

Policy and Process on the Use of Warnings

Reserve Bank of New Zealand

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Introduction

Where any suspected non-compliance by a regulated entity or individual is identified, our legislation allows us to investigate and take enforcement action where appropriate.

Our Regulatory Response Model, contained in our [Enforcement Guidelines](#), outlines the various tools available to us to address potential or actual non-compliance with our legislation. One of the responses available to us is to issue a formal warning (public or private) to an individual or entity whose behaviour we consider amounts to non-compliance.

In accordance with the [Solicitor-General's Guidelines for the Use of Warnings](#), this policy outlines our processes for issuing a formal warning and the content that is to be included in a formal warning.¹

This policy is **not** intended to apply to warnings given in lieu of issuing an infringement notice or pursuing an infringement offence, or statutory warnings (such as warnings issued under section 80 of the AML/CFT Act 2009). The governing legislation provides for additional requirements or tests that need to be followed when issuing these warnings.

This document should be read in conjunction with:

- the [Enforcement Principles and Criteria](#), [Investigation Guidelines](#), and [Enforcement Guidelines](#) (collectively the **Enforcement Framework**);
- the [Solicitor-General's Prosecution Guidelines 2024](#); and
- the [Solicitor-General's Guidelines for the Use of Warnings 2021](#).

Our policy on the use of formal warnings

Purposes

A formal warning may be issued for a range of different purposes, for example, to:

- inform the recipient, the industry and the public of the Reserve Bank's view that there has been a breach or likely breach of the law;
- give the recipient an opportunity to amend or address the behaviour to avoid the risk of an escalated response (e.g. court action) in the future;
- encourage future compliance by the recipient; and
- educate the industry and the public, to assist them to comply with the law.

Consistent with the [Solicitor-General's Guidelines for the Use of Warnings](#), we will consider whether in the circumstances of the case, a formal warning would be likely to achieve the intended purpose.

¹ This policy also contains considerations of the requirements of natural justice and the principles of the Privacy Act 2020 which apply when issuing formal warnings.

The wording of any formal warning will appropriately reflect the particular purpose for which the formal warning is issued.

Circumstances where a formal warning may be appropriate

Not all behaviour that the Reserve Bank considers to be a breach of the law will require a court response. The **Solicitor-General's Prosecution Guidelines** explain that prosecutions ought to be initiated or continued only where the prosecuting agency is satisfied that the Test for Prosecution is met. In cases falling short of this test (in particular, on the public interest limb), a formal warning may be appropriate.

On the other hand, a formal warning may not be appropriate where the Reserve Bank's purposes and objectives are put at serious risk, there is serious actual or potential harm to the financial system or individuals, or where the conduct is ongoing or repeated. Another type of enforcement action may be more appropriate for these situations.

The decision to issue a formal warning will be made on a case-by-case basis and will follow the approach taken in our **Enforcement Guidelines** and apply our **Enforcement Principles and Criteria**. When considering whether to issue a formal warning, we will take into account the circumstances of the situation, including the:

- the seriousness of the behaviour;
- purpose of the formal warning; and
- available evidence to support the formal warning.

The **Solicitor-General's Guidelines for the Use of Warnings** recommends that the following should also be taken into consideration:

- the needs and interest of the person or entity to be formally warned;
- the needs and interest of any person harmed or affected by the behaviour; and
- the wider public interest.

As general guidance, we may issue a formal warning where:

- the evidence is sufficiently strong to establish a *prima facie* case;
- the matter can be satisfactorily resolved without legal proceedings;
- the matter has been remediated and/or the conduct has ceased; and/or
- the non-compliance is unlikely to be repeated in the future.

In some situations, a formal warning 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 response to stop the conduct and manage any potential harm. An enforcement-led response, such as a formal warning, may then follow after an investigation.

Content

Formal warnings issued by the Reserve Bank will be in writing and will include:

- a clear and accurate summary of the key facts that led to the issuance of the formal warning;
- the reasons for issuing the formal warning;
- any relevant response of the recipient in relation to the proposed warning (for example, any admissions made to the summary of facts, or whether the recipient consents to the matter being dealt with by way of a formal warning);
- the consequences related to the formal warning, including:
 - where the formal warning will be held on record and for how long;
 - how the formal warning will be used (for instance, with whom it may be shared and if it will be published); and
 - any likely consequences if, in the future, the recipient engages in similar behaviour (for example, consideration of a previous formal warning as an aggravating factor in future enforcement decisions);
- the recipient's rights in relation to the formal warning, including:
 - how they will be engaged with in the process of issuing the warning; and
 - the recipient's rights under the Privacy Act 2020 and/or the Reserve Bank's Privacy Policy, if any.

A formal warning will not:

- overreach the bounds of the Reserve Bank's role as investigator and/or prosecutor; or
- assert or imply that an offence has been committed or is proven.

Publication

The Reserve Bank may issue a public or private formal warning. A public formal warning will be published on our [Enforcement Register](#). This supports our **transparency** principle in our [Enforcement Principles and Criteria](#) and the purposes for issuing a formal warning (outlined above) by helping to promote accountability and serving as a deterrent for future non-compliance.

Where we have decided to issue a public formal warning, a statement will be published on our website and will include a description of the conduct and the name of the recipient of the formal warning. This may be accompanied by a media release by the Reserve Bank.

Any decision to publish an enforcement-led response, including a formal warning, will be circumstance-specific and made after weighing the benefits of publication against competing considerations, such as commercial sensitivity and our purposes and objectives. This includes assessing the matter against the **Enforcement Principles and Criteria**.

The Reserve Bank communicates any decision to publish the warning to its recipient ahead of publication.

Application of the enforcement principles

In accordance with the **transparency** principle, publication of a formal warning can serve to deter future non-compliance and have a broad positive effect on industry behaviour.

In light of the **proportionality** principle, it may be more appropriate to publish a statement in respect of some formal warnings over others. For example, publication may disproportionately impact the business of the recipient when weighed against the seriousness of the non-compliance and its consequences.

A **risk-based approach** requires weighing the benefits of publication against competing considerations, such as commercial sensitivity, risks to financial stability, and our purposes and objectives.

Process for issuing a formal warning

Where the Reserve Bank decides that a formal warning may be an appropriate response to addressing non-compliance, we will engage with the intended recipient in order to give effect to natural justice. Depending on the circumstances, this may include putting potential adverse findings to the intended recipient for comment before a decision to issue a formal warning is reached.

This provides an opportunity for the intended recipient to do any of the following:

- provide comment on their actions;
- consent to receiving the formal warning and having the matter dealt with in that way; and/or
- admit to the behaviour for which they are being formally warned.

Review

A recipient of a formal warning may request a review of the decision to warn within one month of the formal warning being issued.

The Reserve Bank will undertake a review of the original decision to issue a formal warning, taking particular note of any new or additional information supplied.

When a review is undertaken:

- it will be carried out by a work area that is independent of the enforcement function;

- the Reserve Bank General Counsel will be consulted.

Reconsideration

The Reserve Bank will only issue a formal warning where we are firm in the decision not to prosecute.

However, in rare cases, we may reconsider our decision to not prosecute a person or entity for their behaviour.²

Reasons why we may want to reconsider our decision are set out in the [Solicitor-General's Prosecution Guidelines](#), and include:

- new and additional evidence becoming available; or
- where a reassessment of the original decision shows that it was wrong and should not be allowed to stand.³

Any reconsideration will be reviewed by our legal team, or by a Crown Solicitor.

Updates to the policy and process

This policy is a living document that will be regularly reviewed and updated.

² Please note, a reconsideration is different to a review. A review comes from the external request of the person or entity issued with a formal warning, whereas a reconsideration is an internal process that may be started due to new evidence emerging.

³ See [20.1] – [20.2.3] of the Warnings section in the [Solicitor-General's Prosecution Guidelines](#).