

Banking, Insurance, Life Insurance and Health Insurance (prudential standard) determination No.2 of 2018

Prudential Standard CPS 520 Fit and Proper

Banking Act 1959

Insurance Act 1973

Life Insurance Act 1995

Private Health Insurance (Prudential Supervision) Act 2015

I, Geoff Summerhayes, a delegate of APRA:

- (a) under subsection 11AF(3) of the *Banking Act 1959* REVOKE Banking, Insurance and Life Insurance (prudential standard) determination No. 9 of 2016, including *Prudential Standard CPS 520 Fit and Proper* made under that Determination, to the extent that it applied to all ADIs and authorised banking NOHCs;
- (b) under subsection 32(4) of the *Insurance Act 1973* REVOKE Banking, Insurance and Life Insurance (prudential standard) determination No. 9 of 2016, including *Prudential Standard CPS 520 Fit and Proper* made under that Determination, to the extent that it applied to all general insurers, authorised insurance NOHCs, and subsidiaries of general insurers and authorised insurance NOHCs;
- (c) under subsection 230A(5) of the *Life Insurance Act 1995* REVOKE Banking, Insurance and Life Insurance (prudential standard) determination No. 9 of 2016, including *Prudential Standard CPS 520 Fit and Proper* made under that Determination, to the extent that it applied to life companies, friendly societies, registered life NOHCs, and subsidiaries of life companies and registered life NOHCs;
- (d) under subsection 11AF(1) of the *Banking Act 1959* DETERMINE *Prudential Standard CPS 520 Fit and Proper* in the form set out in the Schedule, to the extent that it applies to all ADIs and authorised banking NOHCs;

- (e) under subsection 32(1) of the *Insurance Act 1973* DETERMINE *Prudential Standard CPS 520 Fit and Proper* in the form set out in the Schedule, to the extent that it applies to all general insurers, authorised insurance NOHCs, and subsidiaries of general insurers and authorised insurance NOHCs;
- (f) under subsection 230A(1) of the *Life Insurance Act 1995* DETERMINE *Prudential Standard CPS 520 Fit and Proper* in the form set out in the Schedule, to the extent that it applies to all life companies, friendly societies, registered life NOHCs, and subsidiaries of life companies and registered life NOHCs; and
- (g) under subsection 92(1) of the *Private Health Insurance (Prudential Supervision) Act 2015* DETERMINE *Prudential Standard CPS 520 Fit and Proper* in the form set out in the Schedule, to the extent that it applies to all private health insurers.

This instrument commences on 1 July 2019.

Dated 14 September 2018

Geoff Summerhayes

Member

Interpretation

In this Determination:

ADI has the meaning given in section 5 of the *Banking Act 1959*.

APRA means the Australian Prudential Regulation Authority.

authorised banking NOHC has the meaning given to the expression authorised NOHC in section 5 of the *Banking Act 1959*.

authorised insurance NOHC has the meaning given to the expression authorised NOHC in subsection 3(1) of the *Insurance Act 1973*.

friendly society has the meaning given in section 16C of the *Life Insurance Act 1995*.

general insurer has the meaning given in section 11 of the *Insurance Act 1973*.

life company has the meaning given in the Schedule to the *Life Insurance Act 1995*.

private health insurer has the meaning given in section 4(1) of *Private Health Insurance (Prudential Supervision) Act 2015*.

registered life NOHC has the meaning given to the expression registered NOHC in the Schedule to the *Life Insurance Act 1995*.

Schedule

Prudential Standard CPS 520 Fit and Proper comprises the 24 pages commencing on the following page.



Prudential Standard CPS 520

Fit and Proper

Objectives and key requirements of this Prudential Standard

This Prudential Standard sets out minimum requirements for APRA-regulated institutions in determining the fitness and propriety of individuals to hold positions of responsibility. Its objective is to ensure that an institution prudently manages the risks that persons acting in responsible person positions who are not fit and proper pose to the institution's business and financial standing.

The ultimate responsibility for ensuring the fitness and propriety of the responsible persons of an APRA-regulated institution rests with its Board of directors (or equivalent).

Persons who are responsible for the management and oversight of an APRA-regulated institution, and persons employed by a member of the group whose activities may materially affect the business or financial standing of the group, need to have appropriate skills, experience and knowledge, and act with honesty and integrity. These skills and qualities strengthen the protection afforded to depositors, policyholders and other stakeholders. To this end, institutions need to prudently manage the risk that persons in positions of responsibility might not be fit and proper.

The key requirements of this Prudential Standard are that an APRA-regulated institution and a Head of a group must:

- maintain a Fit and Proper Policy that meets the requirements of this Prudential Standard;
- ensure that the fitness and propriety of a responsible person generally be assessed prior to initial appointment and then re-assessed annually;
- take all prudent steps to ensure that a person is not appointed to, or does not continue to hold, a responsible person position for which they are not fit and proper;
- ensure that additional requirements be met for certain auditors and Appointed and Reviewing Actuaries; and

- ensure that certain information be provided to APRA regarding responsible persons and the APRA-regulated institution's and Head of a group's assessment of their fitness and propriety.

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Authority

1. This Prudential Standard is made under:
 - (a) section 11AF of the *Banking Act 1959* (**Banking Act**);
 - (b) section 32 of the *Insurance Act 1973* (Insurance Act);
 - (c) section 230A of the *Life Insurance Act 1995* (Life Insurance Act); and
 - (d) section 92 of the *Private Health Insurance (Prudential Supervision Act) 2015* (PHIPS Act).

Application

2. This Prudential Standard applies to all ‘APRA-regulated institutions’,¹ defined as:
 - (a) all **authorised deposit-taking institutions (ADIs)**, including **foreign ADIs**, and **non-operating holding companies** authorised under the Banking Act (authorised banking NOHCs);
 - (b) all **general insurers**, including **Category C insurers**, non-operating holding companies authorised under the Insurance Act (authorised insurance NOHCs) and **parent entities of Level 2 insurance groups**;
 - (c) all **life companies**, including **friendly societies** and **eligible foreign life insurance companies (EFLICs)**, and non-operating holding companies registered under the Life Insurance Act (registered life NOHCs); and
 - (d) all **private health insurers** registered under the PHIPS Act.
3. All APRA-regulated institutions have to comply with this Prudential Standard in its entirety, unless otherwise expressly indicated. The obligations imposed by this Prudential Standard on, or in relation to, a foreign ADI, a Category C insurer or an EFLIC apply only in relation to the Australian branch operations of that institution.
4. Where an APRA-regulated institution is the ‘Head of a group’,² it must comply with a requirement of this Prudential Standard:
 - (a) in its capacity as an APRA-regulated institution;
 - (b) by ensuring that a requirement is applied appropriately throughout the group, including in relation to institutions that are not APRA-regulated; and

¹ Note, for the purposes of this Prudential Standard, an **RSE licensee** is not treated as an ‘APRA-regulated institution’. Refer to *Prudential Standard SPS 520 Fit and Proper* (SPS 520) for fitness and propriety requirements for an RSE licensee.

² Where a Level 2 group operates within a Level 3 group, a requirement expressed as applying to a Head of a group is to be read as applying to the Level 3 Head.

- (c) where specified, on a group basis.

In applying the requirements of this Prudential Standard on a group basis, references in paragraphs 12 to 16 and 25 to 61 to an ‘APRA-regulated institution’ should be read as ‘Head of a group’ and references to ‘institution’ should be read as ‘group’.

5. This Prudential Standard commences on 1 July 2019.

Interpretation

6. Terms that are defined in *Prudential Standard 3PS 001 Definitions*, *Prudential Standard APS 001 Definitions* (APS 001), *Prudential Standard GPS 001 Definitions* (GPS 001), *Prudential Standard LPS 001 Definitions* or *Prudential Standard HPS 001 Definitions* (HPS 001) appear in bold the first time they are used in this Prudential Standard.

7. Where this Prudential Standard provides for APRA to exercise a power or discretion, this power or discretion is to be exercised in writing.

8. For the purposes of this Prudential Standard:

‘group’ means a Level 2 group or a **Level 3 group**, as relevant;

‘Head of a group’ means a Level 2 Head or **Level 3 Head**, as relevant;

‘Level 2 group’ means the entities that comprise:

- (a) **Level 2** as defined in APS 001; or
 (b) a Level 2 insurance group as defined in GPS 001;

‘Level 2 Head’ means:

- (a) where an ADI that is a member of a Level 2 group is not a **subsidiary** of an authorised banking NOHC or another ADI, that ADI;
 (b) where an ADI that is a member of a Level 2 group is a subsidiary of an authorised banking NOHC, that authorised banking NOHC; or
 (c) the parent entity of a Level 2 insurance group as defined in GPS 001.

9. For the purposes of this Prudential Standard, a reference to an ‘auditor’ is taken to be a reference to a person holding any of the following positions unless otherwise specified:

- (a) ‘**Appointed auditor**’ has the meaning given in APS 001, in relation to an ADI or authorised banking NOHC;
 (b) ‘**Appointed Auditor**’ has the meaning given in GPS 001, in relation to a general insurer (including a Category C insurer);
 (c) ‘Auditor’ has the meaning given in *Prudential Standard LPS 310 Audit*

and Related Matters (LPS 310), in relation to a life company (including an EFLIC);

- (d) ‘**responsible auditor**’ has the meaning given in GPS 001, in relation to an authorised insurance NOHC, and, in relation to a registered life NOHC, is an auditor who is required to prepare a report under the Life Insurance Act, prudential standards made under the Life Insurance Act or reporting standards made under the *Financial Sector (Collection of Data) Act 2001* (FSCODA);
 - (e) ‘Appointed Auditor’ has the meaning given in *Prudential Standard 3PS 310 Audit and Related Matters*, in relation to a Level 3 Head; and
 - (f) ‘**Appointed Auditor**’ has the meaning given in *Prudential Standard HPS 310 Audit and Related Matters* in relation to a private health insurer.
10. In this Prudential Standard, the term ‘Prudential Acts’ is used to refer to the Banking Act, the Insurance Act and the Life Insurance Act.
11. This Prudential Standard specifies:
- (a) the senior management responsibilities for the purposes of the definition of **senior manager** in the Prudential Acts³ and the definition of **officer** in the PHIPS Act;
 - (b) the fitness and propriety criteria for auditors and **Appointed Actuaries** for the purposes of the Prudential Acts⁴ and the PHIPS Act;
 - (c) the fitness and propriety criteria for certain responsible persons for the purposes of the Prudential Acts⁵ and the PHIPS Act; and
 - (d) the fitness and propriety criteria for the purposes of paragraph 21(3)(b) of the Banking Act.

Fit and Proper Policy

12. An APRA-regulated institution must prudently manage the risks that persons acting in **responsible person positions**⁶ who are not fit and proper pose to the

³ Refer to subsection 5(1) of the Banking Act in relation to ADIs and authorised banking NOHCs, subsection 3(1) of the Insurance Act in relation to general insurers and authorised insurance NOHCs, and section 8 of the Life Insurance Act in relation to life companies and registered life NOHCs.

⁴ Refer to paragraph 17(2)(b) of the Banking Act in relation to ADIs and authorised banking NOHCs, paragraphs 39(3)(a) and 43(2)(c), and subparagraph 44(1)(a)(iii), of the Insurance Act in relation to general insurers and authorised insurance NOHCs, and section 84 and subsection 93(3) of the Life Insurance Act in relation to life companies and registered life NOHCs.

⁵ Refer to paragraph 23(2)(b) of the Banking Act in relation to ADIs and authorised banking NOHCs, paragraphs 25A(3)(b), 27(2)(b), 43(2)(b), 44(3)(b) and 49R(3)(b), and subparagraph 44(1)(a)(ii), of the Insurance Act in relation to general insurers and authorised insurance NOHCs, and section 245A(3)(b) of the Life Insurance Act in relation to life companies and registered life NOHCs.

⁶ Refer to paragraph 24 for the definition of responsible person position.

institution's business and financial standing. To this end, an APRA-regulated institution must maintain a documented policy relating to the fitness and propriety of the institution's responsible persons that meets the requirements of this Prudential Standard (Fit and Proper Policy).

13. The Fit and Proper Policy must be approved by the **Board**.⁷
14. An APRA-regulated institution must take all reasonable steps to ensure that each responsible person is aware of, and understands, the provisions of its Fit and Proper Policy.
15. The Fit and Proper Policy must form part of an institution's **risk management framework**.⁸
16. Nothing in this Prudential Standard prevents an APRA-regulated institution from adopting and applying a group Fit and Proper Policy used by a **related body corporate**⁹, provided that the policy has been approved by the Board in accordance with paragraph 13 and meets the requirements of this Prudential Standard.

Additional requirements of the Head of a group

17. The Head of a group must maintain a group Fit and Proper Policy (refer to paragraphs 12 to 16).
18. Where an entity within the group that is not an APRA-regulated institution engages in business activities that may materially affect, either directly or indirectly, the whole, or a substantial part, of the group, the Head of the group must ensure that the responsible persons for those business activities are assessed for fitness and propriety in a way that complies with the group Fit and Proper Policy.¹⁰
19. The Head of a group must notify APRA in accordance with paragraphs 56 to 61 in respect of each responsible person across the group, except where an APRA-regulated institution within the group has otherwise notified APRA of that information.

Responsible persons

20. A 'responsible person' is:
 - (a) for an ADI (other than a foreign ADI) or an authorised banking NOHC, a person defined in Attachment A;
 - (b) for a foreign ADI, a person defined in Attachment B;

⁷ A reference to the Board in the case of a foreign ADI is a reference to the **senior officer outside Australia**.

⁸ Refer to *Prudential Standard CPS 220 Risk Management*.

⁹ Related body corporate has the meaning given in section 50 of the *Corporations Act 2001* (Corporations Act).

¹⁰ This paragraph does not override any requirements in SPS 520 applying to an RSE licensee.

- (c) for a general insurer (other than a Category C insurer) or an authorised insurance NOHC, a person defined in Attachment C;
 - (d) for a Category C insurer, a person defined in Attachment D;
 - (e) for a life company (other than an EFLIC) or a registered life NOHC, a person defined in Attachment E;
 - (f) for an EFLIC, a person defined in Attachment F;
 - (g) for the purposes of a group, a person whose activities may materially affect, either directly or indirectly, the whole, or a substantial part, of the business or financial status of the group; and
 - (h) for a private health insurer, a person defined in Attachment G.
21. A person need not be an employee of an APRA-regulated institution to be a responsible person. In some circumstances a consultant, contractor or employee of another entity may be a responsible person.
22. In addition to persons who meet the definition of a responsible person, APRA may determine that a person is a responsible person if APRA is satisfied that the person plays a significant role in the management or control of the APRA-regulated institution or group, or that the person's activities may materially impact on **prudential matters**.
23. APRA may determine that a person is not a responsible person in relation to a particular position, responsibility or activity if APRA is satisfied that the person does not play a significant role in the management or control of the APRA-regulated institution or group or that the person's activities may not materially impact on prudential matters.
24. 'Responsible person position' means the responsibilities or activities of a responsible person that would lead to the person being a responsible person under the definition in paragraph 20.

Senior managers

25. 'Senior manager', or a person who has or exercises senior management responsibilities¹¹, means a person (other than a **director**) who:
- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the institution;
 - (b) has the capacity to affect significantly the institution's financial standing¹²;

¹¹ For the purposes of an 'officer' as defined in subsection 4(1) of the PHIPS Act, in this case excluding a CEO or director.

¹² Paragraphs 25(a) and (b) are intended to be interpreted consistently with the definition of 'senior manager' (in relation to a corporation) in section 9 of the Corporations Act.

- (c) may materially affect the whole, or a substantial part, of the business of the institution or its financial standing through their responsibility for:
 - (i) enforcing policies and implementing strategies approved by the Board of the APRA-regulated institution;
 - (ii) the development and implementation of systems used to identify, assess, manage or monitor risks in relation to the business of the institution; or
 - (iii) monitoring the appropriateness, adequacy and effectiveness of risk management systems; or
 - (d) for a foreign ADI or Category C insurer, is nominated as the senior officer outside Australia to the extent that the person meets the definition in subparagraphs (a), (b) or (c).
26. For the purposes of the definition of senior manager in the Prudential Acts¹³ and the definition of officer in the PHIPS Act¹⁴, the responsibilities set out in paragraph 25, when exercised for an APRA-regulated institution, are senior management responsibilities (except where carried out by a director).
27. ‘Senior manager’, in relation to a **corporate agent** of a Category C insurer, means a person (other than a director of the corporate agent) who, when acting for the corporate agent:
- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Category C insurer represented by the corporate agent;
 - (b) has the capacity to affect significantly the Category C insurer’s financial standing;¹⁵ or
 - (c) may materially affect the whole, or a substantial part, of the business of the Category C insurer or its financial standing through:
 - (i) enforcing policies and implementing strategies approved by the Board of the Category C insurer;
 - (ii) the development and implementation of systems that identify, assess, manage or monitor risks in relation to the business of the Category C insurer; or
 - (iii) monitoring the appropriateness, adequacy and effectiveness of risk management systems.

¹³ Refer to subsection 5(1) of the Banking Act, subsection 3(1) of the Insurance Act and section 8 of the Life Insurance Act.

¹⁴ In relation to section 4(1) of the PHIPS Act, only category (c) in the definition of ‘officer’ is relevant here.

¹⁵ Paragraphs 27(a) and (b) are intended to be interpreted consistently with the definition of ‘senior manager’ (in relation to a corporation) in section 9 of the Corporations Act.

28. For the purposes of the definition of senior manager in subsection 3(1) of the Insurance Act, the responsibilities set out in paragraph 27, when exercised for a corporate agent in respect of an APRA-regulated institution, are senior management responsibilities (except when carried out by a director of the corporate agent).

Criteria to determine if a responsible person is fit and proper

29. An APRA-regulated institution must clearly define and document the competencies required for each responsible person position.
30. For the purposes of the Prudential Acts and the PHIPS Act and for the purposes of determining whether a person is fit and proper to hold a responsible person position, the criteria are whether: ¹⁶
- (a) it would be prudent for an APRA-regulated institution to conclude that the person possesses the competence, character, diligence, honesty, integrity and judgement to perform properly the duties of the responsible person position;
 - (b) the person is not disqualified under an applicable Prudential Act or the PHIPS Act from holding the position;
 - (c) the person either:
 - (i) has no conflict of interest in performing the duties of the responsible person position; or
 - (ii) if the person has a conflict of interest, it would be prudent for an APRA-regulated institution to conclude that the conflict will not create a material risk that the person will fail to perform properly the duties of the position; and
 - (d) for a senior manager of a corporate agent of a general insurer, the person is ordinarily resident in Australia.

Additional criteria applying to auditors¹⁷

31. The criteria for fitness and propriety of an auditor for the purposes of the Prudential Acts are those contained in paragraphs 30 and 32.¹⁸

¹⁶ Refer to paragraphs 21(3)(b) and 23(2)(b) of the Banking Act, paragraphs 25A(3)(b), 27(2)(b), 43(2)(b) and 44(3)(b) and subparagraph 44(1)(a)(ii) of the Insurance Act, paragraph 245A(3)(b) of the Life Insurance Act and subsections 120(1)(a) and 120(3)(a) of the PHIPS Act. Paragraphs 32 and 35 to 36 provide additional criteria for fitness and propriety of an auditor or Appointed Actuary (as applicable) and the eligibility criteria that must be met before an auditor or Appointed Actuary may be appointed (other than a criterion that APRA has determined under paragraphs 33 or 37 does not apply in relation to a particular case).

¹⁷ Refer to *Prudential Standard CPS 510 Governance* (CPS 510) for the requirement for auditors to be independent.

32. The additional criteria which must be met for an auditor to be fit and proper are that the person:
- (a) is a registered company auditor under the Corporations Act;
 - (b) has a minimum of five years' relevant experience in the audit of APRA-regulated institutions in the industry within which they are working;
 - (c) is neither the Chief Executive Officer (CEO) nor a director of the APRA-regulated institution nor of a related body corporate;
 - (d) has experience relating to ADIs, general insurers, life companies or private health insurers (as applicable) that is sufficiently relevant and recent to provide reasonable assurance that the person is familiar with current issues in the audit of that type of APRA-regulated institution;
 - (e) for an Appointed Auditor of a general insurer¹⁹ or responsible auditor of an authorised insurance NOHC, is not:
 - (i) for the Appointed Auditor of a general insurer, the **Appointed Actuary** of the general insurer or, for the responsible auditor of an authorised insurance NOHC, the Appointed Actuary of a general insurer that is a **subsidiary** of the authorised insurance NOHC;
 - (ii) an employee or director of a body corporate, statutory body, partnership, trust, or commercial or professional enterprise of any kind of which that Appointed Actuary is an employee or director²⁰; or
 - (iii) a partner of that Appointed Actuary;
 - (f) for an Auditor of a life company or responsible auditor of a registered life NOHC, is not:
 - (iv) the **Appointed Actuary** of the life company or of a life company that is a subsidiary of the registered life NOHC;
 - (v) an employee or director of a body corporate, statutory body, partnership, trust, or commercial or professional enterprise of any kind of which that Appointed Actuary is an employee or director; or
 - (vi) a partner of that Appointed Actuary;
 - (g) is a member of a recognised professional body; and

¹⁸ Refer to paragraphs 17(2)(b) and 21(3)(b) of the Banking Act; paragraphs 39(3)(a), 43(2)(b) and 44(3)(b), and subparagraph 44(1)(a)(ii) of the Insurance Act and paragraph 245A(3)(b) of the Life Insurance Act.

¹⁹ For paragraphs 32 to 37 refer also to *Prudential Standard GPS 310 Audit and Related Matters* and *Prudential Standard CPS 320 Actuarial and Related Matters* (CPS 320).

²⁰ Refer to CPS 510 for a similar restriction on the Appointed Auditor and Appointed Actuary of a general insurer or a private health insurer being from the same entity.

- (h) is ordinarily resident in Australia.
33. The criteria in paragraph 32 do not apply if the following conditions are met:
- (a) the APRA-regulated institution reasonably considers that there are exceptional circumstances;
 - (b) the APRA-regulated institution has promptly notified APRA of the eligibility criteria that are not satisfied and of the exceptional circumstances as to why they do not apply; and
 - (c) APRA has notified the APRA-regulated institution that APRA has no objections to the person holding the position in question.

Additional criteria applying to Appointed Actuaries²¹

34. The criteria for fitness and propriety of an Appointed Actuary of a general insurer, a life company or a private health insurer, for the purposes of the Insurance Act, Life Insurance Act and PHIPS Act are those contained in paragraphs 30 and 35 to 37.²²
35. The additional criteria that must be met for a person to be fit and proper to act as an Appointed Actuary of a general insurer, a life company or a private health insurer are that the person:
- (a) has appropriate formal qualifications;
 - (b) is not the CEO or a director of the general insurer or life company, as applicable, or of a related body corporate (except when that related body corporate is a subsidiary of the general insurer or life company, as applicable);
 - (c) is not:
 - (i) the Appointed Auditor or Auditor, as applicable;
 - (ii) for an Appointed Actuary, an employee or director of an entity of which the Appointed Auditor or Auditor is an employee or director; or
 - (iii) for an Appointed Actuary, a partner of the Appointed Auditor or Auditor, as applicable;
 - (d) has a minimum of five years' relevant experience in the provision of actuarial services to entities carrying on **insurance business** (for a general insurer), **life business** (for a life company), or private health insurance (for a private health insurer) and has experience relating to general insurers,

²¹ Refer to CPS 320 for eligibility criteria for appointed actuaries as required by section 93 of the Life Insurance Act.

²² Refer to paragraphs 39(3)(a), 43(2)(b) and 44(3)(b), and subparagraph 44(1)(a)(ii) of the Insurance Act.

life companies, or private health insurers, as applicable, that is sufficiently relevant and recent to provide reasonable assurance that the person is familiar with current issues in the provision of actuarial services to such institutions;

- (e) is a Fellow or Accredited Member²³ of the Institute of Actuaries of Australia; and
 - (f) is ordinarily resident in Australia.
36. The criterion in paragraph 35(f) does not apply to the Appointed Actuary of a **Category B insurer** and a Category C insurer if:
- (a) the Appointed Actuary is responsible for providing actuarial services to the corporate group, as a whole, to which the insurer belongs; and
 - (b) the Appointed Actuary meets the criteria in paragraphs 35(a) to (e).
37. The criteria in paragraphs 34 to 36 do not apply while:
- (a) the APRA-regulated institution reasonably considers that there are exceptional circumstances;
 - (b) the APRA-regulated institution has promptly notified APRA of the eligibility criteria that are not satisfied and of the exceptional circumstances as to why they do not apply; and
 - (c) APRA has notified the APRA-regulated institution in writing that APRA has no objections to the person holding the position.

Process for assessment of fitness and propriety

38. The Fit and Proper Policy must include the processes to be undertaken in assessing whether a person is fit and proper for a responsible person position (fit and proper assessment). The processes must include details of:
- (a) a statement of who will conduct fit and proper assessments on behalf of the APRA-regulated institution;
 - (b) the information to be obtained and how it will be obtained;
 - (c) the matters that will be considered before determining if a person is fit and proper for a responsible person position; and
 - (d) the decision-making processes that will be followed.
39. The Fit and Proper Policy must specify the actions to be taken where a person is assessed as being not fit and proper.

²³ 'Fellow' and 'Accredited Member' as defined by the Institute of Actuaries of Australia.

40. The Fit and Proper Policy must provide that a copy of the Policy is to be given to:
- (a) any candidate for election as a director as soon as possible after the candidate is nominated; and
 - (b) any other person before an assessment of their fitness and propriety is conducted.
41. The Fit and Proper Policy must require a fit and proper assessment to be completed before a person becomes the holder of a responsible person position unless they hold the position:
- (a) because of a resolution of members of the APRA-regulated institution; or
 - (b) because APRA has determined that the person is a responsible person under paragraph 22.

In such cases, the Fit and Proper Policy must require an assessment to be completed within 28 days of the person becoming the holder of the responsible person position or 28 days after APRA makes the determination under paragraph 22.

42. Interim appointment to a responsible person position may be made without a full fit and proper assessment for a period of up to 90 days (or longer with APRA's written agreement) including any prior period of interim appointment. Prior to making such an appointment, reasonable steps must be taken, as specified in the Fit and Proper Policy, to assess the fitness and propriety of the person. The APRA-regulated institution must complete a full fit and proper assessment prior to appointing the person to the responsible person position on a permanent basis.
43. The Fit and Proper Policy must require annual fit and proper assessments (or as close to annual as is practicable) for each responsible person position.
44. When a fit and proper assessment is conducted, an APRA-regulated institution must make all reasonable enquiries²⁴ to obtain information, including collecting sensitive information as defined in the *Privacy Act 1988* (Privacy Act), that it believes may be relevant to an assessment of whether the person is fit and proper to hold a responsible person position.
45. Where a responsible person has been assessed as fit and proper, but the APRA-regulated institution subsequently becomes aware of information that may result in the person being assessed as not fit and proper, the APRA-regulated institution must take all reasonable steps, including collecting sensitive information as defined in the Privacy Act if relevant, to ensure that it can prudently conclude that no material fitness and propriety concern exists. Where a concern exists, a full fit and proper assessment must be conducted.

²⁴ Including following the processes described in the Fit and Proper Policy under subparagraph 38(b).

46. The Fit and Proper Policy must contain adequate provisions:
- (a) to encourage any person to disclose information that may be relevant to a fit and proper assessment to the APRA-regulated institution or to APRA;
 - (b) to enable the disclosure to APRA of any information the APRA-regulated institution is required to provide under this Prudential Standard; and
 - (c) for giving or obtaining any consents required for the collection and use of any information:
 - (i) by the APRA-regulated institution to comply with the Fit and Proper Policy or this Prudential Standard; and
 - (ii) by APRA for its powers and functions under the Prudential Acts and the PHIPS Act.
47. The Fit and Proper Policy must require that sufficient documentation for each fit and proper assessment is retained to demonstrate the fitness and propriety of the institution's current, and recently past, responsible persons.

Whistleblowing²⁵

48. The Fit and Proper Policy must include adequate provisions to allow whistleblowing if a person has information that a responsible person does not meet the APRA-regulated institution's fit and proper criteria. The Fit and Proper Policy must ensure that the APRA-regulated institution and its subsidiaries consent to the person providing that information to either the person responsible for conducting fit and proper assessments or APRA.
49. The Fit and Proper Policy must include adequate provisions to allow persons who have information that the APRA-regulated institution has not complied with this Prudential Standard to provide that information to APRA.
50. The Fit and Proper Policy must provide that the APRA-regulated institution and its subsidiaries consent to any person who held a responsible person position disclosing information or providing documents to APRA relating to their reasons for resignation, retirement or removal.
51. An APRA-regulated institution must not, and must ensure that its subsidiaries do not, constrain, impede, restrict or discourage, whether by confidentiality clauses, policies or other means, any person from disclosing information or providing documents to APRA about matters referred to in paragraphs 48 to 50.²⁶

²⁵ Also refer to the provisions for the protection of whistleblowers in Part VIA, Division 1 of the Banking Act, Part IIIA, Division 4 of the Insurance Act, and Part 7, Division 5 of the Life Insurance Act, and the provisions in CPS 510 for not constraining persons from providing information.

²⁶ Refer also to section 52C of the Banking Act, section 38C of the Insurance Act and section 156C of the Life Insurance Act.

52. The Fit and Proper Policy must require that all provisions of the Policy encouraging whistleblowing, and the procedures related to whistleblowing, are adequately explained to directors and employees of the APRA-regulated institution and its subsidiaries who are likely to have information relevant to fit and proper assessments.
53. APRA does not require that an APRA-regulated institution impose an obligation on any person to make the disclosures under paragraphs 48 to 50. However, the Fit and Proper Policy must require that all reasonable steps be taken to ensure that no person making such disclosures in good faith is subject to, or threatened with, a detriment because of any notification in purported compliance with the requirements of the Fit and Proper Policy.

When a responsible person is not fit and proper

54. Where an APRA-regulated institution has assessed that a person is not fit and proper, or a reasonable person in the APRA-regulated institution's position would make that assessment, the APRA-regulated institution must take all steps it reasonably can to ensure that the person:²⁷
 - (a) is not appointed to; or
 - (b) for an existing responsible person, does not continue to hold, the responsible person position.

Informing APRA

55. An APRA-regulated institution must notify APRA of the following information for each responsible person:
 - (a) the title of the responsible person's position;
 - (b) the person's full name;
 - (c) the person's date of birth (for identification purposes only);
 - (d) the person's position and main responsibilities; and
 - (e) a statement of whether the person has been assessed under the Fit and Proper Policy.
56. An APRA-regulated institution must ensure that the information provided under paragraph 55 remains correct for all of its responsible persons. Subject to the Prudential Acts and the PHIPS Act, it must provide revised information to APRA within 28 days of any change or new appointment.
57. An APRA-regulated institution must notify APRA within **10 business days** if it assesses that a responsible person is not fit and proper. If the person remains in

²⁷ Including the actions outlined in the Fit and Proper Policy in accordance with paragraph 39.

the responsible person position, the notification must state the reason for this and the action that is being taken.

58. The information or notifications required by this Prudential Standard must be given in such form, if any, and by such procedures, if any, as APRA publishes on its website from time to time.
59. An APRA-regulated institution must take reasonable steps to:
- (a) obtain any information and documentation that APRA asks of it; and
 - (b) provide that information to APRA,
- to assist APRA in assessing the fitness and propriety of a person. This could include providing the Fit and Proper Policy to APRA on request.
60. APRA does not and will not require disclosure of spent convictions where precluded under Part VIIC of the *Crimes Act 1914*.

Adjustments and exclusions

61. APRA may adjust or exclude a specific prudential requirement in this Prudential Standard in relation to an APRA-regulated institution.²⁸

Determinations made under previous prudential standards

62. An exercise of APRA's discretion (such as an approval, waiver or direction) under a previous version of this Prudential Standard continues to have effect as though exercised pursuant to a corresponding power (if any) exercisable by APRA under this Prudential Standard. For the purposes of this paragraph, 'a previous version of this Prudential Standard' includes any versions of:
- (a) *Prudential Standard APS 520 Fit and Proper*;
 - (b) *Prudential Standard GPS 520 Fit and Proper*; and
 - (c) *Prudential Standard LPS 520 Fit and Proper*.

²⁸ Refer to subsection 11AF(2) of the Banking Act, subsection 32(3D) of the Insurance Act, subsection 230A(4) of the Life Insurance Act and section 92 of the PHIPS Act.

Attachment A - Responsible persons of authorised deposit-taking institutions and authorised banking NOHCs

1. A responsible person of an ADI (other than a foreign ADI) or authorised banking NOHC is any person who is:
 - (a) a director of the APRA-regulated institution;
 - (b) a senior manager of the institution;
 - (c) an appointed auditor who provides any report in relation to the ADI that is required to be prepared by an auditor under the Banking Act, prudential standards made under the Banking Act or reporting standards under FSCODA;
 - (d) an appointed auditor who provides any report in relation to the authorised banking NOHC that is required to be prepared by an auditor under the Banking Act, prudential standards made under the Banking Act or reporting standards; or
 - (e) a person who performs activities for a subsidiary of the APRA-regulated institution where those activities could materially affect the whole, or a substantial part, of the business of the APRA-regulated institution or its financial standing, either directly or indirectly.
2. References to a subsidiary in subparagraph 1(e) of this Attachment do not apply to a subsidiary that is an RSE licensee.

Attachment B - Responsible persons of foreign authorised deposit-taking institutions

1. A responsible person of a foreign ADI is any person who is:
 - (a) a senior manager of the Australian operations of the foreign ADI who is, except in the case of the senior officer outside Australia referred to in paragraph 25(d) of this Prudential Standard, ordinarily resident in Australia;
 - (b) an appointed auditor of the foreign ADI; or
 - (c) a person who performs activities for a subsidiary of the foreign ADI that the foreign ADI controls as part of its Australian operations, where:
 - (i) those activities could materially affect the whole, or a substantial part, of the business of the Australian operations of the foreign ADI or its financial standing, either directly or indirectly; and
 - (ii) the person is ordinarily resident in Australia.
2. References to a subsidiary in subparagraph 1(c) of this Attachment do not apply to a subsidiary that is an RSE licensee.

Attachment C - Responsible persons of general insurers and authorised insurance NOHCs

1. A responsible person of a general insurer (other than a Category C insurer) or authorised insurance NOHC is any person who is:
 - (a) a director of the APRA-regulated institution;
 - (b) a senior manager of the institution;
 - (c) for a general insurer, the Appointed Auditor;
 - (d) for a general insurer, the Appointed Actuary and the Reviewing Actuary;
 - (e) a responsible auditor who provides any report in relation to the authorised insurance NOHC that is required to be prepared by an auditor under the Insurance Act, prudential standards made under the Insurance Act or reporting standards under FSCODA; or
 - (f) a person who performs activities for a subsidiary of the APRA-regulated institution where those activities may materially affect the whole, or a substantial part, of the business of the APRA-regulated institution or its financial standing, either directly or indirectly.
2. References to a subsidiary in subparagraph 1(f) of this Attachment do not apply to a subsidiary that is an RSE licensee.

Attachment D - Responsible persons of Category C insurers

1. A responsible person of a Category C insurer is any person who is:
 - (a) a senior manager of the Category C insurer who is, except in the case of the senior officer outside Australia referred to in paragraph 25(d) of this Prudential Standard, ordinarily resident in Australia;
 - (b) the Category C insurer's **agent in Australia** where the agent in Australia is an individual²⁹;
 - (c) a director of the Category C insurer's agent in Australia where the agent in Australia is a corporate agent;
 - (d) a senior manager of the Category C insurer's agent in Australia where the agent in Australia is a corporate agent;
 - (e) the Appointed Auditor of the Category C insurer;
 - (f) the Appointed Actuary and the Reviewing Actuary of the Category C insurer; or
 - (g) a person who performs activities for a subsidiary of the Category C insurer that the Category C insurer controls as part of its Australian operations, where:
 - (i) those activities may materially affect the whole, or a substantial part, of the business of the Category C insurer or its financial standing, either directly or indirectly; and
 - (ii) the person is ordinarily resident in Australia.
2. References to a subsidiary in subparagraph 1(g) of this Attachment do not apply to a subsidiary that is an RSE licensee.

²⁹ Note that 'agent in Australia' in this Prudential Standard includes a person appointed under subsection 118(2), (3) or (3A) of the Insurance Act to act as agent on a temporary basis.

Attachment E - Responsible persons of life companies and registered life NOHCs

1. A responsible person of a life company (other than an EFLIC) or registered life NOHC is any person who is:
 - (a) a director of the APRA-regulated institution;
 - (b) a senior manager of the institution;
 - (c) for a life company, the Auditor;
 - (d) for a life company, the Appointed Actuary;
 - (e) a responsible auditor who is required, in relation to a registered life NOHC, to prepare a report under the Life Insurance Act, prudential standards made under the Life Insurance Act or reporting standards under FSCODA; or
 - (f) a person who performs activities for a subsidiary of the life company or registered life NOHC where those activities may materially affect the whole, or a substantial part, of the business of the life company or registered life NOHC or its financial standing, either directly or indirectly.

2. References to a subsidiary in subparagraph 1(f) of this Attachment do not apply to a subsidiary that is an RSE licensee.

Attachment F - Responsible persons of eligible foreign life insurance companies

1. A responsible person of an EFLIC is any person who is:
 - (a) a member of the Compliance Committee of the EFLIC;
 - (b) a senior manager of the Australian operations of the EFLIC who is ordinarily resident in Australia;
 - (c) the Auditor of the EFLIC;
 - (d) the Appointed Actuary of the EFLIC; or
 - (e) a person who performs activities for a subsidiary of the EFLIC that the EFLIC controls as part of its Australian operations, where:
 - (i) those activities may materially affect the whole, or a substantial part, of the business of the Australian operations of the EFLIC or its financial standing, either directly or indirectly; and
 - (ii) where the person is ordinarily resident in Australia.
2. References to a subsidiary in subparagraph 1(e) of this Attachment do not apply to a subsidiary that is an RSE licensee.

Attachment G – Responsible persons of private health insurers

1. A responsible person of a private health insurer is any person who is:
 - (a) a director of the private health insurer;
 - (b) an officer of the private health insurer;
 - (c) an Appointed Auditor who provides any report in relation to the private health insurer that is required to be prepared by an auditor under the prudential standards made under the PHIPS Act or reporting standards under FSCODA;
 - (d) the Appointed Actuary;
 - (e) any person who performs activities for a subsidiary of the APRA-regulated institution where those activities could materially affect the whole, or a substantial part, of the business of the APRA-regulated institution or its financial standing, either directly or indirectly.
2. References to a subsidiary in subparagraph 1(e) of this Attachment do not apply to a subsidiary that is an RSE licensee.