



# THE COST OF FALLING BEHIND ON REGULATORY CHANGE



## INTRODUCTION

While every financial institution is unique, they all share one thing: an obligation to meet regulatory requirements. This responsibility is ubiquitous across the industry and, indeed, across the globe; however, Australia in particular is a heavily regulated market. Australian firms are faced with the challenge of following a long list of regulators and regulations – often without the resources necessary to keep up with resulting policy shifts.

Unfortunately, the penalty for failing to meet this obligation can be severe. From enforcement and disciplinary fees to losses in reputation, revenue and morale, the cost of falling behind on regulatory change can create significant damage.

For this reason, financial institutions must find ways to manage regulatory change – and for many, the answer is an integrated platform like RegsWeb.

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# A LOOK AT REGULATORY CHANGE

According to data collected between 1996 and 2021, Australia ranked 4th-highest globally on the regulatory quality index.<sup>1</sup> Singapore was the highest, and the U.K., U.S.A. and Japan ranked 20th, 21st and 22nd respectively.<sup>1</sup> This indicates that Australia's regulatory environment is robust and comprehensive, especially compared to similar markets – but this also signifies a potentially more challenging landscape for financial firms.

For example, between November and December 2022, the Australian Securities and Investments Commission (ASIC) – a single regulator – made at least 30 changes.<sup>2</sup> On one day in November, ASIC released an amendment with 15 individual modifications or impacts.<sup>2</sup>

## Similar realities play out across all the key Australian financial regulators, including:

- Australian Transaction Reports and Analysis Centre (AUSTRAC).
- Office of the Australian Information Commissioner (OAIC).
- Australian Financial Complaints Authority (AFCA).
- Australian Stock Exchange (ASX).
- Cboe Australia (Cboe).
- Australian Prudential Regulation Authority (APRA).

## Using ASIC numbers as an example, it's easy to see how regulatory change can quickly become almost insurmountable:

$$\begin{array}{ccccccc} 30 & \times & 15 & \times & 12 & \times & 7 \\ \text{changes} & & \text{impacts} & & \text{months} & & \text{top} \\ \text{per month} & & \text{each} & & & & \text{regulators} \\ & & & & = & & \\ 37,800 & & & & & & \text{individual modifications to} \\ & & & & & & \text{track and implement per year} \end{array}$$



To make things more complicated, each regulator keeps track of its changes in different ways. For example, ASIC publishes a regulatory tracker and maintains an archive of biannual document updates.<sup>3</sup> Other regulators, such as AUSTRAC, provide newsletters at various intervals, and many publish media releases and updates on their individual websites.

However, these tracking methods aren't integrated across regulators – which means financial organisations must visit each site or source individually and manually compile changes. This rapidly becomes challenging to manage: In 2022 alone, ASIC published 69 pages of updates.<sup>3</sup> If this pattern is generalised across all seven regulators, Australian firms are left with approximately 500 pages of content to read, analyse and apply to policies and processes every year.

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# LOOKING AHEAD THROUGH 2023

As new needs and trends emerge in the regulatory landscape, regulators are becoming increasingly diligent in releasing updates and modifications. **Australian firms will likely have even more to keep up with throughout 2023 and beyond, as regulators are expected to focus on the following areas:**

## CYBERSECURITY

Cybersecurity is an ongoing concern for firms and regulators alike, with the global finance sector representing 17% of all cyberattacks in 2021.<sup>4</sup> Of these attacks, 38% were application-specific, 24% were based on web applications and 22% were completed through reconnaissance<sup>4</sup> – which indicates that security regulations must be robust and multifaceted.

After major attacks in late 2022, APRA made changes to its own regulations, citing a need for clearer definitions of security roles, better protection of information assets and notification of incidents.<sup>5</sup> This is just one of many cybersecurity updates and will likely pave the way for a slew of similar changes throughout 2023.

## ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)

ESG updates are likely to dominate every industry but will be especially noteworthy for Australia's financial firms. For example, ASIC notes that 'misleading conduct in relation to sustainable

finance' is among its Enforcement Priorities for 2023;<sup>6</sup> the regulator has already begun pursuing this priority by bringing legal action against an organisation accused of greenwashing.<sup>7</sup>

## RESILIENCE

Several top regulators identify resilience as one of their targets. ASIC states under 'Technology Risk' that it intends to 'focus on the impacts of technology in financial markets and services, drive good cyber-risk and operational resilience practices, and act to address digitally enabled misconduct, including scams.'<sup>8</sup>

APRA notes that its approach to resilience helped its regulated entities become 'better positioned to deal with COVID-19.'<sup>9</sup> Similarly, AUSTRAC says its purpose is to 'build resilience in the financial system,'<sup>10</sup> and ASX notes that 'the resilience, continuity and quality of our operational processes are critical to our ability to operate.'<sup>11</sup> It's no surprise that these various kinds of resilience will act as the basis of many upcoming changes in 2023, including revisions to key laws such as the Privacy Act and the Modern Slavery Act.

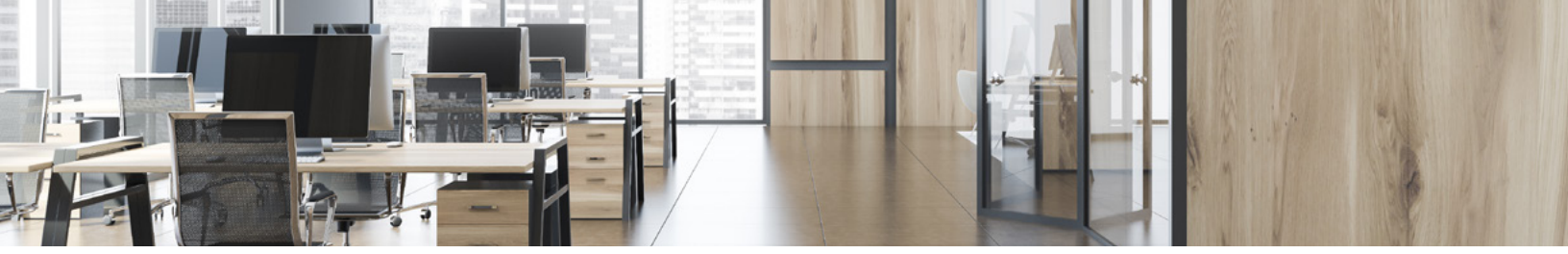


# THE REAL COST OF NONCOMPLIANCE

With so many obstacles to regulatory change management, financial institutions must fully understand the costs of any oversights or shortcomings. Unfortunately, noncompliance – even unintentionally – comes with strict penalties. **The real cost of failing to keep up with regulatory change can include:**

- **Disciplinary fines:** A regulator may impose fines depending on the severity and longevity of an organisation's noncompliance.
- **Legal fees:** If a regulator pursues legal action (for example, pressing criminal charges), organisations may have to pay for legal counsel, time spent in court and more.
- **Enforcement outcomes:** Depending on the regulator's enforcement approach, outcomes may include orders to compensate victims, disqualify certain individuals from management positions, implement training courses, remediate deficiencies and otherwise rectify issues.
- **Reputational damage:** Many incidents of noncompliance, especially when legal or regulatory action is involved, are released to the media and can result in loss of current or future business.
- **Loss of efficiency:** Time spent navigating inspections or conducting reviews, paying fines or communicating with regulators can reduce an organisation's efficiency and reduce revenue.
- **Morale:** Employees, investors and other stakeholders can lose morale when an organisation proves itself incapable of keeping up with key regulatory changes.

It's important to keep in mind that one or more of these costs can apply to each incident of noncompliance. Considering there are nearly 40,000 chances to miss an update or change per year, it's far too likely that financial firms will face these issues without the proper solutions.



To further complicate the cost of non-compliance, each regulator also has different enforcement approaches.

**Here are just a few examples:**

## ASIC

In many ways, ASIC sets the standard for regulator responses to noncompliance and misconduct. It relies on reports, monitoring and surveillance, stakeholder information and more, choosing the most significant issues and opening formal investigations. **In general, it has three enforcement methods:**

- Criminal proceedings.
- Civil proceedings.
- Administrative and other enforcement action.

ASIC considers individual and organisational conduct, nature and seriousness of the offence, potential damage and more when determining what action to take.<sup>11</sup>

## AUSTRAC

**AUSTRAC lists its enforcement actions as:**

- Civil penalty orders.
- Enforceable undertakings.
- Infringement notices.
- Remedial directions.

In other cases, AUSTRAC may issue a written notice requiring organisations to appoint external auditors or undertake financing risk assessments. The regulator can also cancel or suspend provider registration in cases where there is a significant risk of a serious crime.<sup>13</sup>

**This can include one or more of the following penalties:**

- Fines.
- Prison sentences.
- Product intervention orders.
- Public warning and infringement notices.
- Enforceable undertakings.
- External independent expert reviews.
- Bans on providing financial services.
- Relinquishment, disqualification and compensation orders.
- Convictions that cannot be expunged from an individual's criminal record.

## AFCA

AFCA negotiates disputes between parties and financial firms. **When these disputes involve regulatory issues, AFCA may require firms to:**

- Refund fees.
- Correct calculation errors.
- Pay insurance claims.
- Cancel loans.
- Pay fines.

If a financial organisation doesn't pay its AFCA fees and penalties, the offending firm will be expelled from membership and publicly listed as non-compliant.<sup>14,15</sup>

# CASE STUDIES: MISSING THE MARK ON REGULATORY CHANGE

When organisations breach regulations due to failed regulatory change management, serious issues can occur. **Here are a few case studies illustrating these risks:**

## WESTPAC BREACHES CORPORATIONS ACT

In late 2019, Australian bank Westpac was ordered to pay a \$9.15 million penalty for 22 breaches of the Corporations Act.

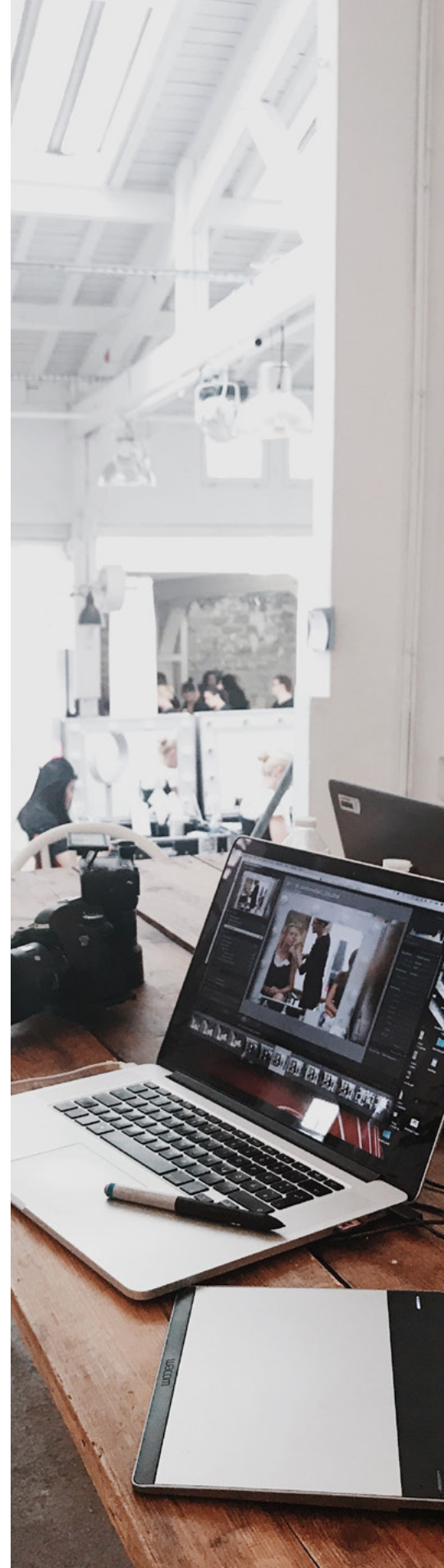
As far back as 2010, Westpac performed internal investigations about a financial planner employed there. The employee had questionable compliance history, but Westpac didn't take action until dismissing him in 2014. The organisation didn't report this misconduct to ASIC until March 2015. Ultimately, a trial determined that Westpac had breached the Corporations Act by allowing the employee to provide poor and inappropriate financial advice in spite of multiple internal reviews.

The inherent flaws of this approach were exacerbated by Westpac's failure to address regulatory changes related to the Corporations Act – changes that required clearer and more consistent reporting, more responsibility in financial advice and more. Under Section 961K of the Act, Westpac assumes direct responsibility for these incidents of non-compliance.<sup>16</sup>

## ASIC ISSUES STOP ORDERS

In mid-2022, ASIC announced its first Design and Distribution Obligations (DDO) stop orders for three financial firms. This action was a response to issues with the firms' target market determinations (TMDs) and associated products, which could have caused sales to retail investors 'for whom they were not appropriate or too risky.'<sup>17</sup> This was a breach of the firms' responsibility under the DDOs, which have been in effect since October 2021.

The three firms were ordered to stop marketing, offering and selling certain products for 21 days. Two of those firms received additional, indefinite stop orders to provide more time for an adequate response.<sup>16</sup>



# HOW TO STAY AHEAD

Although the regulatory change landscape is rife with challenges for financial institutions, the situation is far from hopeless. To stay ahead, firms need to build their approach on a solution like RegsWeb, which can help fulfil the following values:

## ALIGNING WITH REGULATOR ENFORCEMENT PRIORITIES

In 2023 and beyond, regulators are prioritising operational, financial and technological resilience. Other enforcement priorities include:

- Protecting financially vulnerable consumers.
- Addressing misconduct and misinformation.
- Addressing governance and management failures.
- Resolving unfair contract terms.

To know what these values are and how they fluctuate over time, firms must have the capability to compare previous and upcoming changes across multiple regulators — all in one place. That way, financial institutions understand what the landscape looks like and where to focus their regulatory efforts.

## IDENTIFYING RELEVANT CHANGES IN REAL-TIME

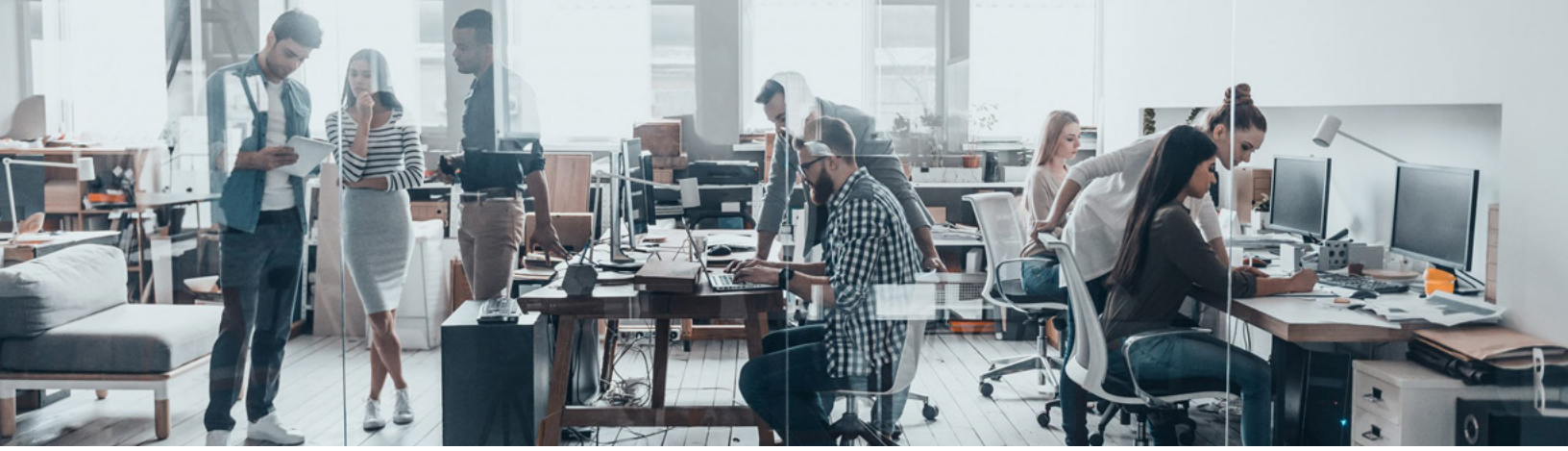
With hundreds or even thousands of updates around every corner, firms must master three things:

- Identifying relevant changes and effective dates as they're released.
- Analysing the impact of these changes on day-to-day policies, procedures and operations.
- Making changes quickly and effectively, including distributing updated documents across the organisation.
- Maintaining proof of these activities for investigation and compliance purposes.

To meet these needs, financial institutions need a tool that seamlessly updates regulatory legislation and displays them in connection with relevant policies. This allows internal teams to identify the impacts of each change and make updates to address the risk of non-compliance.







## MAKING CORRECT ADJUSTMENTS

Even if a firm manages to track every change and identify which policies are impacted, there's still a risk of noncompliance if those changes are interpreted or implemented incorrectly. For a smoother, more reliable approach to regulatory change management, financial institutions need support from subject matter experts — an expert partner to provide advice on necessary changes to policies, procedures and more.

RegsWeb checks all these boxes and more, providing a single, digitised workplace for thousands of regulations, changes and related files. Combined with support from MIntegrity's subject matter experts, this solution enables financial firms to cut through the complexities and focus on making and tracking the right changes at the right times.

## USING SMART TECHNOLOGY

While many financial firms may attempt to piece together different regulatory management solutions, it's far safer — and more cost-efficient — to use a single platform. When legislative documents and internal policies are visually linked, changes are loaded into the regulations library and impacted documents are highlighted, it's much easier to streamline and improve regulatory change management.

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# SIMPLIFY YOUR REGULATORY CHANGE MANAGEMENT

Seven regulators. Dozens of changes per week. Thousands of impacted policies per year. That's the reality of regulatory change in Australia's financial market — and if your firm falls short, you could be subject to severe penalties. From reputational damage and compensation orders to criminal charges and prison time, non-compliance comes with a significant cost.

Don't let regulatory change management leave your firm guessing. Keep up with every change as it happens, make relevant adjustments based on insight into impacted policies and leverage expert advice when you need it.

**That's the power of RegsWeb and MIntegrity.**



**M** INTEGRITY



## SOURCES

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