

Fit and Proper Policy

Policy

Article 7.3 of rthealth fund (rthealth or the fund) Constitution (as amended at 2009) provides, inter alia, that:

Notwithstanding any other provision in this Constitution, a person is not eligible to be elected or appointed as a Director:

- (d) (vii) if, in accordance with criteria expressly specified by the Board, the person is insufficiently qualified to be a Director or is not a fit and proper person to be a Director.
- (e) Criteria expressly specified by the Board as necessary qualifications to be a Director of the Company or for the purpose of assessing whether a person is a fit and proper person to be a Director may be disallowed by ordinary resolution of the Company in general meeting.

Article 7.3 is extracted in full at Appendix A.

The fund is committed to best practice in corporate governance consistent with its vision for the fund and its members. The fund needs to ensure that the persons responsible for the management and oversight of rthealth have the appropriate skills, experience and knowledge and act with honesty and integrity (that is, they are fit and proper).

The Fit & Proper Policy (Policy) is designed to secure these outcomes for the fund.

Non-observance of this policy by directors, senior management or others could place the interests of members and other stakeholders of rthealth at greater risk. Only persons who comply with both the spirit and letter of this Policy may hold positions on the Board, the executive or audit the fund.

Objectives

The objectives of this Policy are to:

- define the minimum standards for determining the fitness and propriety of individuals to serve in responsible positions
- strengthen the governance framework within rt health and
- promote confidence in rthealth and its officers.

Scope

The policy applies to a person who occupies or is to be appointed to a Position of Responsibility.

What is a Position of Responsibility?

The following positions are Positions of Responsibility for the purposes of this Policy:

- Director (including casual appointments)
- Chief Executive Officer (CEO)
- Company Secretary
- Internal Auditor
- External Auditor
- Public Officer
- Any other position specifically designated by the CEO or Board as a Position of Responsibility
- A management position which is involved in:
 - high level decision making;
 - implementing strategies and policies approved by the Board;
 - developing and implementing processes or systems that identify, assess, manage and monitor risks related to business activities and operations; or

— monitoring the appropriateness, adequacy and effectiveness of risk management systems.

(For the purposes of this Policy only a management position which reports directly to the CEO will be a Position of Responsibility)

Who is a Fit and Proper Person?

For the purposes of this Policy a person will be deemed a Fit & Proper Person if they:

- pass a Police Check to the satisfaction of the fund (refer Appendix B);
- sign the Definition and Declaration at Appendix C without amendment and there is no credible information which contradicts the facts asserted in the declaration; and
- provide suitable evidence that they meet the position Competencies at Appendix D.

If a person cannot not sign the Declaration without amendment they will not be deemed a fit and Proper Person unless the delegate of fund, in its sole discretion, is satisfied that any failure to meet a particular criteria within the Declaration will not impair the person's ability to discharge the duties of the Position.

The appropriate delegate to assess if a person is Fit and Proper is set out further below.

Responsibilities

This section describes the allocation of responsibility for implementation of this policy.

Occupant of a Position of Responsibility

A person who occupies, or is proposed to occupy, a Position of Responsibility must:

- adhere to the principles and values contained in this Policy;
- discharge their responsibilities with competence and integrity. The fund has a Code of Conduct for all its officers and the organisation as a whole which outlines the minimum standards it expects; and
- successfully undertake assessment as a 'Fit and Proper' person before appointment to their position.

Remunerations and Nominations Committee

The Remuneration and Nomination Committee will ensure:

- Fit and Proper assessments are conducted for all new director appointments; and
- annual reviews of incumbent Directors (including a declaration from each incumbent) are conducted.

Audit and Risk Committee

The Board Audit and Risk Committee, in conjunction with the Company Secretary and CEO are responsible for ensuring compliance with this Policy.

Company Secretary

The Company Secretary is responsible for:

- administering the Policy; and
- ensuring compliance with relevant PHIAC obligations, identifying any changes to PHIACs requirements and recommending the appropriate policy amendments to the Board.

Internal Auditor

The internal auditor is responsible for reviewing effectiveness of the policy and compliance with the policy as appropriate.

Who assesses if a person is Fit and Proper?

For a person to be a Fit and Proper person for the purposes of this Policy the fund, through an appropriate delegate, under this policy must be satisfied that the person is a Fit and Proper Person. The following table sets out the delegations to approve the holder or candidate for a Position of Responsibility to be a Fit and Proper person:

Position of Responsibility in respect of which an assessment is to be conducted	Who approves the person to be Fit & Proper?
Board member or prospective member other than Board Chair	Remuneration & Nominations Committee
Board Chair	Audit & Risk Committee
CEO	Board
Internal & external auditors	CEO
Manager	CEO

If a conflict of interest (actual or perceived) in respect of the delegate approving another as Fit and Proper, the fund needs to determine whether the task can be carried out by a suitable alternative person or if not whether the conflict is such that it will create a material risk that the person will fail to perform the assessment in a proper manner and how this can be managed. It is noted that the fund Conflict of Interest policy should be referred to in this situation.

Procedures

Prior to appointment a person who is to be appointed to a Position of Responsibility must:

- a provide their consent to the Checks at Appendix A on request for the purposes of this policy;
 - b sign the declaration that they are a Fit and Proper person at Appendix C; and
 - c provide evidence of their qualifications and identity documents on request to confirm the Competencies relevant to the position at Appendix D.
 - d be assessed by the appropriate delegate as to whether they meet the definition of a Fit and Proper Person;
- The fund will:
 - a reflect the requirements of this Policy in its Human Resources policies and procedures and its employment contracts may include a relevant declaration by the employee;
 - b include Fitness and Propriety in its risk register; and
 - c provide a copy of this Policy to any candidate for election as a director as soon as possible after the candidate is nominated, and any other person before an assessment of their fitness and propriety is conducted.

Appendix A: Extract from rthealth Constitution

7.3 (d) Notwithstanding any other provision in this Constitution, a person is not eligible to be elected or appointed as a Director:

- (i) unless the person is at least 18 years of age; or
- (ii) for an elected position, if that person ceases to be a Member or Member Affiliate as the case may be; or
- (iii) unless the person has not had a personal representative or trustee appointed to administer the persons estate or property because of their mental incapacity; or
- (iv) if the person is a Member Affiliate, and the Member who is the spouse or de facto partner of the Member Affiliate is a Director; or
- (v) if the person is a Member, and the Member Affiliate of the Member is a Director; or
- (vi) if the person is prohibited from acting as a director under the Private Health Legislation or does not satisfy any guidelines or criteria for suitability for appointment as a director under the Private Health Legislation; or
- (vii) if, in accordance with criteria expressly specified by the Board, the person is insufficiently qualified to be a Director or is not a fit and proper person to be a Director.

7.3 (e) Criteria expressly specified by the Board as necessary qualifications to be a Director of the Company or for the purpose of assessing whether a person is a fit and proper person to be a Director may be disallowed by ordinary resolution of the Company in general meeting.

7.5 Automatic vacation of office

- (a) The office of a Director shall automatically become vacant on the first to occur of the following events, if the Director:
 - (i) dies; or
 - (ii) ceases to hold any relevant appointment or qualification; or
 - (iii) ceases to be eligible to be a Director under Article 7.3; or
 - (iv) becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
 - (v) becomes prohibited from being a Director of a Company by reason of the Corporations Act (or any order made under the Corporations Act or the Private Health Legislation (or any order made under the Private Health Legislation)); or
 - (vi) cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it; or
 - (vii) is absent without permission of the Board from either 3 consecutive meetings of the Board or 3 meetings of the Board held in any financial year; or
 - (viii) ceases to be a Member or Member Affiliate for any reason except in the case of a Director appointed by the Board provided they have not been appointed as a Member or Member Affiliate Director.

Appendix B: Schedule of checks to be undertaken to assess if a person is fit and proper

Level of Staff	Test
Director	Police Check
	Bankruptcy Check
	Eligibility Declaration
	Public search of APRA Database of Disqualified Persons
	ASIC Disqualified Person Register Check
CEO / Managers	Police Check
	Bankruptcy Check
	Eligibility Declaration
	Public search of APRA Database of Disqualified Persons
	ASIC Disqualified Person Register Check
Internal Auditor	Police check
	Bankruptcy check
	Eligibility Declaration
	Public search of APRA Database of Disqualified Persons
	ASIC Disqualified Person Register Check
External Auditor	Declaration in the annual engagement letter regarding the fit and proper criteria.
	Review of any potential or actual conflicts of interest.

Appendix C: A Fit & Proper Person Definition and Declaration

A Fit and Proper Person is a person who has:

- a) the educational or technical qualifications, knowledge, skills, experience, competence, (as per Appendix D) diligence, judgment, character, honesty or integrity required to satisfactorily discharge the responsibilities of a Position of Responsibility.
- b) never failed to discharge his or her responsibilities as a director or manager of, or a professional service provider to, an entity with competence, diligence, sound judgement, honesty or integrity;
- c) not been the subject of criticism, discipline, punishment or adverse findings, directions or orders, by a court, official inquiry, regulatory agency, complaints handling body, dispute resolution body, or professional or industry body concerning the persons conduct in relation to:
 - the management of an entity; or
 - commercial or professional activities in which the person was involved;
- d) not been the subject of civil or criminal proceedings, or enforcement action, in relation to:
 - the management of an entity; or
 - commercial or professional activities;
 which were 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 which reflected adversely on their competence, diligence, judgement, honesty, or integrity;
- e) not been personally refused a license or authorisation relating to a commercial or professional activity, or had such a license or authorisation revoked; or
- f) not been terminated, resigned or was asked to resign, from a position as a director or manager of, or professional service provider to, an entity in circumstances which reflected adversely on his or her competence, diligence, judgment, honesty, or integrity in discharging his or her responsibilities in the position
- g) not seriously or persistently failed to manage his or her debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- h) not been disqualified, removed or excluded from, or not admitted to:
 - The management of, or a position of responsibility in relation to, an entity or class of entities; or
 - a commercial or professional activity; by a court, tribunal or regulatory agency, or by the operation of a legislative provision;
- i) not acted as, a director or manager of, or a professional service provider to, an entity which:
 - was, or later came to be, insolvent; or
 - was, or later came to be, under insolvency administration; or
 - was, or later came to be, under statutory or judicial management; or
 - failed to repay, or otherwise failed to meet its financial obligations to, creditors or beneficiaries; at a time when events or conduct were occurring which caused or contributed to the insolvency, placement under insolvency administration or statutory or judicial management, or failure to repay or otherwise meet obligations to creditors or beneficiaries;

- j) not contravened any regulatory requirement or professional standard relating to:
 - i) the management of an entity; or
 - ii) commercial or professional activities;
- k) never been obstructive, misleading or untruthful in dealing with a court, tribunal, official inquiry, complaints handling body, dispute resolution body, or professional or industry body;
- l) never hindered, obstructed or misled, or was not candid or truthful with, a regulatory agency;
- m) never demonstrated a lack of readiness and willingness to comply with legal obligations, regulatory requirements or professional standards;
- n) never breached a fiduciary obligation or other obligation involving trust;
- o) not perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices;
- p) not:
 - failed to disclose a conflict of interest; or
 - failed to disqualify himself or herself because of a conflict of interest; or
 - participated in deliberations relating to a matter in which he or she had a conflict of interest; or
 - acted in his or her own interests in preference to the interests of others contrary to a legal, professional or ethical obligation which applied to the person;
- q) not been or become a person of bad repute in any business or financial community or any market;
- r) not knowingly appointed a person who was not fit and proper to act as a responsible person;
- s) no conflict of interest, which may influence his or her ability to carry out the role and functions of the responsible person position they are being considered for, or already fill; and
- t) not failed to comply with a condition imposed by PHIAC;
- u) not been convicted of any offence arising out of breaches of the Financial Sector (Collection of Data) Act 2001;
- v) not been convicted of any offence arising out of breaches of the Corporations Act 2001, the Corporations Law that was previously enforce, or any law of a foreign country that corresponds to that Act or the Corporations Law;
- w) not been convicted of an offence against or arising out of a law in force in Australia, or the law of a foreign country, where the offence related or relates to dishonest conduct, or to conduct relating to a company that carries on a business in the financial sector;
- x) not been declared bankrupt under Australian or foreign law;
- y) not executed a deed of arrangement under Part X of the Bankruptcy Act 1966 (Cth) (or a similar law of a foreign country) where he/she has not yet fully complied with the terms of the deed;
 - not failed to make final payment under the composition where his/her creditors accepted a composition under Part X of the Bankruptcy Act 1966 (Cth) or similar law of a foreign country);
 - not been disqualified by a court from managing corporations;
 - not been disqualified by PHIAC from managing corporations; and

- never been disqualified under the law of a foreign country from managing, or taking part in the management of, an entity that carries on the business of banking or insurance or otherwise deals in financial matters.

I declare that I am a Fit and Proper person as described above and have initialed each page of the Declaration.

I declare that I have read and understood to the best of my ability the Fit and Proper policy.

I acknowledge that rthealth may conduct checks and obtain references to establish that I am a Fit and Proper person and provide my consent for rthealth to obtain a Police check if required, and that any false statement I make in this declaration may lead to dismissal or removal from my position with rthealth.

..... Date:.....

Signature of Responsible Person

..... Date:.....

Signature of Witness

Appendix D: Position Competencies

The following table sets out the competencies (educational or technical qualifications, knowledge, skills, experience) required for each Position of Responsibility:

Position of Responsibility	Competencies
Board member	<ul style="list-style-type: none"> • The level of skill that a 'reasonable person' would be expected to bring to that position - the law holds directors to that standard. • The ability to think strategically, financially, commercially, legally, ethically, short term and long term. • Strong commercial experience commensurate with the job. • Complement the overall mix of skills required for the board. • Qualifications and experience in one or more of law, general commercial, health economics, marketing, finance / accounting.
Member of the Audit & Risk Committee	As per the Audit & Risk Committee Charter
CEO, Manager, Internal Auditor, Public Officer, other holder of a Position of Responsibility	As per position description
External auditor	As per the Audit & Risk Committee Charter

