

### APRA—Supplementary Submission 4A

Dr Dermody'

We would request the opportunity to make a supplementary submission to the Senate Economic Legislation Committee for the purposes of its deliberations on the Financial Sector Legislation Amendment Bill No 2, 2002.

We would wish to inform the Committee that APRA has commenced a comprehensive stocktake of its present supervisory and enforcement powers. The aim is to identify all significant gaps and inconsistencies in supervisory arrangements in all sectors, with a particular focus on those that restrict APRA's effectiveness. This review is giving some detailed attention to the application of fit and proper powers. The review includes application of fit and proper powers across all APRA regulated institutions, establishing and maintaining a register of persons deemed not fit and proper; specifying that where a person provided false or misleading information to APRA in the course of APRA discharging its function or powers then a person may be deemed not fit and proper and/or disqualified; a requirement to be included in legislation for a regulated institution to notify APRA of appointments of directors and senior managers; a requirement for regulated institutions to notify APRA of the removal of directors and senior managers (whether by way of dismissal, resignation or retirement) and the reasons for such changes, and a requirement for a regulated institution to provide APRA with information in relation to a director or senior manager of which the ADI may be aware and that APRA should be reasonably be made aware of in order to form a judgement as to the fitness and propriety of those persons on a continuing basis. The outcome of the review may include the request for further legislative measures.

This development of new regulatory requirements affecting fit and proper provisions will have regard to legal issues (eg need for any protection for people providing information and privacy issues), the practicalities and effectiveness of measures, the burden it may place on institutions and the cost of such measures vis a vis the desired benefits which they may bring. This review is on-going but we would seek the implementation of the proposed fit and proper powers contained in the Bill to give the vital addition to APRA's prudential tools which they represent.

We can confirm that Prudential Standards covering fit and proper requirements will include a requirement that ADIs and authorised NOHCs will need to submit to APRA a copy of its own internal policies established covering fitness and propriety of directors and senior managers. As part of its supervisory oversight of these institutions APRA will review these policies.

In due course once appropriate policies have been established APRA will include the application of these policies as part of the matters subject to examination by APRA review teams, or subject to targeted reviews which may be commissioned from ADI's external auditors from time to time.

We accept the need to offer guidance to regulated institutions in forming judgements about fitness and propriety and this matter will be taken up in our proposed Prudential Standard. We would see this as being undertaken in consultation with affected institutions to provide guidance in a manner which assist them but is effective and appropriately flexible. This process will likely involve a combination of key principles and some prescriptive elements underpinning those elements. In constructing this Prudential Standard we will obviously look at overseas practice but would note that such practice is not always the best approach in the Australian context. We believe the approach we will adopt with our proposed "fit and proper" Prudential Standard will stand favourably in comparison to the approaches adopted in many overseas countries, a number of whom provide minimal guidance on this subject to their regulated institutions. This approach adopted overseas reflects the difficulties perceived in those countries in defining precisely across all persons and institutions through time the features of fitness and is, of course, captured in the appeals processes which are typically established around the judgements exercised by regulators over what constitutes fit and proper.

We would note that APRA and regulated institutions will, of course, only ever be able to reach the on-balance judgements about the fitness and propriety of persons based on information available to them at any given point in time. As such we will always be hostage to the information which is available.

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