



**ASIC**  
Australian Securities &  
Investments Commission

## Guidance for company officers and company auditors on the whistleblower protection regime

ASIC has released new information sheets to help companies, company officers and company auditors understand and comply with their obligations under the corporate whistleblower protection regime.

'Whistleblowers who speak up when they see wrongdoing provide a service to their employers. They can alert companies to changes that are necessary to comply with the law and improve their performance,' said ASIC Executive Director for Assessment and Intelligence, Warren Day.

'It is important that whistleblowers feel supported to speak up. ASIC encourages all companies and audit firms to put in place arrangements for handling whistleblower disclosures, even if the company is not required to have a whistleblower policy under the law.'

The Corporations Act 2001 (Corporations Act) provides strong protections for whistleblowers to encourage them to come forward with their concerns. Whistleblowers have the right to confidentiality, they are protected from reprisals, and they are protected from legal action for reporting their concerns.

Whistleblowers can access these rights and protections by reporting their concerns to a company officer or company auditor. Therefore, it is important for company officers and company auditors to understand their obligations and handle whistleblower disclosures in line with the requirements of the regime.

'The information sheets assist company officers and auditors deal with the requirements under the law as it relates to their important roles in a company', Mr Day said.

The information sheets provide guidance for companies and audit firms to develop arrangements for handling whistleblower disclosures that are effective and tailored to their circumstances.

The information sheets also provide guidance for company officers and company auditors on:

- obtaining consent from whistleblowers to disclose their identity if required for investigations, and
- how to address any employment issues involving a whistleblower while also handling their disclosure.

Information Sheet 246 *Company auditor obligations under the whistleblower protection provisions* ([INFO 246](#)) and Information Sheet 247 *Company officer obligations under the whistleblower protection provisions* ([INFO 247](#)) are available from ASIC's website.

## Background

From 1 July 2019, the whistleblower protection regime in Part 9.4AAA the Corporations Act has been expanded to provide greater protections for whistleblowers who report misconduct about companies and company officers and employees.

The Corporations Act requires public companies, large proprietary companies, and corporate trustees of superannuation entities regulated by APRA to have a whistleblower policy. The policy must set out how those companies will support and

protect whistleblowers and handle their disclosures.

In November 2019, ASIC released Regulatory Guide 270 Whistleblower policies ([RG 270](#)) to assist these companies to meet their obligations under the law to have a whistleblower policy. The guidance sets out the components that a whistleblower policy must include as required by the law. It also provides good practice guidance and tips to assist companies to implement and maintain policies that are tailored to their operations.

ASIC has also released Information Sheet 238 *Whistleblower rights and protections* ([INFO 238](#)) and Information Sheet 239 *How ASIC handles whistleblower reports* ([INFO 239](#)) to assist potential whistleblowers understand their rights and protections under the Corporations Act and how ASIC will respond to whistleblower disclosures we receive.

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# Agricultural Societies Council of New South Wales Ltd



## Whistleblower Policy

### 1 Purpose of this policy

Our whistleblower policy is an important tool for helping Agricultural Societies Council of New South Wales Ltd to identify wrongdoing that may not be uncovered unless there is a safe and secure way to disclose wrongdoing.

Agricultural Societies Council of New South Wales Ltd is committed to the highest standards of integrity and conduct. If you are aware of possible wrongdoing we encourage you to disclose this information and will support you in doing so.

Agricultural Societies Council of New South Wales Ltd is committed to encouraging the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving Agricultural Societies Council of New South Wales Ltd's businesses and provides protections and measures so that people who make a report can do so confidentially and without fear of intimidation, disadvantage or reprisal.

### 2 Who and what does this policy apply to?

This policy applies to and provides protections to Protected Whistleblowers.

You are a Protected Whistleblower and entitled to protection under the *Corporations Act 2001* (Cth) (**Corporations Act**) and, if applicable, under the *Taxation Administration Act 1953* (Cth) (**Taxation Administration Act**) if:

- you are an Eligible Whistleblower; and
- you have disclosed (or intend to disclose) a Reportable Matter to an Eligible Recipient or to the Australian Securities and Investments Commission (**ASIC**), the Australian Prudential Regulation Authority (**APRA**) or another entity prescribed under the Corporations Act.

See below for the meaning of the terms 'Eligible Whistleblower', 'Reportable Matter' and 'Eligible Recipient'.

You will also be entitled to protection as a Protected Whistleblower if you get advice from a legal practitioner on the operation of whistleblowing protection laws.

Also, in more specific and limited circumstances where a matter is of public interest or there is an emergency, a report may be protected if it's made to a journalist or a member of Parliament. It's important that you understand the criteria for making a public interest or an emergency disclosure to be covered by the whistleblower protections. Agricultural Societies Council of New South Wales Ltd recommends that you contact an independent legal adviser before making a public interest or an emergency disclosure.

An Eligible Whistleblower is a person who is, or has been, any of the following:

- an officer or employee of Agricultural Societies Council of New South Wales Ltd (this includes current and former employees who are permanent, part-time, fixed-term or temporary, interns, secondees, managers and directors);
- a person who supplies goods or services to Agricultural Societies Council of New South Wales Ltd or an employee of a person who supplies goods or services to Agricultural Societies Council of New South Wales Ltd (whether paid or unpaid) - this could include current and former volunteers, contractors, consultants, service providers and business partners;
- a person who is an associate of Agricultural Societies Council of New South Wales Ltd - for example, a director or company secretary of Agricultural Societies Council of New South Wales Ltd or a related body corporate of Agricultural Societies Council of New South Wales Ltd; or
- a relative, dependent or dependent of the spouse of any person referred to in this definition of Eligible Whistleblower.

### **3 Matters the policy applies to**

The section below sets out what is a Reportable Matter that will qualify for legal protection under the Corporations Act (or the Taxation Administration Act, where relevant). Disclosures that aren't about a Reportable Matter will not be protected under the Corporations Act or the Taxation Administration Act and this policy.

#### **3.1 Reportable Matter**

A disclosure will concern a Reportable Matter if an Eligible Whistleblower has reasonable grounds to suspect that the information being disclosed is about:

- misconduct (including fraud, negligence, default, breach of trust and breach of duty);
- an improper state of affairs or circumstances;
- behaviour that represents a danger to the public;
- a breach of the Corporations Act; or
- a breach of the Taxation Administration Act or improper conduct in relation to the tax affairs, in relation to Agricultural Societies Council of New South Wales Ltd.

#### **3.2 Personal work-related grievances**

Personal work-related grievances that don't involve a detriment caused to you as a Protected Whistleblower (or a threat of detriment) aren't a Reportable Matter and aren't protected under the Corporations Act or Taxation Administration Act.

A personal work-related grievance is one that relates to your current or former employment that has implications for you personally but doesn't have significant implications for Agricultural Societies Council of New South Wales Ltd.

An example of a work-related grievance that is not protected by law could include if you believe you have missed out on a promotion that you deserve or if you don't like the managerial style of your supervisor.

However, a work-related grievance may still qualify for protection under the law if (for example):

- it is a mixed report that includes information about a Reportable Matter (as well as a work-related grievance);
- Agricultural Societies Council of New South Wales Ltd has broken employment or other laws which are punishable by imprisonment for 12 months or more or acted in a way that is a threat to public safety;
- the disclosure relates to information that suggests misconduct that goes further than the whistleblower's personal circumstances; or
- the whistleblower suffers from or is threatened with detriment for making a disclosure.

### **4 How do I make a report and who do I report to?**

#### **4.1 Making a disclosure**

Reports can be made in person or by telephone, post or email. Reports can be made within business hours or outside business hours.

If, at any time, you are not sure about whether to make a protected disclosure, you can get independent legal advice. Any discussions you have with a lawyer will be protected under this policy and under law.

## 4.2 Eligible Recipients

A protected disclosure of a Reportable Matter can be made using any of the channels below (each is an Eligible Recipient of Reportable Matter):

- an officer, director or senior manager of Agricultural Societies Council of New South Wales Ltd (contact details are on the company website [www.agshowsnsw.org.au](http://www.agshowsnsw.org.au)); or
- an external auditor of Agricultural Societies Council of New South Wales Ltd (Currently Grant Thornton Sydney Telephone 02 8297 2400 or email [communications@au.gt.com](mailto:communications@au.gt.com)).

## 4.3 Other designated bodies that can receive disclosures

Disclosures of a Reportable Matter may also be protected when made to:

- ASIC;
- APRA;
- the Commissioner of Taxation; or
- another Commonwealth authority prescribed by law.

## 5 False reports

A Protected Whistleblower will still qualify for protection for a disclosure even if their disclosure turns out to be incorrect. However, anyone who knowingly makes a false report of a Reportable Matter, or who otherwise fails to act honestly with reasonable belief in respect of the report may be subject to disciplinary action, including dismissal.

## 6 Anonymity when reporting

You may choose to remain anonymous when disclosing a Reportable Matter, over the course of the investigation and after the investigation is finalised. While you are encouraged to share your identity when making a disclosure, as it may make it easier for Agricultural Societies Council of New South Wales Ltd to address your disclosure of a Reportable Matter and for Agricultural Societies Council of New South Wales Ltd to communicate with you, you are not required to share your identity. If you don't share your identity, Agricultural Societies Council of New South Wales Ltd will assess your disclosure in the same way as if you had revealed your identity. However, there may be some practical limitations in conducting the investigation if you don't share your identity.

## 7 Protections for Protected Whistleblowers

### 7.1 Confidentiality

Disclosures from Protected Whistleblowers will be treated confidentially and sensitively. Once a report is received, the Eligible Recipient will make sure immediate steps are taken to protect the identity of the Protected Whistleblower. This will include redacting the name and position of the Protected Whistleblower from any written record of the report, and making sure appropriate document security is implemented.

It's illegal for a person to identify Protected Whistleblowers or disclose information that is likely to lead to their identification. If you are a Protected Whistleblower, your identity and position (or any other information which would be likely to identify you) will only be shared if:

- you consent to the information being shared;
- the disclosure is to a recipient permitted by law such as the Commissioner of Taxation or Australian Federal Police; or
- the disclosure is otherwise allowed or required by law (for example, disclosure to a lawyer of Agricultural Societies Council of New South Wales Ltd to receive legal advice relating to the law on whistleblowing).

In addition, for information likely to identify an Eligible Whistleblower, this may be shared if it is reasonably necessary for the purposes of an investigation. In this circumstance all reasonable steps will be taken to reduce the risk that you will be identified.

## **7.2 Protection against detrimental treatment**

It's illegal for a person to engage in conduct that causes (or threatens) detrimental treatment to a Protected Whistleblower in the belief or suspicion that a person has made, may make, proposes to make or could make a report of a Reportable Matter and where that belief or suspicion is a reason for the conduct.

Detrimental treatment could include dismissal, demotion, harassment, damage to your reputation, discrimination, disciplinary action, bias, threats or other unfavourable treatment connected with making a disclosure as a Protected Whistleblower.

Agricultural Societies Council of New South Wales Ltd will seek to ensure that Protected Whistleblowers are not subjected to detrimental treatment as a result of making (or intending to make) a disclosure under this policy. To protect Protected Whistleblowers from detrimental treatment, Agricultural Societies Council of New South Wales Ltd will:

- make an assessment of the risk of detriment against a Protected Whistleblower as soon as possible after receiving a disclosure of a Reportable Matter;
- make sure Agricultural Societies Council of New South Wales Ltd management are aware of their responsibilities to maintain the confidentiality of a Protected Whistleblower, address the risks of detriment and ensure fairness when managing the performance of, or taking other management action relating to, a Protected Whistleblower; and
- take practical action, as necessary, to protect a Protected Whistleblower from the risk of detriment and intervene if detriment has already occurred.

If a Protected Whistleblower believes that they have been subject to detrimental treatment, they should inform an Eligible Recipient immediately.

## **7.3 Other protections for Protected Whistleblowers**

Protected Whistleblowers are protected from civil, criminal or administrative liability (including disciplinary action) for making reports of Reportable Matters. No contractual right (including under an employment contract) can be exercised against a Protected Whistleblower to stop them disclosing a Reportable Matter.

If you're a Protected Whistleblower and the disclosure is to an Eligible Recipient or other designated body as set out above or is a public interest disclosure or emergency disclosure, the information you disclose also can't be used against you in criminal proceedings or in proceedings for the imposition of a penalty (except if the proceedings are in respect of the falsity of the information).

Eligible Whistleblowers may also be entitled to seek compensation and other remedies through the courts if Agricultural Societies Council of New South Wales Ltd fails to protect the Eligible Whistleblower from detriment and the Eligible Whistleblower suffers loss or damage.

## **8 How will we investigate disclosures?**

Once a report of a Reportable Matter has been received from an Eligible Whistleblower, who has provided reasonable grounds for their belief that the Reportable Matter has occurred, an investigation of those allegations will begin as soon as practicable after the report has been received.

If Agricultural Societies Council of New South Wales Ltd determines that the information disclosed doesn't amount to a Reportable Matter, the Eligible Whistleblower will be, if practicable, informed of that decision. In some instances, reports may not be able to be responded to, for example, because they are anonymous reports.

If an investigation is conducted, it will:

- follow a fair process;
- be conducted in as timely a manner as the circumstances allow; and
- be independent of the person(s) about whom an allegation has been made.

Provided there are no restrictions or other reasonable bases for doing so, people against whom an allegation has been made will be informed of the allegation and will have an opportunity to respond to any allegation. That is, Agricultural Societies Council of New South Wales Ltd will take steps to ensure fair treatment of any person who is the subject of the Reportable Matter report as well as the Protected Whistleblower.

Investigations will be conducted promptly and fairly with due regard for the nature of the allegation and the rights of the people involved in the investigation. Agricultural Societies Council of New South Wales Ltd recognises the importance of balancing the rights of the Eligible Whistleblower and the rights of people against whom a report is made in ensuring fairness.

## **9 Communications with the Protected Whistleblower**

Agricultural Societies Council of New South Wales Ltd will ensure that, provided the claim was not submitted anonymously, the Protected Whistleblower is kept informed of the outcomes of the investigation of their allegations. This will be subject to the considerations of privacy of those against whom allegations are made and considerations of confidentiality affecting Agricultural Societies Council of New South Wales Ltd.

If the Protected Whistleblower is not an employee of Agricultural Societies Council of New South Wales Ltd, the Protected Whistleblower will be kept informed of the investigative outcomes (subject to privacy considerations as above), once the Protected Whistleblower has agreed in writing to maintain confidentiality in relation to any information provided to them regarding a report made by them.

## **10 Further policy details**

### **10.1 How this policy is made available**

This policy is made available on our website.

### **10.2 Revision history**

27 August 2020 Policy adopted



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## Whistleblower protections for not-for-profit organisations

Not-for-profit incorporated organisations that meet the definition of a trading or financial corporation must comply with the corporate sector whistleblower protection regime in Part 9.4AAA of the *Corporations Act 2001* (Corporations Act).

This may include the following organisations incorporated under state or territory legislation, if they are trading or financial corporations:

- incorporated associations
- other bodies corporate, including not-for-profit bodies corporate
- incorporated organisations registered with ASIC as Australian registered bodies
- incorporated organisations registered with the Australian Charities and Not-for-profits Commission (ACNC) as charities.

This information is relevant to the organisations listed above to determine whether they are subject to the corporate sector whistleblower protection regime, and how this may affect the organisation.

All not-for-profit organisations structured as public companies limited by guarantee must already comply with the whistleblower protection provisions.

More information about the corporate sector whistleblower protection regime is available in:

- Information Sheet 238 *Whistleblower rights and protections* ([INFO 238](#))
- Information Sheet 239 *How ASIC handles whistleblower reports* ([INFO 239](#))

- › [Will the whistleblower reforms apply to my organisation?](#)
- › [What will I need to do if my organisation is a trading or financial corporation?](#)
- › [Will the whistleblower protections cover volunteers?](#)
- › [Does my organisation need a policy for dealing with whistleblower reports?](#)
- › [How will ASIC apply the whistleblower protections to incorporated associations and other bodies corporates?](#)
- › [How will ASIC treat whistleblower reports about incorporated associations or other bodies corporate?](#)

## Will the whistleblower reforms apply to my organisation?

### Is my organisation a regulated entity?

The whistleblower protection provisions in the Corporations Act apply to a 'regulated entity'. A regulated entity is defined to include all companies registered under the Corporations Act and other types of incorporated entities, including a corporation to which the Commonwealth Constitution applies.

A corporation to which the Commonwealth Constitution applies is a foreign corporation, or a trading or financial corporation formed within the limits of the Commonwealth.



Not-for-profit organisations that are incorporated under state or territory legislation, such as incorporated associations or cooperatives, can meet the definition of a trading or financial corporation, despite being formed for a not-for-profit, charitable, or community benefit purpose.

Other bodies corporate incorporated under state or territory legislation that are trading or financial corporations will also be regulated entities. This includes where they are incorporated under their own piece of state or territory legislation. It can also include bodies corporate owned privately or by state or territory governments.

## **Is my organisation a trading or financial corporation?**

It is not always clear whether a not-for-profit organisation or charity falls within the definition of a trading or financial corporation, where it engages in trading or financial activities as part of its not-for-profit or charitable activities. Some of these organisations may fall within the definition, and some may not.

Whether your not-for-profit incorporated organisation meets the test of being a trading or financial corporation will depend on the organisation's activities. Some examples are provided below to assist you to form a view about whether your organisation may be a trading or financial corporation.

If your organisation's trading or financial activities are a sufficiently significant proportion of its overall activities, the organisation will likely be a trading or financial corporation. It must be decided on a case-by-case basis with reference to your organisation's activities. If it is in dispute, it may need to be determined by a court.

ASIC cannot give legal advice to organisations or members of the public, and we cannot give a ruling to your organisation on whether or not it meets the test for being a trading or financial corporation. If your organisation is in doubt about whether it meets the definition of a trading or financial corporation, we encourage your organisation to seek legal advice.

## **What are trading or financial activities?**

Trading activities involve buying and selling goods or services. Financial activities involve commercial dealings or transactions in finance, such as borrowing, lending, investing or providing advice on financial matters.

A not-for-profit organisation selling goods or services to the public to support its operations or promote its activities, such as through fundraising drives, would not be enough to make it a trading corporation, where this activity is not a sufficiently significant proportion of its overall activities.

Similarly, an organisation merely having a loan or credit facility, or making financial investments, to support funding its operations would not be enough to make it a financial corporation.

However, where an organisation engages in trading or financial activity as a sufficiently significant proportion of its overall activities, it will meet the test for being a trading or financial corporation.

## **Examples of trading or financial activities**

Previous legal cases provide some examples of when incorporated not-for-profit organisations have and have not been considered trading or financial corporations.

### **Not-for-profit sporting clubs**

A not-for-profit sporting club was found to be a trading corporation where it paid players, charged admission to spectators for matches, and sold television and advertising rights connected with matches.

Conversely, a not-for-profit sporting club was found not to be a trading corporation where it generally did not pay players or charge spectators admission. The court found that, although the club engaged in some trading activities, this was not of sufficient significance to require it to be characterised as a trading corporation.

### **Charities**

An animal welfare charity was found to be a trading corporation on the basis that it earned substantial income from trading activities, whereas a medical research charity was found not to be a trading corporation where its trading

activities were insubstantial and peripheral to the central activity of medical research and only generated a small proportion of its revenue.

### **Not-for-profit finance organisations**

The court has found that not-for-profit building societies have been found to be financial corporations, despite performing an important social function, as they lent money at interest and were therefore engaged in commercial dealing in finance.

Similarly, a not-for-profit superannuation entity incorporated under state law was found to be a financial corporation as its investments providing commercial and housing loans were a substantial and significant part of its overall activities.

## **What will I need to do if my organisation is a trading or financial corporation?**

If your incorporated association or other body corporate does engage in trading or financial activities to a significant degree, your organisation will need to comply with the whistleblower protections in the Corporations Act.

This will mean that your organisation will need to comply with the obligations to protect whistleblowers who report misconduct, an improper state of affairs or circumstances, or breach of law by or about your organisation or an officer or employee of your organisation.

Broadly, this will mean:

- keeping a whistleblower's identity and information confidential, unless they provide you with consent to disclose their information, and
- preventing your organisation or an officer or employee from harming or causing detriment to a whistleblower. For example, it is illegal to fire a person, harass a person, or discriminate against a person because it is thought they made a whistleblower report. Your organisation could also be liable to pay compensation to a whistleblower if they suffer loss, damage or injury for reporting misconduct.

More information about the corporate sector whistleblower protection regime is available in:

- Information Sheet 238 *Whistleblower rights and protections* ([INFO 238](#))
- Information Sheet 239 *How ASIC handles whistleblower reports* ([INFO 239](#))

## **Will the whistleblower protections cover volunteers?**

Volunteers will likely fall within the definition of a whistleblower under the whistleblower protection provisions.

Whistleblowers are generally insiders within organisations, and will include an individual or an employee of a person who supplies services or goods to the organisation. The person does not have to be paid for their contribution, and so will likely include volunteers.

## **Does my organisation need a policy for dealing with whistleblower reports?**

Incorporated associations or other bodies corporate are not subject to the requirement in the Corporations Act to have a whistleblower policy from 1 January 2020. This is because the requirement to have a whistleblower policy only applies to public companies, large proprietary companies, and proprietary companies that are the trustees of registrable superannuation entities.

Charities or not-for-profits structured as public companies limited by guarantee will need a whistleblower policy if their annual (consolidated) revenue is \$1 million or more. See [ASIC Corporations \(Whistleblower Policies\) Instrument 2019/1146](#).

Despite not requiring a formal whistleblower policy, if your organisation is subject to the corporate sector whistleblower protection regime, your organisation may benefit from documenting and implementing a strategy for dealing with any whistleblower reports you may receive in line with the legislative requirements. This may form part of the broader

governance or compliance measures within your organisation. You may wish to seek advice, including legal advice, on implementing the new requirements.

ASIC has released Regulatory Guide 270 *Whistleblower policies* ([RG 270](#)) to help entities establish a whistleblower policy that complies with their legal obligations. It also contains our good practice guidance on implementing and maintaining a whistleblower policy.

RG 270 may also assist entities that are not required to have a whistleblower policy but are required to manage whistleblowing in accordance with the Corporations Act.

## How will ASIC apply the whistleblower protections to incorporated associations and other bodies corporates?

ASIC applies the whistleblower protections provisions in the Corporations Act to incorporated associations and other bodies corporates that are trading or financial corporations in a way that is equivalent to their application to companies registered under the Corporations Act.

For example, we read a reference to an officer or senior manager of a body corporate as a reference to a person performing the equivalent role within an incorporated association or other body corporate, such as an officer, public officer, or committee member of an incorporated association.

You may wish to legal seek advice about how the whistleblower protection regime applies to your organisation, or what it means for your operations.

## How will ASIC treat whistleblower reports about incorporated associations or other bodies corporate?

ASIC is responsible for enforcing the corporate sector whistleblower protection regime as it applies to incorporated associations and other bodies corporate that are trading or financial corporations. ASIC can receive reports from people alleging misconduct, improper conduct, or breaches of the law by incorporated associations or other bodies corporate that are trading or financial corporations.

Whistleblowers can lodge these reports with ASIC through our [how to complain webpage](#) or by writing to us.

For more information see:

- Information Sheet 153 *How ASIC handles reports of misconduct* ([INFO 153](#))
- Information Sheet 238 *Whistleblower rights and protections* ([INFO 238](#))
- Information Sheet 239 *How ASIC handles whistleblower reports* ([INFO 239](#))

### Concerns about the treatment of whistleblowers

ASIC can pursue allegations that an incorporated association or other body corporate subject to the new whistleblower protection regime has:

- caused detriment to a whistleblower, or
- breached a whistleblower's confidentiality.

### Concerns about governance or operations of incorporated associations or other bodies corporate

Beyond a whistleblower's concerns about their treatment by an incorporated association or other body corporate, ASIC will likely not be able to take action on a whistleblower's allegations about the governance or operations of an incorporated association or other body corporate.

Generally, this is because these organisations are registered under state or territory legislation, which sets out the governance and operational requirements for these organisations, and ASIC does not administer these requirements.

If the incorporated association or other body corporate is registered as a charity with the ACNC, whistleblowers may also wish to report their concerns about the charity's operations to the ACNC.

Similarly, whistleblowers may also wish to raise their concerns with the relevant state or territory agency responsible for incorporated associations or other state or territory bodies corporate.

Whistleblowers will be entitled to the protections under the whistleblower protection regime from when they report their concerns to an eligible recipient. Eligible recipient as defined in the whistleblower protection provisions would include an officer, senior manager, auditor, or actuary of the incorporated association or body corporate, or alternatively ASIC (or APRA if relevant).

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