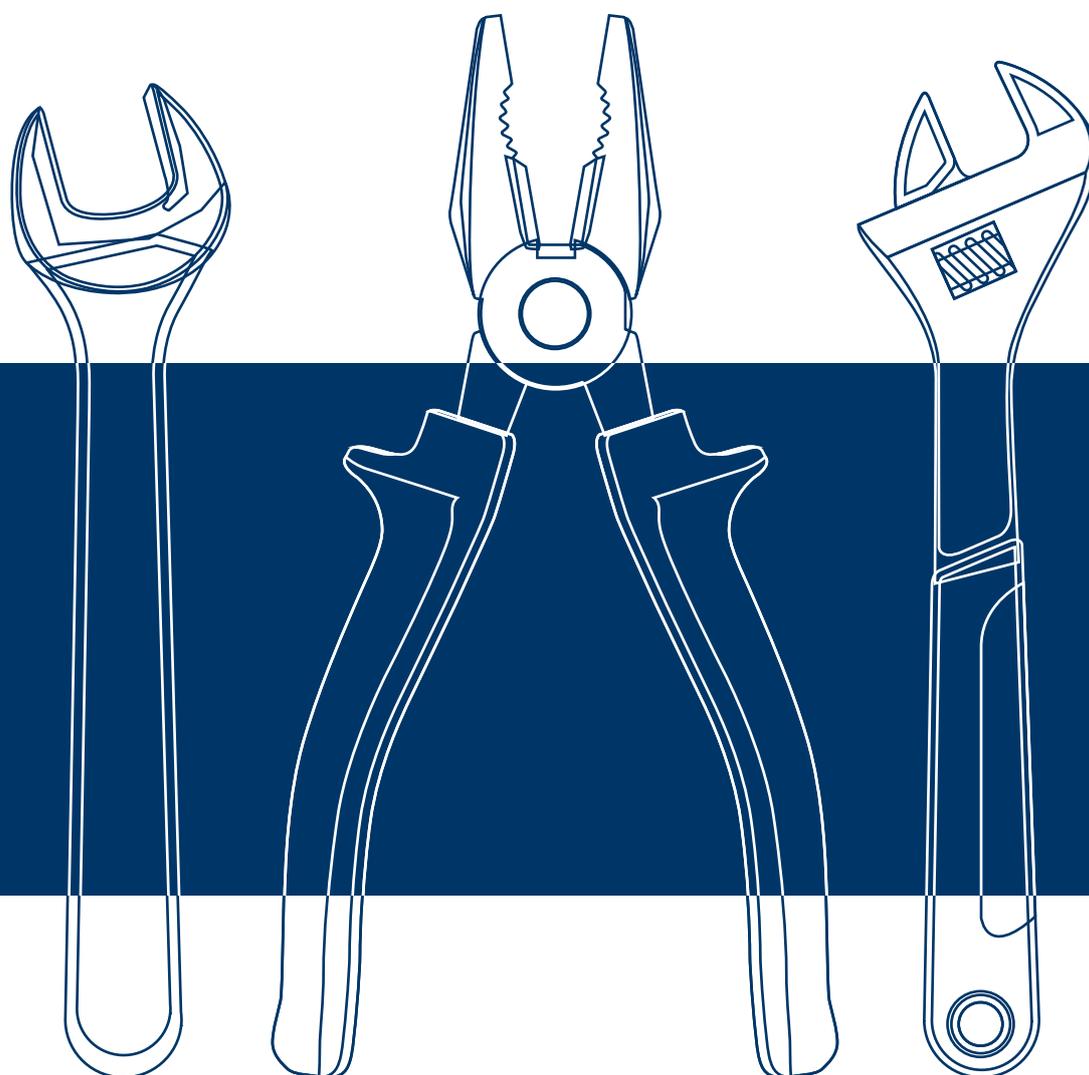


GOVERNANCE TOOLKIT

Fit and Proper

Version 1:1 March 2014



THIS TOOLKIT PROUDLY SUPPORTED BY

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LAWYERS



Purpose of the Governance Toolkits

AIST has developed the Governance Toolkits to assist **Trustees** with maintaining strong prudential frameworks. They are created specifically for AIST members and are a benefit of membership.

The Toolkits contain functional tools such as diagrams, decision trees, flowcharts and checklists, to assist **Trustees** with understanding and applying their legal obligations, regulatory guidance and AIST governance guidelines.

How to use this Toolkit

The Fit and Proper Toolkit is designed to assist **Trustees** with understanding and implementing the Superannuation Prudential Standard SPS 520 Fit and Proper (**SPS 520**).

Tools

Obligations Map	showing the source of the Fit and Proper requirements and how they interconnect with the broader prudential regulatory framework
Implementation Flowchart	to implement Fit and Proper obligations
Decision Tree	to identify Responsible Persons
Checklists	<ul style="list-style-type: none"> - to assess if a person is Fit and Proper - to prepare and maintain a Fit and Proper Policy
Dictionary	words in bold font are defined in a Dictionary at the back of the Toolkit. AIST recommends that members of the Board and other relevant staff familiarise themselves with the key concepts in the Dictionary.
Alerts	<p>Symbol  is used to identify an issue that needs particular care. It may denote:</p> <ul style="list-style-type: none"> - an issue or uncertainty arising from different, overlapping requirements; or - a matter that requires particular care in interpretation or application to a Trustee's particular circumstances.

Warning & Disclaimer

The Toolkit is intended to assist **Trustees** but does not replace or exhaustively replicate primary sources of a **Trustee's** legal obligations, such as general law, legislation, regulations, prudential standards and regulatory guidance.

While the  identifies issues requiring particular care, content without a  should not be regarded as any less significant. The **Trustee** will have to make its own judgements on how to apply the information in this Toolkit and should seek professional advice if uncertain.

This Toolkit does not constitute legal advice and should not be relied upon to demonstrate compliance with any legal obligation or standard of conduct expected of **Trustees** or their directors. While this Toolkit is a valuable tool for a **Trustee** considering its obligations, it will not guarantee compliance or sound prudential outcomes.

Content in this Toolkit is adapted from the Australian Prudential Regulation Authority (APRA) publications Superannuation Prudential Standard **SPS 520** – Fit and Proper (July 2013) and Prudential Practice Guide **SPG 520** – Fit and Proper (**SPG 520**) (July 2013). APRA has been consulted on its content but does not endorse it.

The information is current as at 1 March 2014. The Prudential Standards and Prudential Practice Guides can change and any changes made on or after 1 March 2014 will need to be taken into account.

Further assistance

If you would like further assistance, contact your professional advisers or alternative contact AIST at info@aist.asn.au or Mills Oakley Lawyers at super@millsOakley.com.au.

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1. RSE licensee’s obligations

1.1 Fit and Proper Policy

The **RSE licensee** is required to have a Board approved Fit and Proper Policy. The Fit and Proper Policy is a component of the **RSE licensee’s** Risk Management and Governance frameworks. Viewed broadly, it is a risk treatment plan for the risks posed to the **RSE licensee’s** business arising from having a person who is not fit and proper acting in a responsible person position.

The **RSE licensee** must take all reasonable steps to ensure that its responsible persons are aware of its Fit and Proper Policy. AIST suggests that this may require periodic training on the content and application of the policy.

Where an **RSE licensee** has an equal representation Board, and it is not possible to undertake a fitness and proprietary assessment prior to the formal appointment of a responsible person, APRA expects the **RSE licensee** to make available to sponsoring organisations and prospective Board candidates its Fit and Proper Policy and a **summary of the duties and responsibilities of an RSE licensee**.

1.2 Identify responsible person positions and document competencies

The Fit and Proper Policy relates to the fitness and propriety of the **RSE licensee’s** responsible persons. The **RSE licensee** must determine who are its responsible persons and document the required competencies of their positions (**responsible person positions**). AIST suggests that an **RSE licensee** maintain a Responsible Persons Register to demonstrate compliance in the event of an APRA review. The Register should include the names of all Responsible Persons, their roles, the Trustee’s reasons for considering them a responsible person, the date of their last Fit and Proper assessment, and the outcome of that assessment.

1.3 Conduct Fit and Proper Assessments

- a) Before appointing someone to a **responsible person position** in a permanent capacity, the **RSE licensee** must assess that person’s fitness and propriety against the prescribed criteria using the decision-making process and considerations described in the Fit and Proper Policy.
- b) Assessments must also be conducted annually (or as close to annually as is practicable) and when circumstances arise which bring into question the fitness and propriety of a responsible person (**special circumstances**).
- c) The **RSE licensee** must retain sufficient documentation of assessments of its current and recently past responsible persons.
- d) If a person is assessed as not fit and proper prior to appointment, the **RSE licensee** must take all reasonable steps it can to ensure that the person is not appointed to a **responsible person position**. If existing appointments are assessed as not fit and proper, the **RSE licensee** must take all reasonable steps to remove the person from the **responsible person position** or to ensure the person does not continue to hold the role.

 The **Trustee’s** company constitution or Fund governing rules may not permit the **Trustee** to remove a director. AIST suggests that **Trustees** review their governance arrangements and seek to address this issue before it arises. If it does arise, the **Trustee** may need to seek advice and consult APRA as part of the reporting process.

1.4 Report to APRA

- a) The **RSE licensee** must notify APRA within 14 days of any change or new appointment of a responsible person as to that person’s fitness and propriety.
- b) The **RSE licensee** must notify APRA, within 14 days of the assessment, if a person assessed as not fit and proper continues to hold a **responsible person position**.

- c) The Fit and Proper Policy must include provisions for the giving of or obtaining of any consents required, to encourage disclosure of information relevant to assessments, to enable disclosure to APRA and to allow whistleblowing in the event a person has information that a responsible person does not meet the fit and proper criteria.

1.5 Source of obligations

The Fit and Proper obligations are in SPS 520. APRA's expectations are in SPG 520. Other obligations arise from the **SIS Act** and the **Crimes Act** (see section 1.7 below).

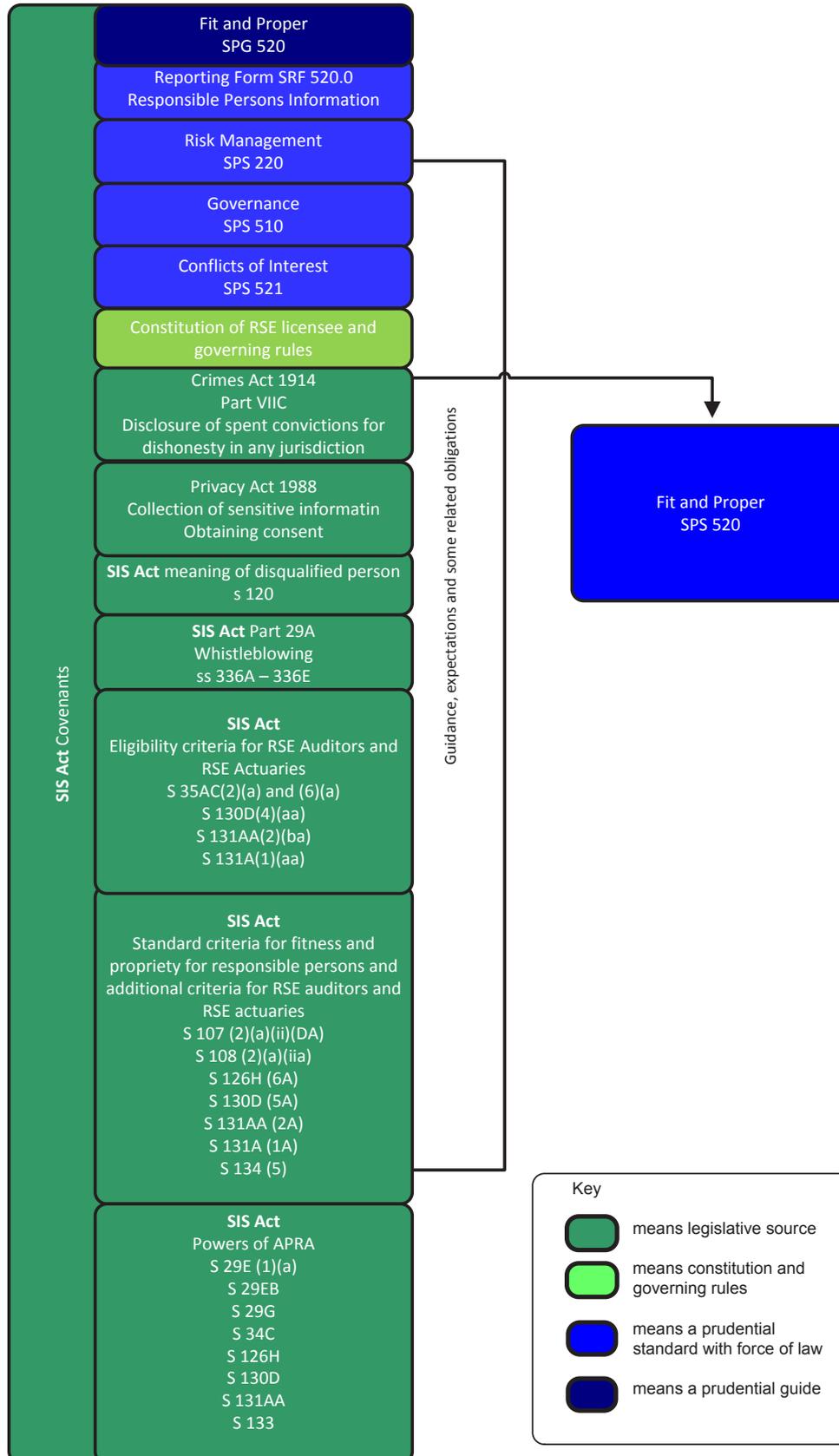
1.6 Board renewal

The **RSE licensee** is required to have a Board Renewal Policy (see **SPS 510**). That policy must include the process for appointing and removing directors. Additionally, if a Board has member representatives on it or, as an equal representation Board, contains independent directors or trustees, the **RSE licensee** is required to establish and publish the process for appointment and removal of member representative and independent directors and trustees (per sections 107 and 108 of the **SIS Act**). These processes for appointing and removing directors will need to reflect the Fit and Proper Policy processes.

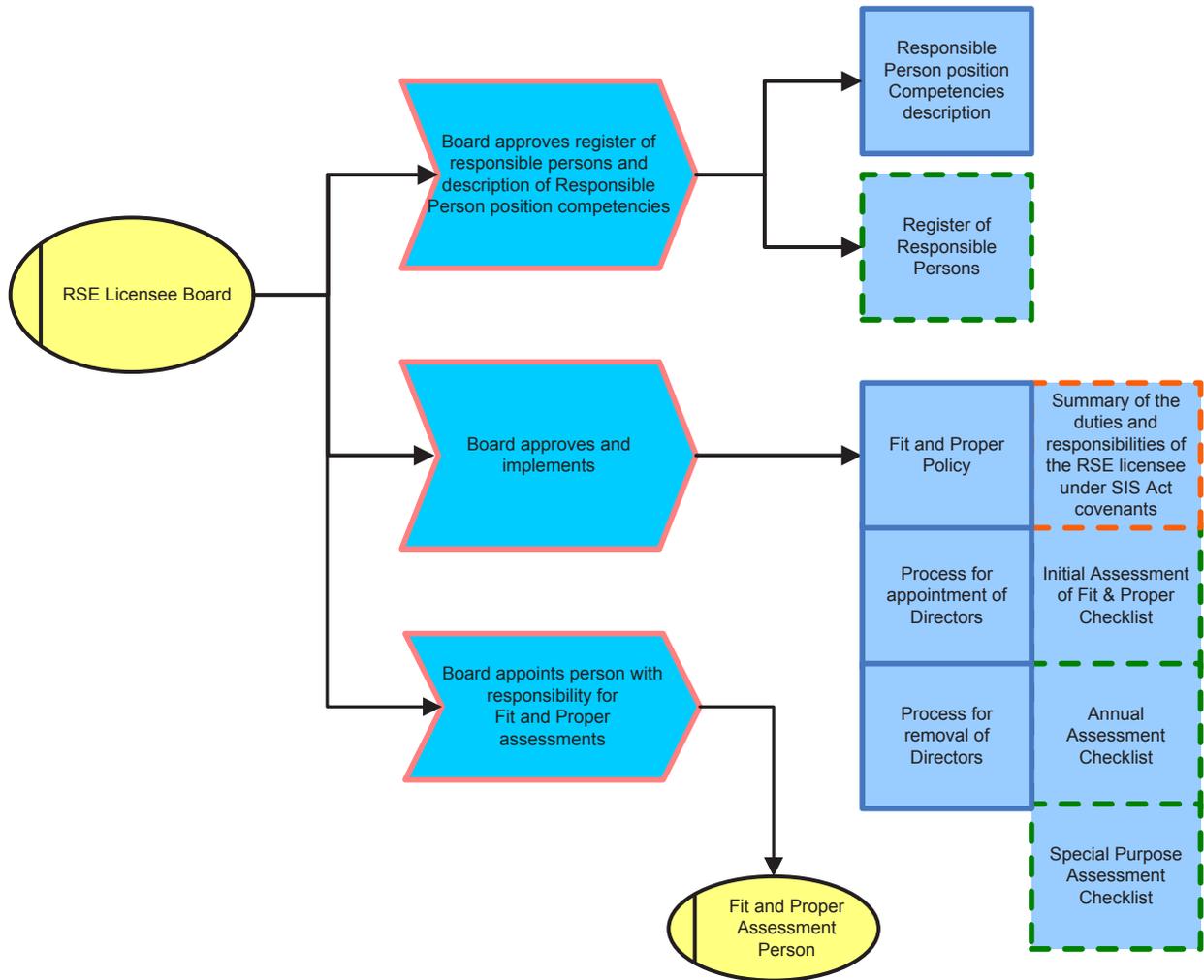
 AIST recommends that the RSE licensee consider the obligations under the **SIS Act** and SPS 510 together to ensure consistency between them. As at 1 March 2014, the laws governing board composition are the subject of proposed legislative change.

1.7 Obligations Map

The Fit and Proper Policy is a component of the **RSE licensee's** Risk Management and Governance frameworks. SPS 520 contains references to SPS 220, SPS 510 and SPS 521. The **RSE licensee** is required to report information about its responsible persons to APRA in accordance with Reporting Form SRF 520.0 *Responsible Persons Information*.



1.8 Implementation Flowchart



Shape Types Key: means an organisational unit means a process means a document output	
Document Types Key: means a document prescribed by the prudential standards means a document not prescribed by the prudential standards but expected by APRA means a document not prescribed by the prudential standards but suggested by AIST	

2. Responsible persons

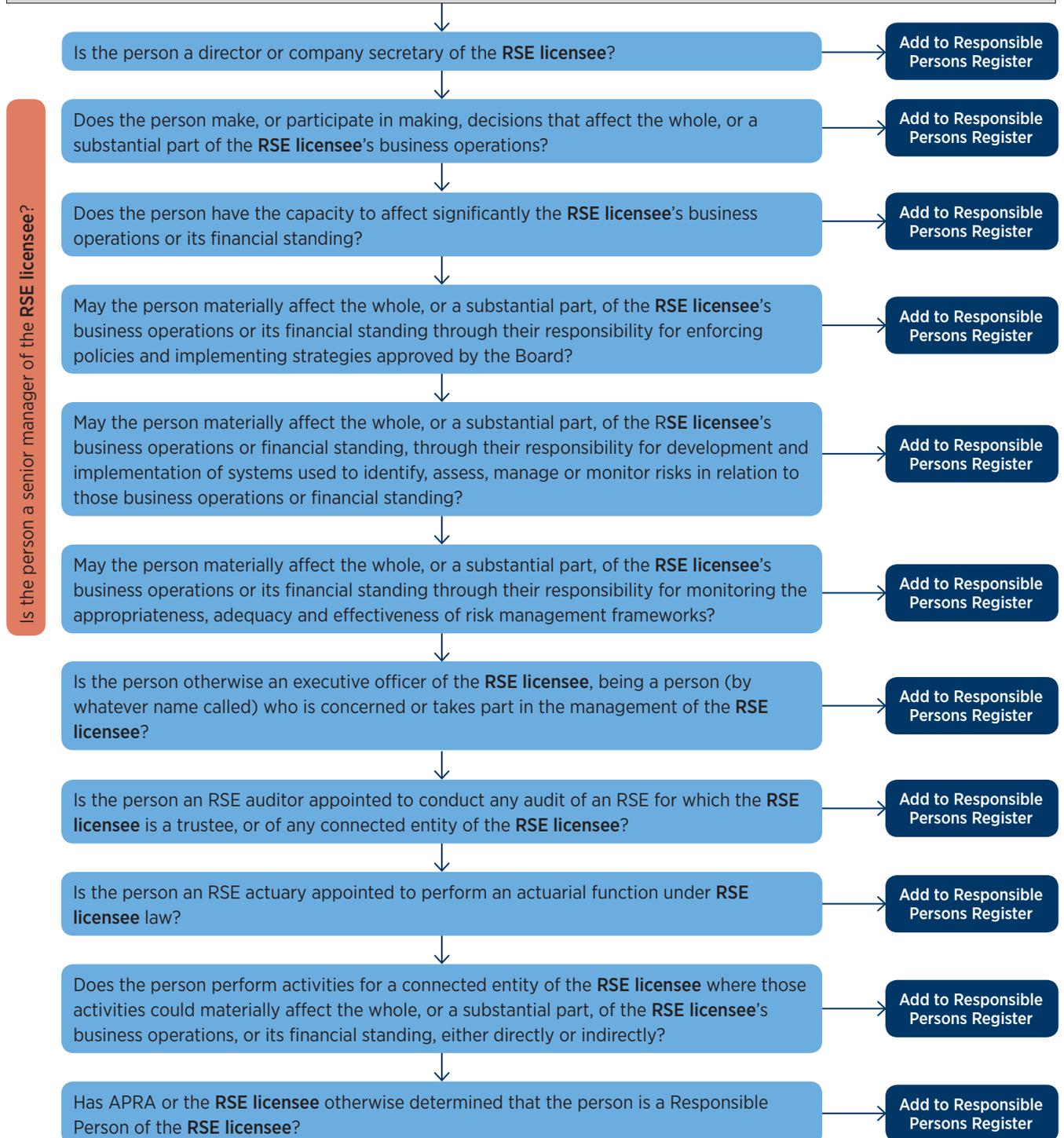
2.1 Decision Tree – who are the RSE licensee’s responsible persons?

⚠ The RSE licensee may require professional advice on interpreting and applying the concepts in this process.

The RSE licensee must consider:

- all its employees and employees of its connected entities, whether employed directly or under contract; and
- all employees, consultants and contractors of a third party who may satisfy the definition of ‘responsible person’ as set out in SPS 520.

AISt suggests that the RSE licensee maintain a Responsible Persons Register to demonstrate compliance in the event of an APRA review.



3. Criteria to determine if a person is fit and proper

3.1 Checklist – criteria to determine if a person is fit and proper

This checklist combines requirements of SPS 520 and APRA expectations in SPG 520, however the criteria are not exhaustive.

 A number of items below ask whether it would be prudent for the **RSE licensee** to conclude a particular matter. This reflects the language in SPS 520.18 and a focus of obligations on the process of prudent judgement rather than the outcome (see SPG 520.25). In demonstrating the application of prudent judgement, AIST recommends that a record of the **RSE licensee’s** considerations and the reasons for its determinations in regard to each ‘Responsible Person’ be maintained.

TASK	YES/NO
(a) Are the competencies required for the responsible person position clearly defined and documented?	
(b) Would it be prudent for the RSE licensee to conclude that the person possesses: <ul style="list-style-type: none"> <li data-bbox="193 891 1251 963">i. the competence required to properly perform their duties and has demonstrated that competence? <li data-bbox="193 994 927 1030">ii. the experience required to properly perform their duties? <li data-bbox="193 1061 911 1097">iii. the character required to properly perform their duties? <li data-bbox="193 1128 895 1164">iv. the honesty required to properly perform their duties? <li data-bbox="193 1196 900 1232">v. the integrity required to properly perform their duties? <li data-bbox="193 1263 906 1299">vi. the diligence required to properly perform their duties? <li data-bbox="193 1330 1086 1366">vii. the soundness of judgement required to properly perform their duties? 	
(c) Would it be prudent for the RSE licensee to conclude that the person possesses the education or technical qualifications relevant to their duties and responsibilities?	
(d) Would it be prudent for the RSE licensee to conclude that the person possesses the knowledge relevant to their duties and responsibilities?	
(e) Would it be prudent for the RSE licensee to conclude that the person possesses the skills relevant to their duties and responsibilities?	
(f) Has the person demonstrated the appropriate competence and integrity in fulfilling occupational, managerial or professional responsibilities previously and/or in the conduct of their current duties?	
(g) In relation to the members of the Board of the RSE licensee , are you satisfied that each individual person makes a contribution to the RSE licensee satisfying the requirements of fitness at a collective level?	
(h) Have you confirmed that the person has not been disqualified from holding their position by the SIS Act ?	

TASK	YES/NO
(i) Have you confirmed that the person:	
i. does not have any conflict of interest in performing their duties? or ii. if the person is in a position of conflict, have you determined that the conflict will not create a material risk that the person will fail to properly perform their duties?	
(j) Have you confirmed that the person:	
i. has not demonstrated a lack of willingness to comply with legal obligations, regulatory requirements or professional standards? and	
ii. has not been obstructive, misleading or untruthful in dealing with regulatory bodies or a court?	
(k) Have you confirmed that the person has not breached any fiduciary obligations?	
(l) Have you confirmed that the person has not perpetrated or participated in negligent, deceitful or otherwise discreditable business or professional practices?	
(m) Have you confirmed that the person has not been reprimanded, disqualified or removed, by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct?	
(n) Have you confirmed that the person has not seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others?	
(o) Have you confirmed that the person has not been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies in that management?	
(p) Have you confirmed that the person is not of bad repute in any business or financial community or any market?	
(q) Have you confirmed that the person has not been the subject of civil or criminal proceedings or enforcement action where those proceedings or that action:	
i. related to the management of an entity, or commercial or professional activities?	
ii. determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct)? and	
iii. reflected adversely on the person's competence, diligence, judgement, honesty or integrity?	
(r) Have you considered relevant overseas conduct?	
(s) Have you confirmed all other criteria determined by the RSE licensee in its Fit and Proper Policy?	

3.2 Decision standard for fitness and propriety considerations

- (a) APRA does not require the **RSE licensee** to necessarily bar or remove a person from a responsible person position solely on the basis of one negative outcome. This is explained at SPG 520.25.
- (b) APRA expects the **RSE licensee** to make a prudent conclusion based on the provision of sufficient information. It may be that a particular matter is not relevant to the responsible person position. It may be that, while a matter is relevant, other considerations, such as materiality, elapsed time since the event, or repetition or duration of the behaviour, lead to a prudent conclusion of fitness and propriety despite certain evidence.
- (c) APRA states that, if there is insufficient information for the **RSE licensee** to prudently make such a conclusion, particularly as a result of a lack of cooperation by the person, APRA would normally regard the fitness and propriety criteria as not being met.
- (d) A person may be judged not fit and proper for one responsible person position but fit and proper for another, perhaps due to certain competencies or conflicts being specific to the position.
- (e) However, decisions as to a lack of character, diligence, honesty, integrity or judgement or that a person has been guilty of misleading or deceptive conduct, particularly in their interactions with APRA, will tend to suggest a person is not fit and proper for any responsible person position.
- (f) In determining whether an individual is a responsible person for the purpose of SPS 520, some assessments will be difficult and will depend upon an individual's actual role within the business (as opposed to his or her title) and the person's place within the organisational structure of the business. APRA notes in SPG 520 that 'senior managers' will include 'managers reporting directly to the Chief Executive Officer and those responsible for key aspects of risk management'.
- (g) This represents APRA's stated view and may assist the **RSE licensee** in the event of an APRA review, but it is not exhaustive and may not satisfy all the obligations imposed by SPS 520. If the **RSE licensee** is unsure as to whether a person meets the definition of 'responsible person', the **RSE licensee** can seek guidance from APRA or a professional adviser. APRA also notes that the **RSE licensee** can extend the assessment process for fitness and propriety to a wider range of persons if it determines to do so. Such an assessment can also be made if the **RSE licensee** is in doubt as to whether a person comes within the definition of 'responsible person'.

3.3 Additional criteria for RSE Auditors

TASK	YES/NO
(a)	Have you confirmed that the auditor is registered as an auditor under the Corporations Act or is the Auditor-General (or a delegate of the Auditor-General) of the Commonwealth, a State or Territory?
(b)	Have you confirmed that the auditor is not your CEO, one of your directors or a CEO or a director of a related body corporate or a connected entity?
(c)	Have you confirmed that the auditor has a minimum of five years relevant experience in the audit of the business operations of RSE licensees ?
(d)	Have you confirmed that the auditor has experience relating to business operations of RSE licensees that is sufficiently relevant to provide reasonable assurance that the auditor is familiar with current issues in the audit of the business operations of RSE licensees (including Australian conditions and Australia's prudential and regulatory requirements)?
(e)	Have you confirmed that the auditor is not your actuary or the actuary of your RSE?
(f)	Have you confirmed that the auditor is not an employee or director of a body corporate, statutory body, partnership, trust or commercial or professional enterprise of any kind of which your RSE actuary is an employee or director?
(g)	Have you confirmed that the auditor is not a partner of your actuary?
(h)	Have you confirmed that the auditor is not your employee?
(i)	If you have answered NO to any of the above but reasonably consider that there are exceptional circumstances:
i.	have you promptly notified APRA of the criteria that are not satisfied and of the exceptional circumstances as to why they should not apply? and
ii.	has APRA notified you in writing that it has no objections to the proposed auditor holding that position?
(j)	Have you determined that there is no risk that the independent professional judgement of the auditor may be unduly influenced by their other duties and interests?

3.4 Additional criteria for RSE Actuaries

This checklist combines requirements of SPS 520 and APRA expectations in SPG 520.

TASK	YES/NO
(a) Have you confirmed that the actuary has the appropriate formal qualifications?	
(b) Have you confirmed that the actuary is not your CEO, one of your directors or a CEO or a director of a related body corporate (except when that related body corporate is one of your connected entities)?	
(c) Have you confirmed that the actuary is not your auditor or the auditor of any RSE within your business operations?	
(d) Have you confirmed that the actuary is not an employee or director of an entity of which your auditor is an employee or director?	
(e) Have you confirmed that the actuary is not a partner of your auditor?	
(f) Have you confirmed that the actuary:	
i. has a minimum of five years relevant experience in the provision of actuarial services to RSE licensees and RSEs or in superannuation more generally? and	
ii. has experience 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 the business operations of RSE licensees (including Australian conditions and Australia's prudential and regulatory requirements)?	
(g) Have you confirmed that the actuary is a Fellow or Accredited Member (however described) of the Institute of Actuaries of Australia?	
(h) Have you confirmed that the actuary is ordinarily resident in Australia?	
(i) If you have answered NO to any of the above but the RSE licensee reasonably consider that there are exceptional circumstances:	
i. have you promptly notified APRA of the criteria that are not satisfied and of the exceptional circumstances as to why they should not apply? and	
ii. has APRA notified you in writing that it has no objections to the proposed actuary holding that position?	
(j) Have you determined that there is no risk that the independent professional judgement of the actuary may be unduly influenced by their other duties and interests?	

4. Content of Fit and Proper Policy

These checklists will assist the **RSE licensee** with maintaining the appropriate content in its Fit and Proper Policy.

4.1 General content

TASK	YES/NO
(a) Does the Policy explain how the assessment of the fitness and propriety of the RSE licensee's responsible persons fits within the Risk Management Framework as a whole?	
(b) Where the RSE requires equal representation on the Trustee Board, does the Policy require that a copy of the Policy and a summary of the duties and responsibilities of an RSE licensee be provided to each nominating body?	
(c) Does the Policy require that a copy of the Policy and a summary of the duties and responsibilities of an RSE licensee be provided to: <ul style="list-style-type: none"> <li data-bbox="76 887 1517 949">i. a candidate for a Board position, as soon as possible after nomination? and <li data-bbox="76 949 1517 1016">ii. a candidate for a responsible person position, prior to assessment and appointment? 	
(d) Does the Policy describe how awareness of the Fit and Proper Policy will be built across all the RSE licensee's responsible persons?	
(e) Does the Policy require: <ul style="list-style-type: none"> <li data-bbox="76 1189 1517 1294">i. a full assessment of fitness and propriety prior to the appointment or promotion of a responsible person? or <li data-bbox="76 1294 1517 1666">ii. where full assessment prior to appointment or promotion is not possible: <ul style="list-style-type: none"> <li data-bbox="76 1361 1517 1498">a. the taking of 'reasonable steps' as set out in the Fit and Proper Policy to assess fitness and propriety, including the provision of an attestation or representation as to fitness and propriety? <li data-bbox="76 1498 1517 1603">b. an interim appointment of up to 90 days pending a full assessment of fitness and propriety? and <li data-bbox="76 1603 1517 1666">c. a full assessment during those 90 days? 	
(f) Does the Policy require 'reasonable steps' be taken to ensure: <ul style="list-style-type: none"> <li data-bbox="76 1733 1517 1839">i. permanent appointment of a responsible person only if the candidate is assessed as fit and proper? or <li data-bbox="76 1839 1517 1939">ii. for an existing responsible person, that person does not continue to hold the responsible person position if they are not assessed as fit and proper? 	
(g) Does the Policy set out the 'reasonable steps' relevant to the above processes?	

TASK	YES/NO
(h) Does the Policy require annual (or as close to annual as possible) assessments of an RSE licensee's responsible persons?	
(i) Does the Policy require a fit and proper assessment of a person holding a responsible person position under a determination by APRA, within 28 days of that determination?	
(j) Does the Policy require assessment if the RSE licensee becomes aware of special circumstances ?	
Board approval	
(k) Does the Policy require and record Board approval?	

4.2 Process for assessment of fitness and propriety

TASK	YES/NO
<p>(a) Does the Policy document the process for assessment of fitness and propriety including:</p> <ul style="list-style-type: none"> i. state who has responsibility for conducting fit and proper assessments? ii. list what information is to be obtained including: <ul style="list-style-type: none"> a. information which shows the person is not a disqualified person within the meaning of section 120 of the SIS Act? b. information which shows the person has never been convicted of any offence of dishonesty in any jurisdiction, in Australia or overseas (including spent convictions)? c. information which may include sensitive information as defined in the <i>Privacy Act 1988</i>? and d. all information that the RSE licensee believes may be relevant to the assessment? iii. in accordance with the <i>Privacy Act 1988</i>, describe how the information will be obtained, including that all reasonable enquiries will be made and the obligation to ensure accuracy will be observed? iv. in accordance with the <i>Privacy Act 1988</i>, provide for consent to be obtained to collect and use information for the RSE's purposes? v. provide for consent to be obtained for disclosure of information to APRA? vi. list any relevant matters that will be considered when making a determination as to a person's fitness and propriety? vii. outline the decision-making processes that will be followed? 	
<p>(b) Does the Policy provide for the RSE licensee to 'prudently conclude that no material fitness and propriety concern exists' at the completion of the assessment?</p>	
<p>Process when person not fit and proper</p>	
<p>(c) Does the Policy provide for contractual arrangements with the responsible person in which the responsible person agrees:</p> <ul style="list-style-type: none"> i. to provide assistance to the RSE licensee to obtain information necessary to implement the Policy and releasing persons who provide the information from liability if they do so in good faith? and ii. not to seek damages or other remedy from the RSE licensee for implementing the Policy in good faith? 	

TASK	YES/NO
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(d) Does the Policy document the process, including listing the ‘reasonable steps’, for taking action when:

i. the **RSE licensee** becomes aware of information that may result in a person being assessed as not fit and proper? and

ii. a person is assessed as being not fit and proper?

(e) Do such reasonable steps include providing the person with a fair opportunity to put relevant matters to the **RSE licensee**?

Retention of information

(f) Does the Policy provide for the retention of information collected during recent assessments?

Disclosure of relevant information

(g) Does the Policy encourage disclosure of relevant information by responsible persons and others, during the process of assessment and on an ongoing basis?

(h) Does the Policy require the **RSE licensee** to take reasonable steps to obtain any information and documentation requested by APRA and provide that information to APRA, in order to assist APRA with an assessment of the fitness and propriety of a person?

(i) Does the Policy provide for the **RSE licensee** to discuss with APRA the circumstances where it believes that a person has information that is likely to be material to a fit and proper assessment that the **RSE licensee** has not been able to obtain?

(j) Does the Policy enable disclosure of fitness and propriety information to APRA, in the form APRA determines:

i. within 14 days of any new responsible person being appointed?

ii. within 14 days of any change to information already reported?

iii. within 14 days of a responsible person being assessed as being not fit and proper, including, where the person remains in the **responsible person position**, the reasons for this and the action that is being taken?

iv. on an ongoing basis, in accordance with APRA Reporting Standards?

4.3 Approach to Assessment

During an assessment, an **RSE licensee** need only make enquiries about matters that are likely to be material. It ought to weigh the burden of documenting information and the risk of unnecessary disclosure of personal information with the possibility that this information might be material.

An **RSE licensee** may rely on information collected for other assessments, for instance during the application for an Australian Financial Service Licence or during the application for registration as a company auditor, where that information remains current at the time of assessment. Where information was not collected for the purpose of a fit and proper assessment but is required for the assessment, the **RSE licensee** may consider seeking legal advice about its use.

An attestation or representation alone would generally not be regarded by APRA as being sufficient for an initial appointment (when at least an Australian criminal record check and evidence of material qualifications would be expected) but may be helpful in satisfying the reasonable steps required for an interim appointment and, in relation to the RSE auditor and the RSE actuary, may assist in assessing fitness and propriety when given by a firm. If a person makes an attestation or representation which is later discovered to have been given in the knowledge that it was false, this will very likely indicate that the person is not fit and proper and should be removed or not appointed.

APRA considers that the annual performance review would typically be the appropriate time for the annual assessment of the responsible person. However, an assessment need not be linked to the annual performance review if material information adverse to the assessment becomes known during the year.

4.4 Whistleblowing provisions

TASK	YES/NO
<p>(a) Does the Policy include adequate provisions for the protection of persons who disclose:</p> <ul style="list-style-type: none"> i. information that a person does not meet the RSE licensee's fit and proper criteria? ii. information that the RSE licensee has not complied with SPS 520? 	
<p>(b) Do the protections extend to current directors and employees as well as persons who previously held a responsible person position with the RSE licensee?</p>	
<p>(c) Do the protections require that all reasonable steps be taken to ensure that no person disclosing such information in good faith is subject to, or threatened with, a detriment because of any such disclosure in purported compliance with the requirements of the Policy?</p>	
<p>(d) Does the Policy include assurance of the consent from the RSE licensee and its connected entities for whistleblowers to disclose such information described above to:</p> <ul style="list-style-type: none"> i. the person conducting fit and proper assessments? and/or ii. APRA? 	
<p>(e) Does the Policy require the RSE licensee and its connected entities to ensure that they do not constrain, impede, restrict or discourage persons from disclosing such information described above, whether by confidentiality clauses, policies or other means?</p>	
<p>(f) Does the Policy require that its provisions encouraging whistleblowing and the procedures in sections 336A – 336E of the SIS Act are adequately explained to directors and employees of the RSE licensee and its connected entities who are likely to have information relevant to fit and proper assessments?</p>	

5. Dictionary

Connected entity means a subsidiary of the RSE licensee (where the RSE licensee is a body corporate).

Corporations Act means *Corporations Act* 2001.

Crimes Act means *Crimes Act* 1914. Part VIIC of the Act is relevant to disclosure of spent convictions in the context of evaluating whether a responsible person is a ‘disqualified person’.

Related body corporate means a body corporate that is:

- (a) a holding company of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate.

Responsible person position means a position which is and must be held by a responsible person of the RSE licensee, as that term is defined in Prudential Standard SPS 520.

RSE licensee means an entity that holds an RSE licence granted under s29D of the SIS Act. It is used interchangeably in this Toolkit with **Trustee**.

SIS Act means the *Superannuation Industry (Supervision) Act* 1993. Provisions relevant to Prudential Standard SPS 520 and this Toolkit are:

- (a) Power of APRA to make Prudential Standards under section 34C and adjust or exclude a specific prudential requirement in relation to an **RSE licensee** under subsection 34C(5);
- (b) Definitions for ‘connected entity’, ‘Executive officer’, ‘RSE auditor’, ‘RSE actuary’, and ‘group of individual trustees’ in subsection 10(1);
- (c) Protection of whistleblowers in sections 336A – 336E;
- (d) Criteria for fitness and propriety for **responsible person positions** including the additional criteria for RSE auditors and RSE actuaries in subsections 107(2)(a)(ii)(DA), 108(2)(a)(iia), 126H(6A), 130D(5A), 131AA(2A), 131A(1A) and 134(5);
- (e) Meaning of ‘disqualified person’ in section 120; and
- (f) Eligibility criteria for superannuation auditors and superannuation actuaries in subsections 35AC(2)(a) and (6)(a), 130D(4)(aa), 131AA(2)(ba) and 131A(1)(aa).

SIS Regs means the *Superannuation Industry (Supervision) Regulations* 1994.

Special circumstances means, for the purposes of this Toolkit, circumstances which bring into question the fitness and propriety of a person who already holds a position as an **RSE licensee’s** responsible person, and require the **RSE licensee** to undertake a follow up assessment of that person’s fitness and propriety.

Summary of the duties and responsibilities of an RSE licensee means a document referred to in paragraph 19 of SPG 520 referring to the duties and responsibilities as encapsulated in the covenants described in section 52 of the **SIS Act**.

Notes

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