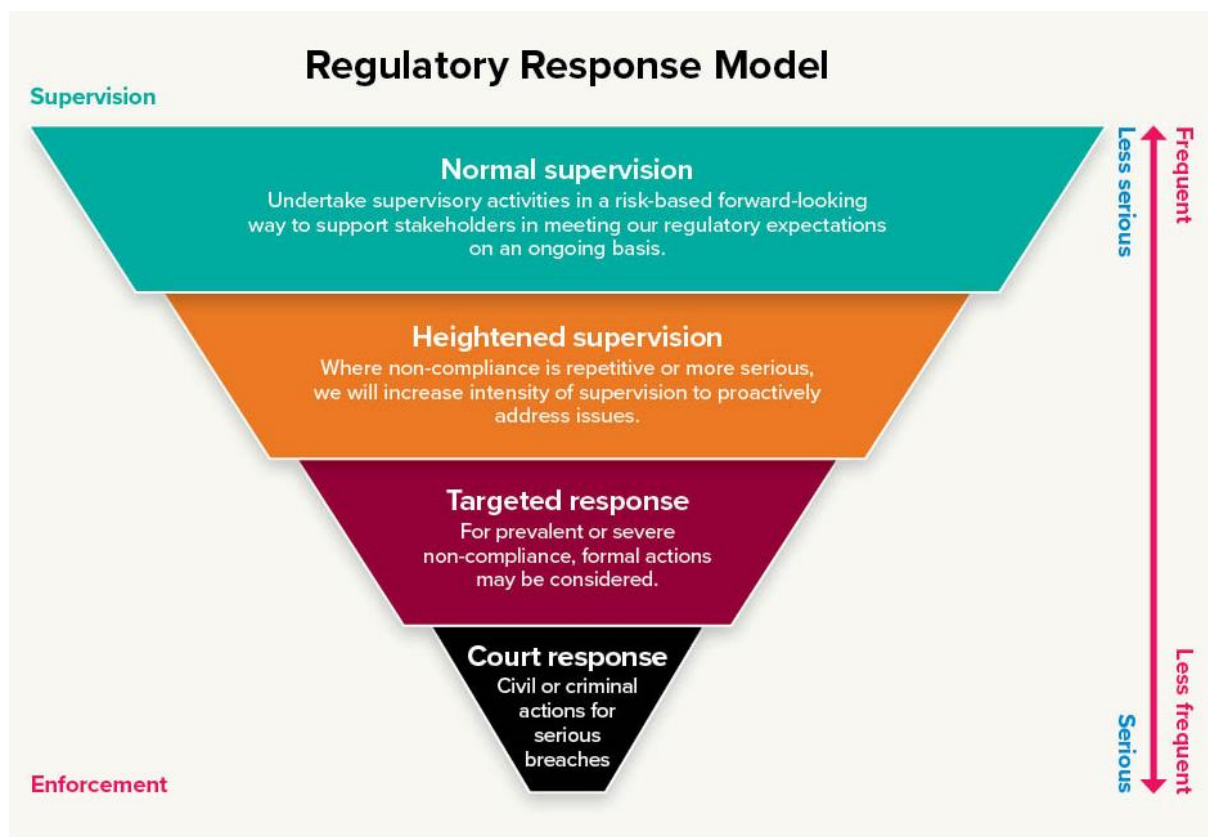
We have a variety of tools³ available to us to address potential or actual non-compliance with our legislation. These range from tools used as part of normal or heightened supervision to court responses such as civil or criminal litigation. We have the ability to use a proportionate approach to escalate and intensify our actions as appropriate.

Our regulatory response model below gives an overview of the available tools, reflecting the increasing levels of seriousness of the non-compliance.⁴ The model also shows indicative usage of the available tools and whether they are likely to be led by our supervision or enforcement function. We expect that enforcement-led court responses should represent a relatively limited proportion of overall regulatory activity.

² We have introduced the Relationship Charter to banks and insurers, and will be discussing it with our other regulated sectors over time.

³ Further legislative reform will change our available compliance response options. We will update this guidance where appropriate.

⁴ For further context, the regulatory response model should be read alongside the diagram in our Statement of Prudential Policy that shows the paths for the potential escalation of matters when dealing with serious non-compliance when a regulated entity is approaching non-viability.



This is not a sequential model of intervention and the tools listed in the model are only examples. We choose the most appropriate tool or combination of tools from anywhere within the model to suit the circumstances. There may be overlaps or tools that run in parallel. For example:

- Heightened supervision may proceed in parallel with a targeted response and conceivably with a court response. For example, we could impose a compliance plan while investigating the conduct which may result in court action or a public warning.
- Supervisory responses may be used initially to stop ongoing non-compliance or remedy harm, whereas enforcement-led responses may occur later to punish and deter future non-compliance. For example, we could conceivably impose new or amended licence conditions on a regulated entity before the outcome of litigation is determined.

Our enforcement and supervision functions are operationally separate, but work closely together with the other prudential regulation functions to achieve our objectives. As indicated in the model (and further described below), whether a response to identified non-compliance is supervision or enforcement-led will depend on the circumstances and the seriousness of the non-compliance. Notwithstanding this, our supervision and enforcement functions will work closely together and provide subject matter expertise and support on all matters of identified non-compliance where appropriate.

Enforcement-led responses will tend to be responses from the targeted response or court response strata of the model. The Enforcement Framework directly applies to all enforcement-led responses.

Below we describe each stratum of response in the model in greater detail.

Normal supervision

The widest stratum of the model reflects our normal supervisory approach to prudential regulation and Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT). This includes approaches to correct minor or isolated non-compliance in line with our supervisory approach as outlined in the Statement of Prudential Policy.

Normal supervision will be undertaken by the relevant supervision function.

Heightened supervision

Where non-compliance is repetitive or more serious in nature, a heightened supervisory response may be appropriate.⁵ This may involve escalated engagement with the regulated entity and its board, imposing additional reporting obligations, or remediation (e.g., requiring the implementation of a compliance plan).

Heightened supervisory responses are likely to be supervision-led.

Targeted response

As the severity or prevalence of non-compliance increases, a higher-level of response may be appropriate. These higher-level responses may include:

- Statutory warnings or enforceable undertakings.⁶
- Public or private warnings, changes of licensing conditions (e.g., Conditions of Registration (CoRs) for registered banks), removal of directors, or a direction to a regulated entity.^{7 8}

Where identified non-compliance justifies a targeted response, the circumstances will determine whether the matter is supervision or enforcement-led. This could be different for different sectors, entities, and in different regulatory and economic environments.

As general guidance, statutory warnings and enforceable undertakings are likely to be enforcement-led, while the issuance of directions, removal of directors, or changes to conditions of licence will generally be supervision-led.

Court responses

Where the non-compliance is serious, repetitive, systemic, or causes serious harm, a court response may be appropriate to best achieve our purpose and objectives. Depending on the relevant legislation, this includes criminal prosecutions leading to conviction and a fine; and civil action such as seeking pecuniary penalties and injunctive relief. We may also take proceedings against individuals where we believe that they have breached their statutory obligations. As noted above, our supervision and enforcement functions will work closely together to determine the appropriate response(s). A court response will almost always be enforcement-led.

⁵ A heightened supervisory response may be selected as the appropriate response after the enforcement function has undertaken an investigation. In these circumstances, the matter will likely be referred back to the relevant supervision function to progress the response.

⁶ 'Enforceable undertakings' are currently available under the AML/CFT Act and 'voluntary undertakings' are also available under the Financial Markets Infrastructure Act 2021.

⁷ The Reserve Bank may give directions to a registered bank under section 113 of the Banking (Prudential Supervision) Act 1989 and to licensed insurers under section 143 of the Insurance (Prudential Supervision) Act 2010.

⁸ The Reserve Bank may also issue infringement notices for certain offences. These are a type of low-level targeted response. Infringement notices are dealt with separately below.

Other points

No supervisory or enforcement-led response

In rare circumstances we may also close an investigation without a supervisory or enforcement-led response if no breach of legislation can be made out or if there are significant mitigating factors. Where no supervisory or enforcement-led response is determined to be applicable after an investigation, we will communicate this to the regulated entity (or individual) as soon as practicable.

Infringement offences

We can issue infringement notices for breaches of certain statutory obligations that give rise to infringement offences under the Reserve Bank of New Zealand Act 2021. These are a type of low-level, targeted response that may lead to a court response if the infringement notice is not complied with or if the non-compliance is repeated or continuous. We will apply our Enforcement Principles and Criteria when considering whether and what action to take in response to an infringement offence.

Natural justice considerations

Enforcement-led targeted and court responses will occur after the matter has been referred to the enforcement function for investigation. We will follow all applicable natural justice considerations when considering the appropriate response.

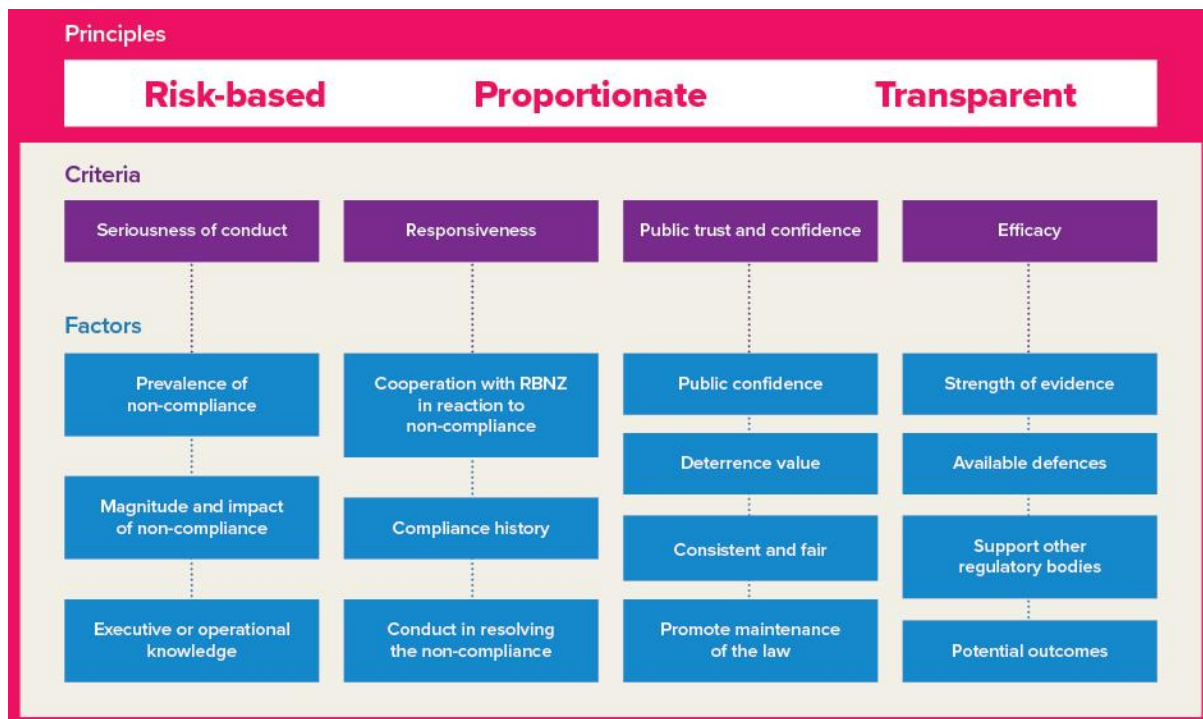
Where a court response is considered, we will only take proceedings where we are comfortable that we have a sound legal basis for acting and where the relevant tests⁹ in the Solicitor-General's Prosecution Guidelines are satisfied.¹⁰

⁹ The relevant tests are the Public Interest test (included in the 'public trust and confidence' criterion in the Enforcement Principles and Criteria) and the Evidential Sufficiency test (included in the 'efficacy' criterion in the Enforcement Principles and Criteria).

¹⁰ The Solicitor-General's Prosecution Guidelines is only a mandatory consideration in bringing criminal proceedings. However, for consistency we may choose to apply the same tests to our consideration of civil proceedings.

Application of the Enforcement Principles and Criteria

Our Enforcement Principles and Criteria apply to all matters of serious non-compliance that are being dealt with by our enforcement function. They apply throughout an investigation¹¹ and when selecting the appropriate response to non-compliance that has been referred to the enforcement function. The table below sets out our Enforcement Principles and Criteria.



Application of the enforcement principles

Below, we provide further detail on how we apply each of our enforcement principles when determining an appropriate response to serious non-compliance that has been referred to the enforcement function. As indicated in our examples below, the appropriate response may involve a referral back to the relevant supervision function for a supervision-led response.

Risk-based

Our risk-based approach involves an assessment of the nature of the regulated entity, seriousness of non-compliance, significance of the issue, and the circumstances of the non-compliance.¹²

We have a low tolerance for clear instances of non-compliance by regulated entities that may impact our financial stability objective or on our ability to achieve the specific purposes of our legislation. We also have a low tolerance for clear instances of our regulated entities not complying with their obligations under the AML/CFT Act.

If the serious non-compliance gives rise to a *high risk* to achieving our prudential mandate or our responsibilities under the AML/CFT Act, the risk-based principle would likely indicate a more robust enforcement-led targeted response or court response may be appropriate. This enforcement-led

¹¹ The application of the Enforcement Principles and Criteria during an investigation is dealt with in our Investigation Guidelines.

¹² Enforcement Principles and Criteria.

response may operate in parallel with a supervisory response. For example, if the financial stability objective was at risk the immediate priority would be finding an appropriate supervisory response¹³ to stop the conduct and manage any potential negative consequences. An enforcement-led response, such as a court response, may then follow after an investigation.

However, if the magnitude and impact of the non-compliance is low, or the non-compliance involves a *low risk* to achieving our legislative purposes and objectives then these would be taken into account as mitigating factors. For example, if the non-compliance with the AML/CFT Act involves a high volume of transactions or an extended period of non-compliance, but carries a low risk to our ability to achieve our legislative objectives, then a targeted response may be appropriate (e.g., an enforceable undertaking or statutory warning under AML/CFT Act) as opposed to a court response.

Proportionate

The proportionality principle means that the burden and cost of an enforcement-led response should be proportionate to the relevant non-compliance, level of harm involved, and expected benefits from that enforcement-led response, for both us and our regulated entities.¹⁴

Where the serious non-compliance has caused serious actual or potential harm, is repeated, reduces public confidence, and the regulated entity has not cooperated with us during our investigation, an enforcement-led response towards the more serious end of the regulatory response model may be proportionate (e.g., a court response).

For example, where a regulated entity fails to comply with fundamental elements of the AML/CFT Act, we may issue them with a statutory warning to address the non-compliance in the first instance. If the regulated entity continues to engage in the same or similar non-compliance after receiving the statutory warning, or fails to remediate the non-compliance, a more robust response such as litigation may be proportionate to punish and deter further non-compliance. In these circumstances failure to respond appropriately to previous targeted responses will be considered as an aggravating factor.

Conversely, where the serious non-compliance involves a large number of transactions but has been promptly and voluntarily brought to our attention, has limited harm, and has been remediated, a targeted response may be proportionate (e.g., a statutory warning under the AML/CFT Act). In these circumstances the cooperation of the regulated entity (or individual) with our investigation and the effective, prompt, and voluntary remediation of the non-compliance are considered as mitigating factors.

It is also possible that a supervisory response may be proportionate, in which case, our enforcement function will likely refer the matter back to the relevant supervision function to implement the appropriate response.

In considering an appropriate response, we will have regard to other domestic and international regulators' responses to similar instances of non-compliance.

¹³ In this context 'supervisory response' includes the full spectrum of supervisory tools available to the Reserve Bank, from enhanced supervision through to resolution.

¹⁴ Enforcement Principles and Criteria.

Transparent

The transparency principle promotes accountability by ensuring that the public, regulated entities, and other stakeholders are aware of our enforcement processes and responses. Transparency has two important factors, transparency of process and transparency of outcome.¹⁵

Publication may form part of our enforcement-led response, as publication can serve to deter future non-compliance and have a broad positive effect on industry behaviour.

In most cases, we will look to publish enforcement-led responses on our website.¹⁶ For example, in most cases we will publish statutory warnings on our website, as well as judgments from any litigation that we undertake. This includes any litigation that may be decided against the Reserve Bank.

Any decision to publish an enforcement-led response will be circumstance-specific and made after weighing the benefits of publication against competing considerations, such as commercial sensitivity and our purpose and objectives. The proportionality principle will also be considered to ensure that any effects of the publication would not be disproportionate to the non-compliance and appropriate in light of the enforcement-led response itself. With any publication, we will also endeavour to communicate the reasons for our actions, to the extent that it is appropriate and permissible.

We will communicate any decision to publish to the regulated entity (or individual) ahead of that disclosure.

Application of the enforcement criteria

The application of our enforcement criteria and underlying factors will aid us in determining the appropriate response to non-compliance. For example:

- The **seriousness of conduct** criterion indicates that the more prevalent, harmful, and negligent the conduct, the more likely a higher-level response from the 'narrow end' of our regulatory response model may be appropriate (e.g., court response). For example, non-compliance that has persisted for a long period, or has had a serious impact on individual customers or financial stability will likely be considered as an aggravating factor when deciding the appropriate response.
- The **responsiveness** criterion considers whether a regulated entity (or individual) has cooperated with us (and, if appropriate, impacted parties),¹⁷ has a good compliance history, and has taken steps to resolve the serious non-compliance. Where these factors are present, a targeted response may be appropriate, such as a statutory warning or, possibly a referral back to the relevant supervision function for a supervision-led response. Conversely, if we have taken repeated supervisory actions in respect of the same or similar conduct, we will consider

¹⁵ Enforcement Principles and Criteria.

¹⁶ While infringement notices are a type of targeted response, we will not usually publish the issuing of infringement notices as they are a low-level response. We may, however, publish any court response that we take in response to infringement offences.

¹⁷ For example, the Commissioner of Police Financial Intelligence Unit, in the case of an AML/CFT issue.

this as an aggravating factor which may weigh in favour of a more serious response such as a court response.

- The **public trust and confidence** criterion weighs any erosion of public confidence in the law or the financial system resulting from the non-compliance and the deterrence value of a robust enforcement-led response with the question of whether a particular response will be consistent and fair. For example, where we identify similar non-compliance by several regulated entities over the same period, we will consider the appropriateness of a particular response in light of the overall deterrence effect and impact on public confidence, consistency between the individual responses, and the fairness to each individual regulated entity involved.
- The **efficacy** criterion considers the strength of evidence, available defences, potential outcomes, and whether the particular response will support other regulatory bodies. All of these factors influence which response may be appropriate.

Communication

What we are able to communicate and when will depend on the individual case. As soon as we are reasonably able to do so in the context of the investigation, we will contact a regulated entity (or individual) to let them know that we have opened an investigation. More information on our approach to communications with regulated entities (and individuals) during an investigation can be found in our [Investigation Guidelines](#).

Once a decision on a response has been reached we will inform the regulated entity (or individual) of that decision in a timely way. The form and nature of that communication will depend on the circumstances.

Updates to the Enforcement Framework

The Enforcement Framework consists of living documents that will be regularly reviewed and updated. As our enforcement function matures and further internal processes are refined, we will look to update the Enforcement Framework guidance to provide further clarity on our processes to stakeholders and regulated entities. We welcome any comments on these Enforcement Guidelines. Please provide any using the email address Enforcement.Consultation@rbnz.govt.nz.

Glossary

Investigation refers to compliance issues that are being investigated by our enforcement function.

Our legislation means the Reserve Bank of New Zealand Act 2021, Banking (Prudential Supervision) Act 1989, Insurance (Prudential Supervision) Act 2010, Non-bank Deposit Takers Act 2013, Financial Markets Infrastructures Act 2021, and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Regulated entity has the meaning given to it in section 5 of the Reserve Bank of New Zealand Act 2021 and includes the relevant reporting entities which the Reserve Bank is responsible for supervising under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Serious non-compliance includes activity that breaches laws that we are responsible for administering. This includes prevalent or material non-compliance that has been identified by the regulator, or admitted by the regulated entity through statutory disclosure and reporting.