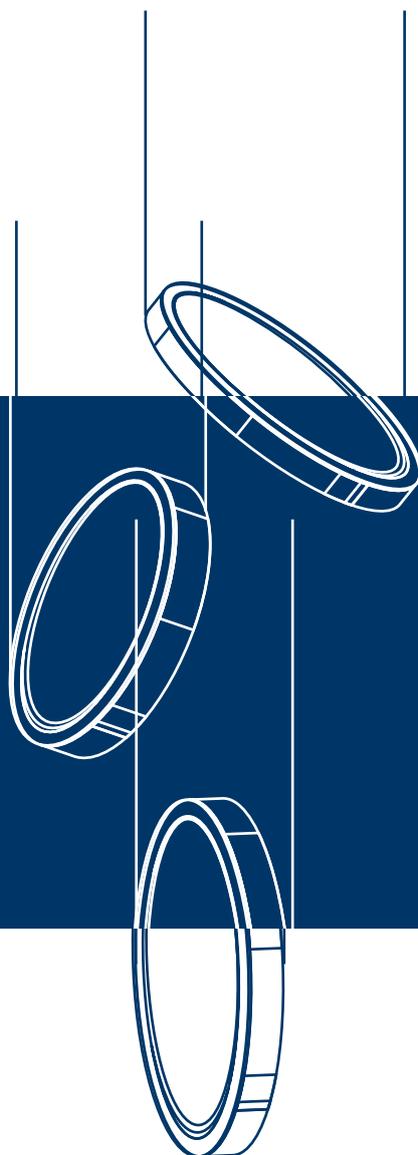


GOVERNANCE TOOLKIT

Remuneration

Version 1:1 March 2014



THIS TOOLKIT PROUDLY SUPPORTED BY

MO MILLS OAKLEY
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 Remuneration Toolkit is designed to assist **Trustees** with understanding and implementing the aspects related to Remuneration in the Superannuation Prudential Standard **SPS 510** Governance (**SPS 510**).

Tools

Obligations Map	showing the source of the Remuneration obligations and how they interconnect with the governance and broader regulatory framework
Implementation Flowchart	to implement Remuneration obligations within the governance obligations
Decision Tree	to identify who is covered by the Trustee’s Remuneration Policy
Checklists	<ul style="list-style-type: none"> - to assess whether all Remuneration tasks have been addressed - to prepare and maintain a Remuneration Policy - to establish a Remuneration Committee
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 510** – Governance (November 2012), Prudential Practice Guide **SPG 510** – Governance (**SPG 510**) (July 2013) and Prudential Practice Guide **SPG 511** – Remuneration (**SPG 511**) (November 2013).

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.

Index

RSE licensee's obligations.....	3
Obligations map.....	4
Implementation flowchart.....	5
Preparation task checklist.....	6
Who is covered by the Remuneration Policy.....	8
Content checklist.....	12
Remuneration committee.....	15
Dictionary.....	16

1. RSE licensee’s obligations

1.1 Remuneration Policy

- (a) The **RSE licensee** is required to establish and maintain a board approved documented Remuneration Policy. The Remuneration 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 arising from the remuneration of persons providing services (including through their employment) to the **RSE licensee**.
- (b) For the **RSE licensee**, the Remuneration Policy must, as a minimum, outline:
 - i. the **Remuneration Objectives** of its Remuneration Arrangements and specifically including the **Remuneration Objectives** of any performance-based components;
 - ii. the structure of its Remuneration Arrangements, including any performance-based components; and
 - iii. who is covered by its Remuneration Policy.
- (c) The Remuneration Policy must capture all forms of ‘remuneration’, regardless of where, or from whom, the remuneration is sourced and regardless of where, or to whom, the remuneration is paid.
- (d) In addition to any other objectives, any performance-based components of remuneration must be designed to encourage behaviour that supports the risk management framework of the **RSE licensee** (see SPS 220), amongst other things.

1.2 Appoint a Remuneration Committee

The **RSE licensee** must appoint either:

- (a) a standalone Board Remuneration Committee compliant with SPS 510; or
- (b) another of its Board committees to perform the role required of a Board Remuneration Committee by SPS 510.

Part of that role is to regularly review and make recommendations to the Board on the Remuneration Policy and the remuneration of persons covered by the Policy. In attending to the appointment of the Remuneration Committee, the checklist in Section 5 of the Toolkit should be considered.

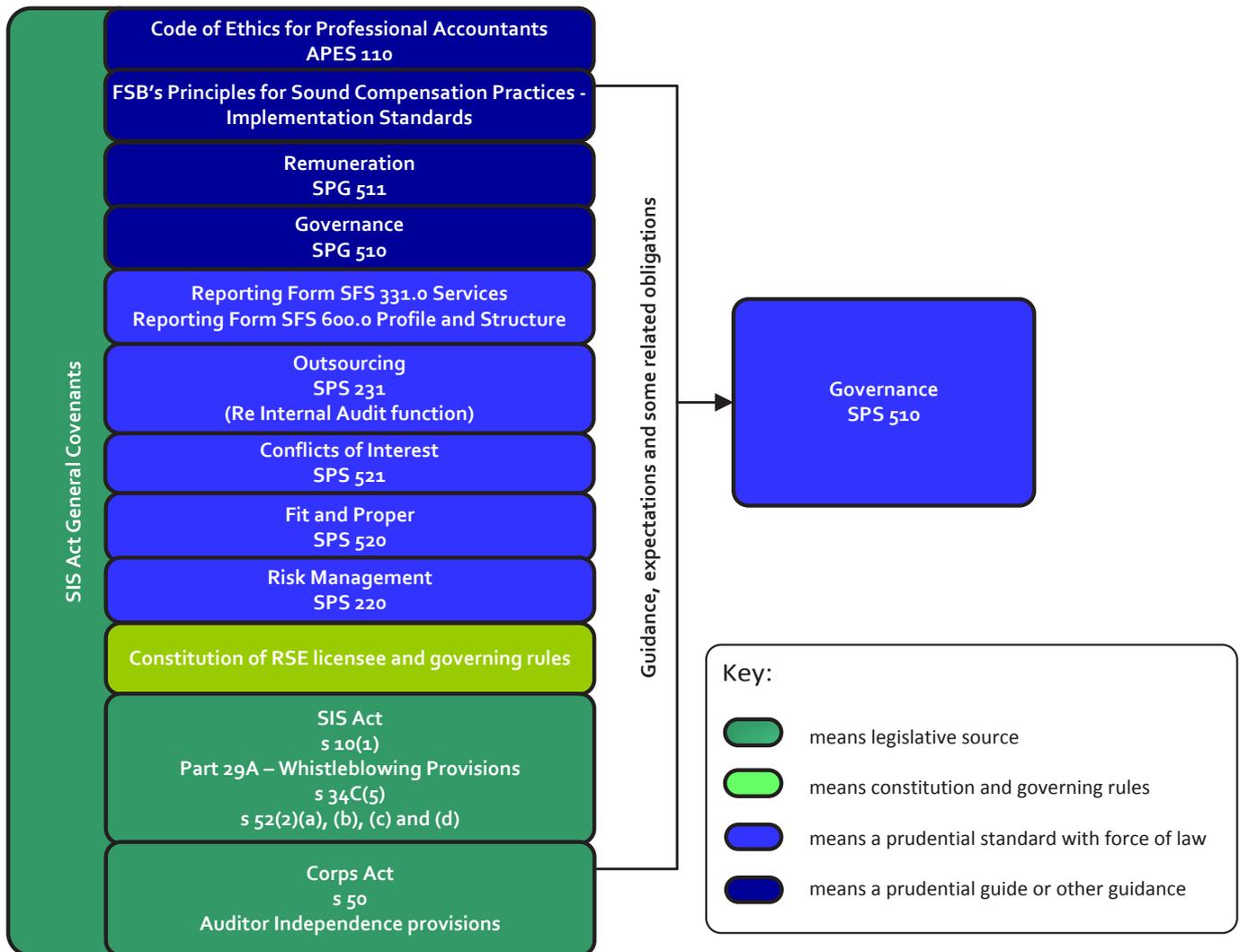
1.3 Source of obligations

The Remuneration obligations are in SPS 510. APRA’s expectations are in SPG 510 and SPG 511.

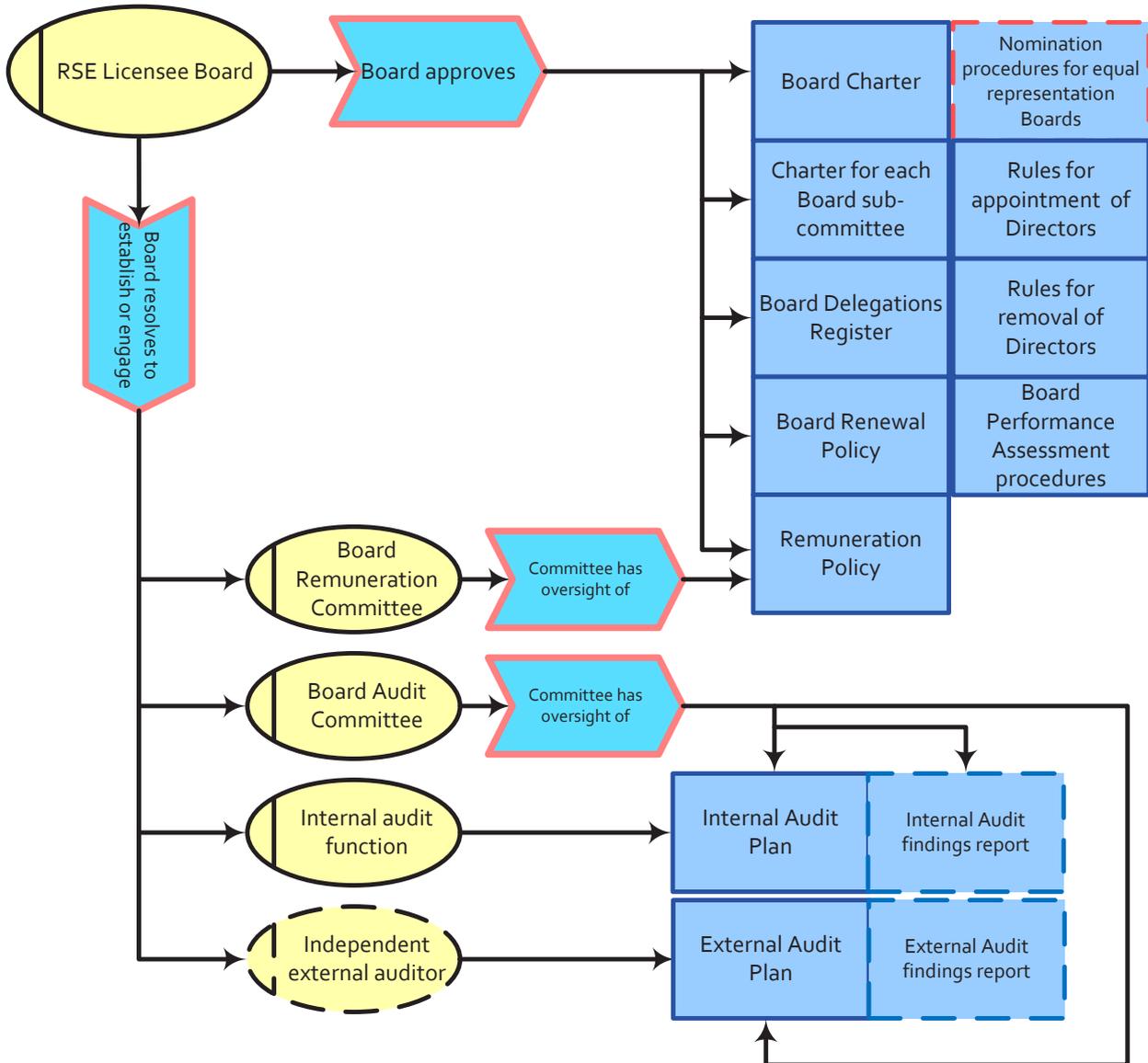
1.4 Obligations Map

The Remuneration Policy is a component of the **RSE licensee's** Risk Management and Governance frameworks. SPS 510 contains references to SPS 220, SPS 521 and SPS 520. External sources of guidance are also referred to.

The **RSE licensee** is required to report to APRA certain information about who its service providers are in accordance with Reporting Form SRF 331.0 *Services*, and information about the membership of its Remuneration Committee and the number of meetings held in accordance with Reporting Form SRF 600.0 *Profile and Structure*.



1.5 Implementation Flowchart



Shape Types Key:

-  means an organisational unit
-  means a process
-  means a document output
-  means an external entity

Document Types Key:

-  means a document prescribed by the prudential standards
-  means a document not prescribed by the prudential standards but required by other sources
-  means a document not prescribed by the prudential standards but expected by APRA

2. Preparation Task Checklist

This checklist will assist the **RSE licensee** with understanding and covering the requirements of SPS 510 (in relation to the Remuneration Policy) and the expectations of APRA outlined in SPG 511.

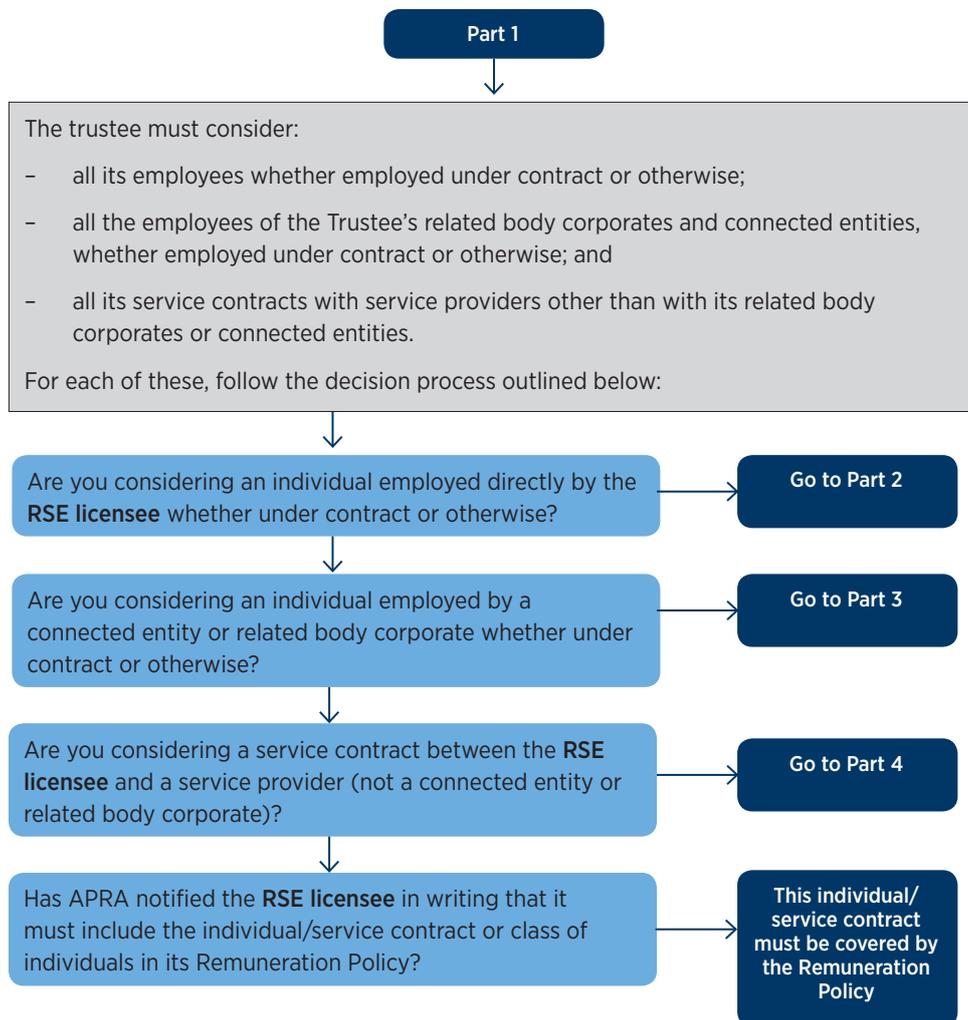
TASK	YES/NO
(a) AIST recommends that members of the Board and other relevant staff familiarising themselves with the key concepts in the Dictionary in Section 6. Has this been done?	
(b) Has the RSE licensee documented all the RSE licensee's RSEs, connected entities and related body corporates?	
(c) Has the RSE licensee documented who its risk and control personnel are? 	
(d) Has the RSE licensee documented who its responsible persons are? 	
(e) Has the RSE licensee documented who are its sub-contractors and service-providers?	
(f) Does the RSE licensee's business plan outline what it understands to be the interests and reasonable expectations of the RSE's beneficiaries?	
(g) Has the RSE licensee documented the risks it has identified as arising from the remuneration of employees, sub-contractors and service-providers related to: <ul style="list-style-type: none"> <li data-bbox="76 1108 1516 1176">i. the RSE licensee's long term financial soundness; <li data-bbox="76 1176 1516 1243">ii. the long term financial soundness of connected entities; and <li data-bbox="76 1243 1516 1310">iii. the interests and reasonable expectations of the RSE's beneficiaries? 	
(h) Has the RSE licensee documented what are its Remuneration Objectives , including the Remuneration Objectives in relation to any performance-based components, having regard to the minimum requirements outlined in the Content Checklist in Section 4 of this Toolkit but adding to these where relevant for the RSE licensee's business?	
(i) Referring to the Content Checklist, has the RSE licensee considered what structure of Remuneration Arrangements will best achieve the RSE licensee's Remuneration Objectives , incorporating the aspects of the structure required under SPS 510 as shown?	
(j) In relation to any performance-based components, in the RSE licensee's own or any connected entity's Remuneration Arrangements, has the RSE licensee documented: <ul style="list-style-type: none"> <li data-bbox="76 1736 1516 1803">i. how the RSE licensee will respond to uneven performance across business units; <li data-bbox="76 1803 1516 1904">ii. how the RSE licensee will respond when, despite good performance of some, your business operations face material adversity; and <li data-bbox="76 1904 1516 2038">iii. how the components of performance-based remuneration for executives will align financial incentives for them with long-term, successful stewardship of the RSE licensee?  	

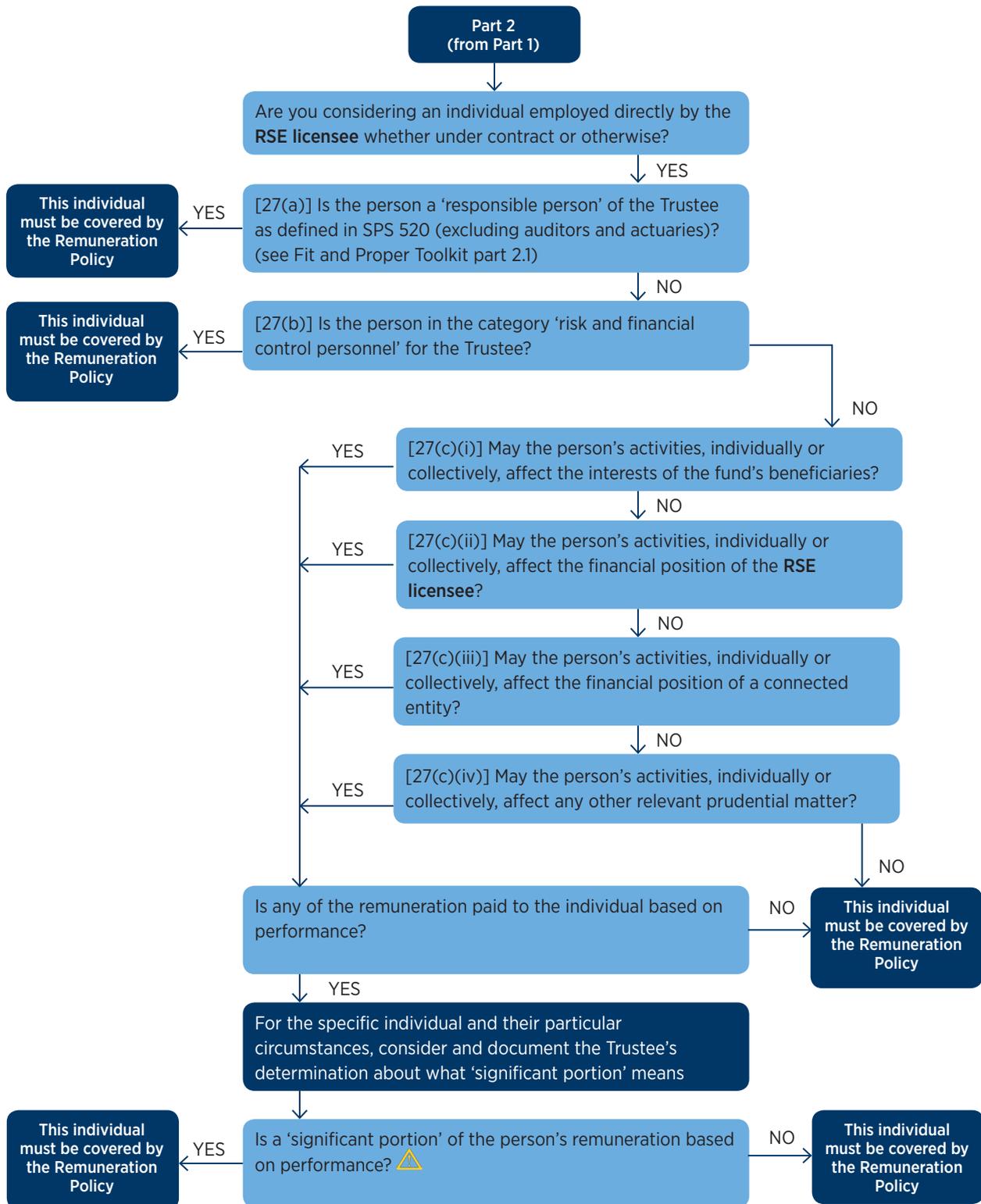
TASK	YES/NO
<p>(k) In relation to any performance-based components, has the RSE licensee documented how employment contracts will permit the exercise of discretion to adjust performance-based remuneration downwards if such adjustments are necessary:</p>	
<p>i. to protect the financial position of the RSE licensee's or its connected entities?</p>	
<p>ii. to respond to significant unexpected or unintended consequences that were not foreseen by the Board Remuneration Committee (or its equivalent)?</p>	
<p>iii. for the purposes of any other relevant prudential matter (those matters being listed)?</p>	
<p>(l) Using the Who is Covered Decision Tree in Section 3, have you documented <i>who</i> is covered by the RSE licensee's Remuneration Policy and included this in the policy?</p>	
<p>(m) Where the Board Remuneration Committee has decided that certain incentive-based third-party arrangements are not to be covered by the RSE licensee's Remuneration Policy because they have been deliberated upon and assessed by an appropriate Board Committee, has the RSE licensee documented why the Board Remuneration Committee considers that the remuneration requirements with respect to those third parties are being adequately addressed by those other processes?</p>	
<p>(n) Referring to the Content Checklist, has the RSE licensee included all the mandatory provisions in its Remuneration Policy where relevant?</p>	
<p>(o) Has the Board of the RSE licensee considered whether the Remuneration Policy meets the requirements of SPS 510 and is in line with the guidance in SPG 511 and, if satisfied, approved the Remuneration Policy?</p>	

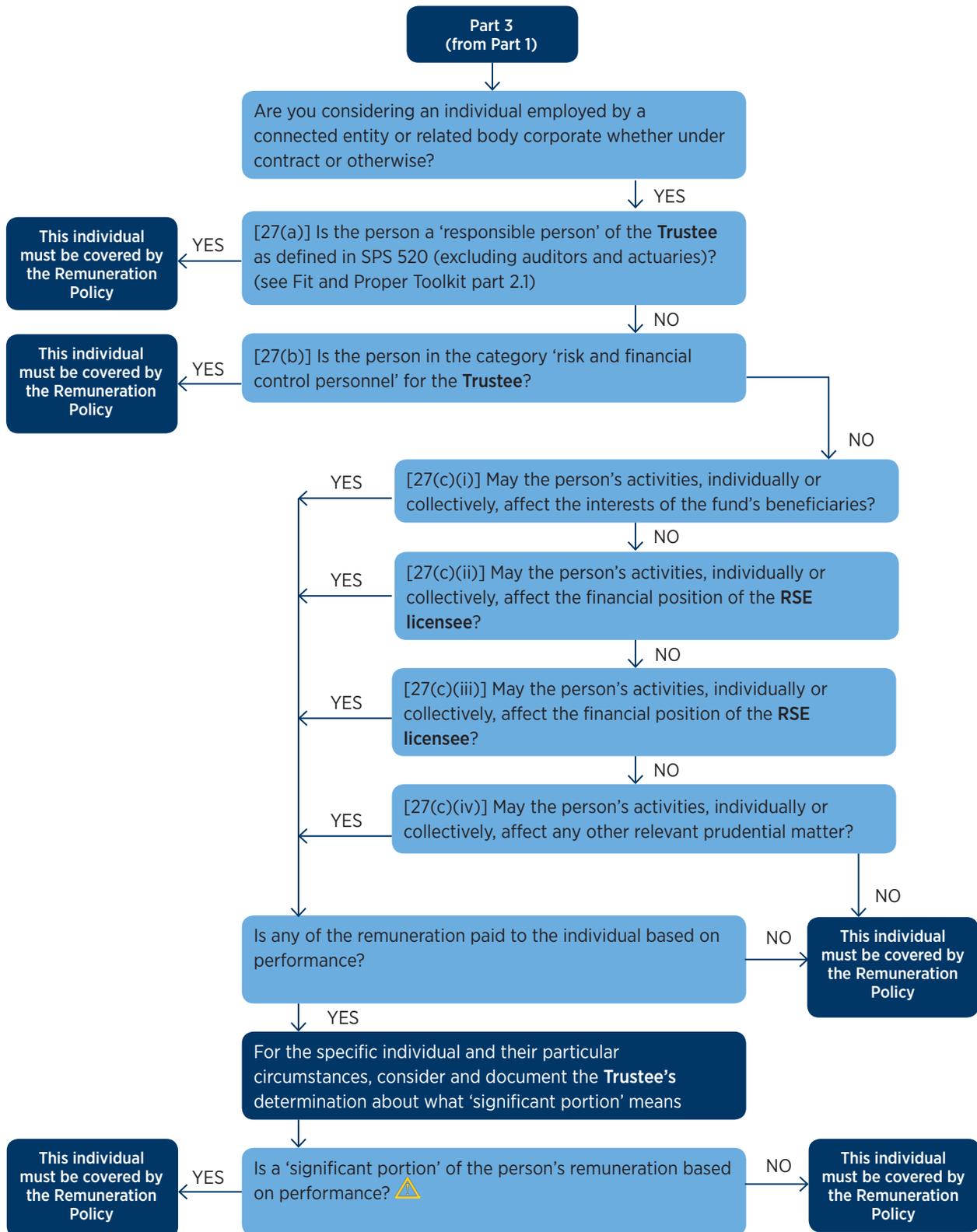
3. Who is covered by the Remuneration Policy?

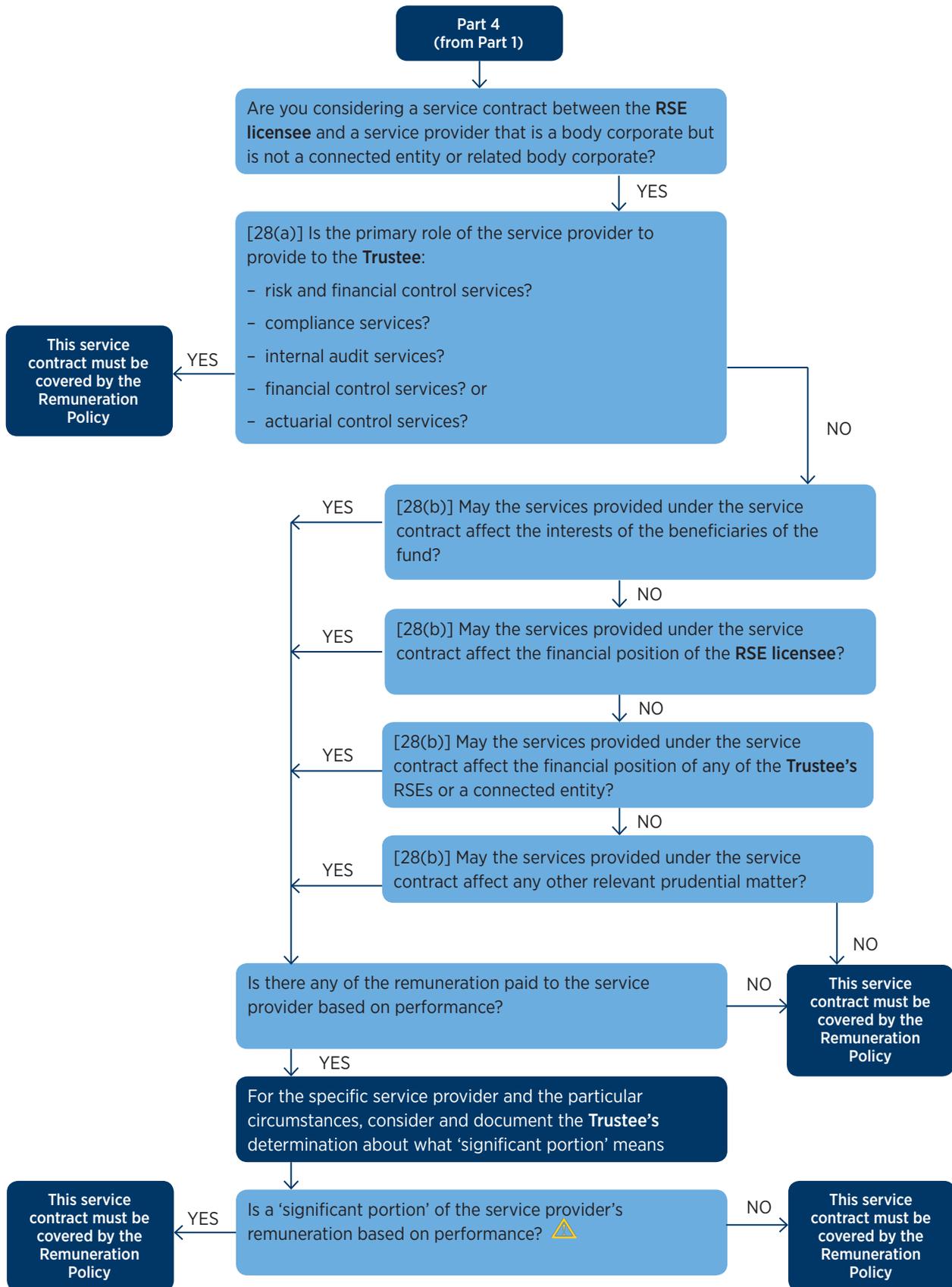
Paragraphs 27 and 28 of SPS 510 set out the persons who, at a minimum, are to be covered by the **RSE licensee's** Remuneration Policy. The following decision tree is designed to assist with determining the categories of persons who must, at a minimum, be covered in accordance with paragraphs 27 and 28. Categories of person additional to the minimum may be covered if desired. ⚠️ AIST's Fit and Proper Toolkit can assist with the identification of the **RSE licensee's** responsible persons.

The Remuneration Committee may decide not to include certain incentive-based third-party arrangements that might otherwise be required to be covered because the risks associated with the arrangements have been deliberated upon, assessed and explicitly dealt with in the **RSE licensee's** Risk Management Framework under the oversight of an appropriate Board Committee.









4. Content Checklist

4.1 Remuneration Objectives

The **Remuneration Objectives** must be set out in the Remuneration Policy. SPS 510 states some minimum objectives and others can be inferred from the other content in the Prudential Standard. The **Trustee** may choose to identify additional objectives for its Remuneration Arrangements. The structure of the Remuneration Arrangements is intended to support and achieve the stated objectives.  AIST recommends that the Trustee consider whether it has the expertise or needs to obtain external expertise in deciding its **Remuneration Objectives**.

TASK	YES/NO
Has the RSE licensee, at a minimum, included the following Remuneration Objectives?	
(a) Encourage behaviour that supports the long term financial soundness of the RSE licensee , any of its RSEs and connected entities?	
(b) Protect the financial position of the RSE licensee , its RSEs and connected entities?	
(c) Encourage behaviour that supports the protection of the interests of beneficiaries?	
(d) Encourage behaviour that supports meeting the reasonable expectations of beneficiaries?	
(e) Encourage behaviour that supports the risk management framework of the RSE licensee ?	
(f) Encourage prudent risk-taking (by being aligned with it)?	
(g) Ensure the independence of risk and financial control personnel and do not compromise that independence?	
For performance-based components	
(h) That the RSE licensee will be able to respond to uneven performance across business units?	
(i) That the RSE licensee will be able to respond when, despite good performance of some, its business operations face material adversity?	
(j) That the RSE licensee will include provisions in employment contracts and service contracts to permit it to adjust performance-based remuneration components downwards when circumstances require it:	
i. to protect its financial position or that of its connected entities;	
ii. to respond to significant unexpected or unintended consequences that were not foreseen by the Board Remuneration Committee; and	
iii. for the purposes of any other prudential matter listed in the Remuneration Policy?	
(k) That the performance-based remuneration for executives is structured to align financial incentives for them with the long-term, successful stewardship of the RSE licensee .	

4.2 Structure of Remuneration Arrangements

TASK	YES/NO
Has the RSE licensee included the following details in relation to the structure of its Remuneration Arrangements?	
(a) Has the RSE licensee documented the mix of forms of remuneration:	
i. fixed components?	
ii. variable components?	
iii. cash versus equity-related benefits?	
(b) Has the RSE licensee documented:	
i. where or from whom the remuneration is sourced (the RSE licensee , a related entity, a sponsoring organisation or an unrelated third party)?	
ii. where or to whom the remuneration is paid (to an employee, to a related entity, to a sponsoring organisation, to a director or to a third party service provider)?	
(c) Has the RSE licensee documented the timing in relation to eligibility to receive payments?	
For performance-based components	
(d) Has the RSE licensee documented the measures of performance?	
(e) Does the structure align the performance-based components of remuneration with prudent risk-taking?	
(f) Does the structure provide for adjustments to reflect:	
i. the outcomes of the RSE licensee's business operations?	
ii. the risks related to the RSE licensee's business operations? and	
iii. the time necessary for the outcomes of those business operations to be reliably measured?	
(g) Has the RSE licensee documented any short-term employee benefits payable to executive officers or individual trustees or directors, divided into at least the following components:	
i. cash salary, fees and short-term compensated absences?	
ii. short-term cash profit-sharing and other bonuses?	
iii. non-monetary benefits? and	
iv. other short-term employee benefits?	

TASK	YES/NO
(h)	Has the RSE licensee documented any post-employment benefits payable to executive officers or individual trustees or directors, divided into at least the following components:
i.	pension and superannuation benefits?
ii.	other post-employment benefits?
(i)	Has the RSE licensee documented any other long-term employee benefits payable to executive officers or individual trustees or directors (any amount attributable to a long-term incentive plan being separately identified)?
(j)	Has the RSE licensee documented any termination payments payable and the circumstances in which they will be payable?
(k)	Has the RSE licensee documented all types of remuneration including:
i.	grants of a cash bonus, performance-related bonus or share-based payment compensation benefit, whether part of a specific contract for services or not?
ii.	share-based payment transactions (including options or rights)?
iii.	options and rights over an equity instrument issued or issuable by the RSE licensee or by a related body corporate?
iv.	an amount, attributable to the service of an executive officer who is a director, or an individual trustee, which is paid to an organisation or entity rather than to the relevant executive officer or relevant individual trustee?
v.	payment, benefit or compensation from a related entity of the reporting entity?
(l)	Does the Remuneration Policy provide, where relevant, that Responsible Persons, who receive equity or equity-linked deferred remuneration, are prohibited from hedging their economic exposures to the resultant equity price risk before the equity-linked remuneration is fully vested and able to be sold for cash by the recipient?
(m)	Does the Remuneration Policy specify the actions to be taken where a person is found to have breached this prohibition?

5. Remuneration Committee

The following checklist will assist with the establishment of the Remuneration Committee and the preparation of a Remuneration Committee Charter.

TASK	YES/NO
(a) Does the Board Remuneration Committee have not less than three members?	
(b) Are all members of the Board Remuneration Committee non-executive directors?	
(c) Is the Board Chair a member of the Board Remuneration Committee? If so, is the Chair the only independent director of the Board? If not, the Chair should not be a member of the Board Remuneration Committee.	
(d) Does the Board Remuneration Committee have a written charter and terms of reference that outline the Committee's roles, responsibilities and terms of operation?	
(e) Do the responsibilities of the Board Remuneration Committee include:	
i. conducting regular reviews of the Remuneration Policy (including making recommendations to the Board) and making assessments of the policy's effectiveness and compliance with SPS 510 (APRA expects that this review should take place at least every 3 years)?	
ii. making annual recommendations to the Board as to the remuneration of the responsible persons identified in Section 3 as well as in relation to other persons whose activities are determined by the Committee to affect the financial soundness of the RSE licensee's business operations?	
iii. making annual recommendations to the Board as to the remuneration of other persons covered by the Remuneration Policy?	
(f) Does the Board Remuneration Committee:	
i. have free and unfettered access to necessary resources in carrying out its duties?	
ii. have power when engaging third party experts to do so in a manner that ensures the engagement and the advice received is independent?	
(g) Does the Board Remuneration Committee charter require all of the members of the Committee to meet with APRA upon request?	

6. Dictionary

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

Performance-based components of remuneration are the variable components such as bonuses or commissions, eligibility for which is performance-based. Components may include short-term and longer-term incentive remuneration, payable with or without deferral, and may be paid in cash or equity-related payments. Performance-based Remuneration Arrangements are commonly structured:

- (a) to recognise individual performance;
- (b) to recognise contributions to results at business unit level; and
- (c) to recognise contributions to results for the whole of the business.

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.

Remuneration Arrangements means all forms of remuneration, regardless of where, or from whom, the remuneration is sourced. It includes payments to individuals (the usual meaning of remuneration) as well as payments to corporate bodies and sub-contractors under service contracts, even though these are not typically described as ‘remuneration’.

Remuneration Objectives means what you hope to achieve from the structure of your Remuneration Arrangements. These should be related to the risks identified as arising from the remuneration of employees, sub-contractors and service-providers which are in turn related to the long term financial soundness of the **RSE licensee** and its connected entities, and to the interests and reasonable expectations of the RSE’s beneficiaries.

RSE licensee means an entity that holds an RSE licence granted under s29D of the *Superannuation Industry (Supervision) Act 1993*. It is used interchangeably in this Toolkit with **Trustee**.

Risk and financial control personnel are persons whose primary role is risk management, compliance, internal audit, financial control or actuarial control.

Significant portion, of total remuneration, is not defined with certainty as an objective measure. APRA expects a Trustee to undertake its own assessment given the context of the Trustee’s **Remuneration Arrangements**, each person’s role and the relative quantity of performance-based remuneration. APRA provides an inclusive list of the contextual factors:

- (a) the circumstances of the **RSE licensee**;
- (b) the significance of the remuneration to the individual;
- (c) the role of the individual concerned; and
- (d) the **RSE licensee’s** risk management controls and remuneration practices.

Structure of Remuneration Arrangements means the elements of remuneration which make up the total way in which employees, sub-contractors and service-providers are remunerated, comprising the fixed and variable components, the cash and any equity-related benefits, of that remuneration. It includes details of the timing of eligibility to receive remuneration.

Notes

Prepared by:



AUSTRALIAN INSTITUTE OF SUPERANNUATION TRUSTEES

Ground Floor, 215 Spring Street, Melbourne VIC 3000

www.aist.asn.au



MILLS OAKLEY LAWYERS

Melbourne

Level 6, 530 Collins Street, Melbourne VIC 3000

Sydney

Level 12, 400 George Street, Sydney NSW 2000

Brisbane

Level 14, 145 Ann Street, Brisbane QLD 4000

www.millsoakley.com.au