



Banking, Insurance and Life Insurance (prudential standard) determination No. 4 of 2012

Prudential Standard CPS 520 Fit and Proper

Banking Act 1959

Insurance Act 1973

Life Insurance Act 1995

I, Ian Laughlin, delegate of APRA:

- (a) under subsection 11AF(3) of the *Banking Act 1959* REVOKE Banking, Insurance and Life Insurance (prudential standards) determination No. 4 of 2011 which determined *Prudential Standard CPS 520 Fit and Proper* 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 standards) determination No. 4 of 2011 which determined *Prudential Standard CPS 520 Fit and Proper* to the extent that it applied to all general insurers and authorised insurance NOHCs;
- (c) under subsection 230A(5) of the *Life Insurance Act 1995* REVOKE Banking, Insurance and Life Insurance (prudential standards) determination No. 4 of 2011 which determined *Prudential Standard CPS 520 Fit and Proper* to the extent that it applied life companies, including friendly societies, 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 and authorised insurance NOHCs; and

- (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, including friendly societies, and registered life NOHCs.

This instrument takes effect on 1 January 2013.

Dated: 30 November 2012

[Signed]

Ian Laughlin
Member

Interpretation

In this Determination:

APRA means the Australian Prudential Regulation Authority.

ADI is short for authorised deposit-taking institution.

authorised deposit-taking institution has the meaning given in section 5 of the *Banking Act 1959*.

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*.

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*.

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

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 21 pages commencing on the following page.



Prudential Standard CPS 520

Fit and Proper

Objective and key requirements of this Prudential Standard

This Prudential Standard sets out minimum requirements for regulated institutions in determining the fitness and propriety of individuals to hold positions of responsibility. Its objective is to ensure that a regulated institution prudently manages the risks posed to its business operations and financial standing by having persons acting in responsible positions who are not fit and proper.

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 a regulated institution 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, regulated 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:

- a regulated institution must have and implement a Fit and Proper Policy that meets the requirements of this Prudential Standard;
- the fitness and propriety of a responsible person must generally be assessed prior to initial appointment and then re-assessed annually;
- a regulated institution must 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;
- additional requirements must be met for certain auditors and Appointed and Reviewing Actuaries; and
- certain information must be provided to APRA regarding responsible persons and the regulated institution'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) in relation to **authorised deposit-taking institutions (ADIs)** and **non-operating holding companies** authorised under the Banking Act (authorised banking NOHCs);
 - (b) section 32 of the *Insurance Act 1973* (Insurance Act) in relation to **general insurers** and **non-operating holding companies** authorised under the Insurance Act (authorised insurance NOHCs); and
 - (c) section 230A of the *Life Insurance Act 1995* (Life Insurance Act) in relation to **life companies**, including **friendly societies**, and **non-operating holding companies** registered under the Life Insurance Act (registered life NOHCs).

Application

2. This Prudential Standard applies to:
 - (a) all ADIs, including **foreign ADIs**, and authorised banking NOHCs;
 - (b) all general insurers, including **Category C insurers**, and authorised insurance NOHCs; and
 - (c) all life companies, including friendly societies and **eligible foreign life insurance companies** (EFLICs), and registered life NOHCs.

These institutions are collectively referred to as ‘regulated institutions’ in this Prudential Standard.

3. All 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 business** of that institution.
4. This Prudential Standard commences on 1 January 2013.

Interpretation

5. Terms that are defined in *Prudential Standard APS 001 Definitions* (APS 001), *Prudential Standard GPS 001 Definitions* (GPS 001) or *Prudential Standard LPS 001 Definitions* (LPS 001) appear in bold the first time they are used in this Prudential Standard.
6. For the purposes of this Prudential Standard, the term ‘auditor’ is used to refer to the following positions except where 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); and
 - (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* (Collection of Data Act).
7. In this Prudential Standard, the term ‘Prudential Acts’ is used to refer to the Banking Act, the Insurance Act and the Life Insurance Act;
8. This Prudential Standard specifies:
- (a) the senior management responsibilities for the purposes of the definition of senior manager in the Prudential Acts¹;
 - (b) the fitness and propriety criteria for auditors and Appointed Actuaries for the purposes of the Prudential Acts²;
 - (c) the fitness and propriety criteria for certain responsible persons for the purposes of the Prudential Acts³; and
 - (d) the fitness and propriety criteria for the purposes of paragraph 21(3)(b) of the Banking Act.

¹ 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.

² 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.

³ 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.

Fit and Proper Policy

9. A regulated institution must prudently manage the risks that persons acting in **responsible person positions**⁴ who are not fit and proper pose to its business and financial standing. To this end, a regulated institution must have a documented policy relating to the fitness and propriety of its responsible persons that meets the requirements of this Prudential Standard (Fit and Proper Policy).
10. The Fit and Proper Policy must be approved by the **Board**.⁵
11. A 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.
12. The Fit and Proper Policy must form part of a regulated institution's risk management system or **risk management framework**.⁶
13. Nothing in this Prudential Standard prevents a regulated institution from adopting and applying a group Fit and Proper Policy used by a **related body corporate**⁷, provided that the policy has been approved by the Board in accordance with paragraph 10 and meets the requirements of this Prudential Standard.

Responsible persons

14. A 'responsible person' of a regulated institution 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;
 - (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; and
 - (f) for an EFLIC, a person defined in Attachment F.

⁴ Refer to paragraph 18 for the definition of responsible person position.

⁵ A reference to the Board, in the case of a foreign ADI, Category C insurer or an EFLIC, is a reference to the senior officer outside Australia or Compliance Committee (as applicable) as referred to in *Prudential Standard CPS 510 Governance* (CPS 510).

⁶ As required by *Prudential Standard APS 310 Audit and Related Matters*, *Prudential Standard GPS 220 Risk Management* and *Prudential Standard LPS 220 Risk Management*.

⁷ Related body corporate has the meaning given in section 50 of the *Corporations Act 2001* (Corporations Act).

15. A person need not be an employee of a regulated institution to be a responsible person if they are within the definitions in paragraph 14 and Attachments A to F inclusive. In some circumstances a consultant, contractor or employee of another entity may be a responsible person.
16. In addition to persons who meet the definition of a responsible person, APRA may determine, in writing, 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 regulated institution, or that the person's activities may materially impact on **prudential matters**.
17. APRA may determine, in writing, 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 regulated institution or that the person's activities may not materially impact on prudential matters.
18. 'Responsible person position' means the responsibilities or activities of a responsible person that would lead to the person being a responsible person under the definitions in paragraph 14 and Attachments A to F inclusive.

Senior managers

19. 'Senior manager' in relation to a regulated institution means a person (other than a **director** of that regulated institution) who:
 - (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the regulated institution;
 - (b) has the capacity to affect significantly the regulated institution's financial standing⁸;
 - (c) may materially affect the whole, or a substantial part, of the business of the regulated institution or its financial standing through their responsibility for:
 - (i) enforcing policies and implementing strategies approved by the Board of the regulated institution;
 - (ii) the development and implementation of systems used to identify, assess, manage or monitor risks in relation to the business of the regulated 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).

⁸ Paragraphs 19 (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.

20. For the purposes of the definition of senior manager in the Prudential Acts⁹, the responsibilities set out in paragraph 19, when exercised for a regulated institution, are senior management responsibilities (except where carried out by a director).
21. ‘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 standing¹⁰; 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.
22. For the purposes of the definition of senior manager in subsection 3(1) of the Insurance Act, the responsibilities set out in paragraph 21, when exercised for a corporate agent in respect of a 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

23. A regulated institution must clearly define and document the competencies required for each responsible person position.
24. For the purposes of the Prudential Acts and for the purposes of determining whether a person is fit and proper to hold a responsible person position, the criteria are whether:¹¹

⁹ Refer to subsection 5(1) of the Banking Act, subsection 3(1) of the Insurance Act and section 8 of the Life Insurance Act

¹⁰ Paragraphs 21 (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.

- (a) it would be prudent for a 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 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 a 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 auditors¹²

- 25. The criteria for fitness and propriety of an auditor for the purposes of the Prudential Acts are those contained in paragraphs 24 and 26.¹³
- 26. 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 regulated institutions in the industry within which they are working;
 - (c) has experience relating to ADIs, general insurers or life companies (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 regulated institution;
 - (d) for an Appointed Auditor of a general insurer¹⁴ or responsible auditor of an authorised insurance NOHC, is not:

¹¹ 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 and paragraph 245A(3)(b) of the Life Insurance Act. Paragraphs 27 and 29 to 33 provide additional criteria for fitness and propriety of an auditor, Appointed Actuary or a Reviewing Actuary of a general insurer (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 28 or 33 does not apply in relation to a particular case).

¹² Refer to CPS 510 for the requirement for auditors to be independent.

¹³ Refer to paragraphs 17(2)(b) and 21(3)(b) of the Banking Act in relation to an auditor or responsible auditor; paragraphs 39(3)(a), 43(2)(b) and 44(3)(b), and subparagraph 44(1)(a)(ii) of the Insurance Act in relation to an appointed auditor or responsible auditor and paragraph 245A(3)(b) of the Life Insurance Act in relation to an Auditor or responsible auditor.

- (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 director¹⁵; or
 - (iii) a partner of that Appointed Actuary;
- (e) for an Auditor of a life company or responsible auditor of a registered life NOHC, is not:
- (i) the **Appointed Actuary** of the life company or of a life company that is a subsidiary of the registered life 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 director; or
 - (iii) a partner of that Appointed Actuary;
- (f) is a member of a recognised professional body; and
- (g) is ordinarily resident in Australia.
27. The criteria in paragraph 26 do not apply if the following conditions are met:
- (a) the regulated institution reasonably considers that there are exceptional circumstances;
 - (b) the regulated institution has promptly notified APRA of which eligibility criteria are not satisfied and of the exceptional circumstances as to why they do not apply; and
 - (c) APRA has notified the regulated institution in writing that APRA has no objections to the person holding the position in question.

¹⁴ For paragraphs 26 to 33 inclusive, refer also to *Prudential Standard GPS 310 Audit and Related Matters* and *Prudential Standard GPS 320 Actuarial and Related Matters*.

¹⁵ Refer to CPS 510 for a similar restriction on the Appointed Auditor and Appointed Actuary of a general insurer being from the same entity.

Additional criteria applying to Appointed Actuaries¹⁶ and Reviewing Actuaries

28. The criteria for fitness and propriety of an Appointed Actuary of a general insurer or life company, or of a **Reviewing Actuary** of a general insurer, for the purposes of the Prudential Acts are those contained in paragraphs 24 and 29 to 34 inclusive.¹⁷
29. 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 or life company, or as a Reviewing Actuary of a general insurer, are that the person:
- (a) has appropriate formal qualifications;
 - (b) is not the Chief Executive Officer nor 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 institutions carrying on **insurance business** (for a general insurer) or **life business** (for a life company); and
 - (e) has experience relating to general insurers or life companies, 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;
 - (f) is a Fellow or Accredited Member¹⁸ of the Institute of Actuaries of Australia; and
 - (g) is ordinarily resident in Australia.
30. In addition to the criteria specified in paragraph 29, a Reviewing Actuary of a general insurer must not be an employee of the insurer.

¹⁶ Refer to LPS 320 for eligibility criteria for appointed actuaries as required by section 93 of the Life Insurance Act.

¹⁷ Refer to paragraphs 39(3)(a), 43(2)(b) and 44(3)(b), and subparagraph 44(1)(a)(ii) of the Insurance Act

¹⁸ 'Fellow' and 'Accredited Member' as defined by the Institute of Actuaries of Australia.

31. In addition to the criteria specified in paragraph 28, where a general insurer's Appointed Actuary is not an employee of the insurer, the Reviewing Actuary must not be:
- (a) an employee or director of the same firm or company as the Appointed Actuary, or from a related firm or related company; or
 - (b) a partner of the same firm or related firm as the Appointed Actuary.
- A Reviewing Actuary may, however, be from the same firm or company as the general insurer's Appointed Auditor or from a related firm or related company.
32. The criterion in paragraph 29(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 29(a) to (e) inclusive.¹⁹
33. The criteria in paragraph 28 to 32 do not apply while:
- (a) the regulated institution reasonably considers that there are exceptional circumstances;
 - (b) the regulated institution has promptly notified APRA of which eligibility criteria are not satisfied and of the exceptional circumstances; and
 - (c) APRA has notified the regulated institution in writing that APRA has no objections to the person holding the position.

Process for assessment of fitness and propriety

34. 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 regulated institution;
 - (b) what information will 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.

¹⁹ Note that, by application of paragraphs 29 to 31, the Reviewing Actuary of the general insurer must meet the criteria specified in those paragraphs, including that the Reviewing Actuary is a Fellow or Accredited Member of the Institute of Actuaries of Australia and ordinarily resident in Australia.

35. The Fit and Proper Policy must specify the actions to be taken where a person is assessed as being not fit and proper.
36. 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.
37. 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 regulated institution; or
 - (b) because APRA has determined that the person is a responsible person under paragraph 16.

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.

38. 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 regulated institution must complete a full fit and proper assessment prior to appointing the person to the responsible person position on a permanent basis.
39. 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.
40. When an assessment is conducted, a regulated institution must make all reasonable enquiries²⁰ to obtain information, including collecting sensitive information as defined in the *Privacy Act 1988*, that it believes may be relevant to an assessment of whether the person is fit and proper to hold a responsible person position.
41. Where a responsible person has been assessed as fit and proper, but the regulated institution subsequently becomes aware of information that may result in the person being assessed as not fit and proper, the regulated institution must take all reasonable steps, including collecting sensitive information as defined in the *Privacy Act 1988* if relevant, to ensure that it can prudently conclude that no

²⁰ Including following the processes described in the Fit and Proper Policy under subparagraph 34(b).

material fitness and propriety concern exists. Where a concern exists, a full fit and proper assessment must be conducted.

42. 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 regulated institution or to APRA;
 - (b) to enable the disclosure to APRA of any information the 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 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.
43. 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 regulated institution's current, and recently past, responsible persons.

Whistleblowing²¹

44. The Fit and Proper Policy must include adequate provisions to allow whistleblowing if a person believes that a responsible person does not meet the regulated institution's fit and proper criteria. The Fit and Proper Policy must ensure that the regulated institution and its subsidiaries consent to the person notifying either the person responsible for conducting fit and proper assessments or APRA of that belief and the reasons for it.
45. The Fit and Proper Policy must include adequate provisions to allow persons who believe that the regulated institution has not complied with this Prudential Standard to notify APRA of that belief and the reasons for it.
46. The Fit and Proper Policy must provide that the 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.
47. A 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 44, to 46.²²

²¹ 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.

²² Refer also to section 52C of the Banking Act, section 38C of the Insurance Act and section 156C of the Life Insurance Act.

48. The Fit and Proper Policy must require that any provisions of the Policy, and of the Prudential Acts, encouraging whistleblowing are adequately communicated to directors and employees of the regulated institution and its subsidiaries who are likely to have information relevant to fit and proper assessments.
49. APRA does not require that a regulated institution impose an obligation on any person to make the disclosures under paragraphs 44, to 46. 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

50. Where a regulated institution has assessed that a person is not fit and proper, or a reasonable person in the regulated institution's position would make that assessment, the regulated institution must take all steps it reasonably can to ensure that the person:²³
 - (a) is not appointed to; or
 - (b) for an existing responsible person, does not continue to holdthe responsible person position.

Informing APRA

51. A regulated institution must notify APRA of the following information for each responsible person:
 - (a) the person's full name;
 - (b) the person's date of birth (for identification purposes only);
 - (c) the person's position and main responsibilities; and
 - (d) a statement of whether the person has been assessed under the Fit and Proper Policy.
52. A regulated institution must ensure that the information provided under paragraph 51 remains correct for all of its responsible persons. Subject to the Prudential Acts, it must provide revised information to APRA within 28 days of any change or new appointment.
53. A 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 the responsible person position, the notification must state the reason for this and the action that is being taken.

²³ Including the actions outlined in the Fit and Proper Policy in accordance with paragraph 35.

54. 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.
55. A 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.
56. APRA does not and will not require disclosure of spent convictions where precluded under Part VIIC of the *Crimes Act 1914*.

Adjustments and exclusions

57. APRA may, by notice in writing to a regulated institution, adjust or exclude a specific prudential requirement in this Prudential Standard in relation to that regulated institution.²⁴

Determinations made under previous prudential standards

58. 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:

- (a) *Prudential Standard APS 520 Fit and Proper* made on 23 June 2008;
- (b) *Prudential Standard GPS 520 Fit and Proper* made on 23 June 2008;
- (c) *Prudential Standard LPS 520 Fit and Proper* made on 2 March 2010; and
- (d) *Prudential Standard CPS 520 Fit and Proper* made on 9 September 2011.

²⁴ Refer to subsection 11AF(2) of the Banking Act, subsection 32(3D) of the Insurance Act and subsection 230A(4) of the Life Insurance 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 regulated institution;
 - (b) a senior manager of the regulated 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 the Collection of Data Act;
 - (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 regulated institution where those activities could materially affect the whole, or a substantial part, of the business of the regulated institution or its financial standing, either directly or indirectly.
2. References to a subsidiary in subparagraph 1(e) do not apply to a subsidiary that holds an RSE licence under the *Superannuation Industry (Supervision) Act 1993* (the SIS Act).²⁵

²⁵ RSE licence has the meaning given in subsection 10(1) of the SIS Act.

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 19(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) do not apply to a subsidiary that holds an RSE licence under the SIS Act.²⁶

²⁶ RSE licence has the meaning given in subsection 10(1) of the SIS Act.

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 regulated institution;
 - (b) a senior manager of the regulated 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 the Collection of Data Act; or
 - (f) a person who performs activities for a subsidiary of the regulated institution where those activities may materially affect the whole, or a substantial part, of the business of the regulated institution or its financial standing, either directly or indirectly.
2. References to a subsidiary in subparagraph 1(f) do not apply to a subsidiary that holds an RSE licence under the SIS Act.²⁷

²⁷ RSE licence has the meaning given in subsection 10(1) of the SIS Act.

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 19(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 individual²⁸;
 - (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) do not apply to a subsidiary that holds an RSE licence under the SIS Act.

²⁸ 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 regulated institution;
 - (b) a senior manager of the regulated 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 the Collection of Data Act; 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) do not apply to a subsidiary that holds an RSE licence under the SIS Act.

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) do not apply to a subsidiary that holds an RSE licence under the SIS Act.