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General Manager
Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority

By email: PolicyDevelopment@apra.gov.au

APRA Governance Review—Discussion Paper

1. This submission has been prepared by members of the following Committees of the Law Council of Australia:
 - (a) the Superannuation Committee and the Insurance Committee of the Law Council's Legal Practice Section; and
 - (b) the Corporations Committee and the Financial Services Committee of the Law Council's Business Law Section,(collectively, the **Committees**).

Consultation

2. The Committees thank the Australian Prudential Regulation Authority (**APRA**) for the opportunity to provide feedback on the Governance Review **Discussion Paper**, which was released by APRA for public consultation on 6 March 2025. We also thank APRA for the productive telephone discussion on 9 May 2025.
3. The Discussion Paper contains eight **proposals** designed to uplift governance standards and practices for APRA-regulated entities.
4. This submission sets out our comments on each of the proposals, highlighting areas where we believe the proposals may not achieve APRA's objectives and offering constructive suggestions for improvement to ensure that any amendments to existing standards are more likely to achieve APRA's objectives.
5. In summary, the Committees are supportive of some proposals but are concerned that a number of the proposals would, if implemented in their current form, not result in the desired governance uplifts and instead could result in conflicts with the general law regulating boards of companies and departures from standard board operations and thereby increasing governance risk.

Proposal 1: Skills and capabilities

6. There are two elements to APRA's Proposal 1, being:
 - (a) to impose a new obligation on APRA-regulated entities to identify measurable and identifiable skills and observable behavioural attributes required by directors—both collectively and individually; and
 - (b) to require boards to take active steps to address existing skills gaps and to consider existing skills gaps when considering new directors.
7. APRA's view is that Proposal 1 would not change the equal representation model and, presumably, can apply to an equal representation model.
8. The Committees note that CPS 510 *Governance*, in particular paragraph 19, already imposes obligations on boards which, if complied with, should avoid the 'shortcomings' that APRA has referred to in the Discussion Paper. The Committees therefore consider that there is a strong argument that no changes are necessary: the fact that, in APRA's view, a few boards are not fully complying with their current obligations does not justify imposing more prescriptive obligations on all boards. The comments made below are made subject to this overarching view.

Identifying skills

9. The Committees agree that skills matrices represent best practice as a tool used by boards for identifying the full range of skills needed for effective board operation. Different boards may wish to adopt different approaches to identification of skills and this level of prescription could potentially prevent the development of better ways to address skills identification in the future. If, notwithstanding the Committees' views expressed in paragraph 8, APRA was still minded to make the changes then, instead, the Committees would recommend:
 - (a) the Prudential Standards expressly require APRA-regulated boards to identify the range of skills the board considers necessary for effective board operation and to regularly review the required range of skills; and
 - (b) APRA notes in regulatory guidance that it is APRA's view that skills matrices represent best practice to identify the range of skills required by APRA-regulated boards.
10. The Committees are also supportive of boards taking into account the range of identified skills and any identified skill gaps when assessing candidates for directors. Also important is diversity. Diversity includes the mix of experiences, backgrounds and characteristics present at the board table. Diversity, in its broadest sense, also includes gender, age, ethnicity, cultural background, disability, sexuality, education, and professional experience.
11. For the superannuation industry, any requirements imposed by APRA concerning the appointment of directors must ensure that boards can continue to draw on a range of diverse candidates rather than (say) a particular set of professionals with the requisite checklist of skills. Identifying specific skills as the only requisite factor is likely to encourage homogeneity of candidates with the same or similar education, qualifications, training and experience.

Skills of individual directors

12. The *Corporations Act 2001* (Cth) and other relevant legislation specifies the minimum/core level of skills that each director should hold or obtain (eg financial literacy, understanding of regulatory framework) which is clear and unobjectionable. However, the Committees consider that APRA should only **add to those requirements by clear delineation of what those matters should be** rather than general commentary.
13. The Committees are supportive of directors of APRA-regulated entities being expected to have either undertaken an industry-recognised course (eg, directors course) or to take that course within one year of joining the board unless they already hold prescribed professional qualifications (eg, law, economics, actuarial)—but in that case these skills could not, of course, be minimum skills required on appointment. This could be seen to support the equal representation model in superannuation, as the focus shifts to assisting a nominated director to gain the relevant director-related skills and knowledge. (See further below for specific comments on the equal representation model.)
14. In effect, the focus should be on the core skills, knowledge and experience of individual directors to enable the board to focus on the key and highly important role of properly setting strategy and properly overseeing management's operation. In this regard, the Committees recommend APRA focus on the development plans to support directors, and the need for chairs to take a leadership and mentoring role.
15. The Committees would be concerned if Proposal 1 involved requiring there to be a specific director on the board who has a specific skill set: eg, tax expertise, IT expertise. Instead, the Committees see the role of management is to have these types of particular skills. The skills required of directors should not be confused with the skills required by management (ie, it may be appropriate to require management to have tax expertise, IT expertise etc but not necessarily for boards), acknowledging that directors need to have sufficient knowledge for their oversight and challenge role. This is discussed further below in relation to Proposal 6.

Verifiable skills

16. It is not clear to the Committees how skills should be verifiable in the sense of being able to be checked or demonstrated before appointment beyond the existing ASX requirements as to background checks and existing fit and proper checks (such as envisaged by paragraph 32 of SPG 520 *Fit and proper*). We assume that the intention is that the additional verification should be considered as part of board performance reviews. Assuming this is the case, the Committees recommend the focus be on skills that can be properly assessed in a board performance review rather than expressly requiring them to be verifiable.

Behavioural attributes

17. The Committees believe in the importance of behavioural attributes in the dynamics of board decision making and so are supportive of APRA encouraging boards to promote discussion of the board's role of monitoring and challenging management that directors should do, together with appropriate urgency around holding management to account.

18. However, we strongly believe that APRA should not require behaviours to be documented in a form similar to a skills matrix. The role of a skills matrix is to consider the required skills, knowledge, experience and capabilities of the board as a whole and to identify gaps—it is not intended as an inherently subjective assessment of behavioural attributes. While some may wish to adopt a form similar to a skills matrix, others may wish to include them in (say) charters.
19. The Committees also note that boards operate on a collective decision-making basis, and would strongly support the ability of boards to continue to mandate any required behavioural attributes for the board to operate effectively.

Interaction with equal representation model

20. While the Discussion Paper states that there would be no changes to the equal representation model for superannuation trustees, the Committees are concerned that Proposal 1 does not properly reflect:
 - (a) superannuation trustee boards that operate under an equal representation model do not normally have nomination rights, and so their role is limited to accepting or rejecting a nominee. While boards can liaise with the nominating bodies to encourage the nominating bodies to provide nominees with the necessary base skills and with skills to fill any skills gaps, nominating bodies are under no legal obligation to do so;
 - (b) those who operate under an equal representation model are required by the *Superannuation Industry (Supervision) Act 1994 (Cth)* (**SIS Act**) to fill vacancies within 90 days (section 89);
 - (c) following the Stronger Super reforms in 2012, the SIS Act imposes heightened duties on superannuation trustee directors (section 52A); and
 - (d) superannuation trustee directors owe duties directly to the fund members, as well as (and in priority to) shareholders.
21. It is not clear what steps APRA would expect a trustee board to take if a nominee did not possess the skills to fill an identified skill gap, but the trustee only had 90 days to fill a vacancy. While the board could take earlier steps to explain to the nominating body the skills required to fill a skills gap, the nomination is not within the control of the board. The Committees would be concerned if a board were put in a position where it had to choose whether to breach an APRA Prudential Standard or breach the SIS legislation.
22. The Discussion Paper states that requisite skills should be considered by those making director nominations. The Committees support this as a statement of recommended practice but note that APRA would not appear to have the power to require nominating bodies to comply with APRA Prudential Standards.

Proposal 2: Fitness and propriety

23. There are two elements to APRA's Proposal 2, being to:
- (a) require regulated entities to meet higher minimum requirements to ensure fitness and propriety of their responsible persons; and
 - (b) require significant financial institutions (**SFIs**), and non-SFIs under heightened supervision, to engage proactively with APRA on potential appointments.
24. The Proposal is to be implemented by defining "fit and proper" within the new Standard, ensuring that it incorporates existing guidance and additional considerations, including:
- (a) a review of:
 - (i) actual, potential, and perceived conflicts;
 - (ii) criminal records and regulatory contraventions;
 - (iii) character or regulatory references;
 - (b) evaluation of reputational risk; and
 - (c) an obligation for SFIs, (and non-SFIs under heightened supervision) to engage proactively with APRA on potential appointment.
25. The Proposal is made by APRA in the context of:
- (a) APRA's view that current fit and proper assessments for board members and executives within the financial services industry can lack thorough scrutiny, leading to potential risks for organisations and their members; and
 - (b) observations by APRA, which have given rise to the following significant areas of concern:
 - (i) **Inadequate scrutiny in assessments:** Some fit and proper evaluations are conducted without suitable examination of the individual's qualifications and suitability.
 - (ii) **Minimal consideration of fitness:** Boards can hesitate to reassess whether an individual remains fit and proper even when they have caused reputational or financial harm to the institution.
 - (iii) **Lack of rigorous vetting processes:** There is a tendency towards a box-ticking approach rather than implementing more detailed vetting methods.
 - (iv) **Insufficient accountability:** The failure to remove directors who do not meet fitness and propriety standards can undermine the overall governance and integrity of the institution.
 - (v) **Inadequate succession planning oversight:** Current practices may not ensure robust succession planning and effective nomination processes.

Identification and consideration of potential conflicts ought not to be a prescribed element of a fit and proper assessment

26. In the Committees' view, the existence of a potential conflict or conflicts should not form the basis of a fit and proper assessment. For example, a director can still be fit and proper even though they also perform an executive role or have a role with a supplier. Rather, it is how the director has identified and managed the conflict that can impact their propriety.
27. In 2006, APRA attempted to disqualify seven directors of AXA alleging they were not fit and proper. The individuals appealed APRA's decision to the Administrative Appeals Tribunal, which overturned APRA's decision: *VBN and Australian Prudential Regulation Authority* [2006] AATA 710; (2006) 92 ALD 259. In doing so, the Tribunal stated:

That there is a potential for conflict between the interests of the directors and their role is an integral part of the scheme established by the SIS Act. ... The potential for conflict by virtue of their appointment alone does not mean that there is a conflict of the sort that means that an individual director is in breach of a fiduciary duty. There must be something more that shows that there is in fact a conflict of duty between the interests of the directors of a trustee of a fund. This must be determined by reference to the circumstances and not by reference to a formula or recitation of principle. Do the circumstances show that a director was in a position in which that director's interests or those of another for whom he or she had responsibility or to whom he or she owed a duty conflicted with the interests of the trustee?

28. The Committees are of the view that the better approach would be to consider actual or potential conflicts that are not capable of being managed (such that the director would not be able to fulfil their duties).

Perceived conflicts—novel concept at law

29. The proposal suggests that "perceived conflicts" (in addition to actual or potential conflicts) ought to be considered in a fit and proper assessment. To assess and determine that a director is not fit and proper because of a *perceived* conflict would go well beyond the legal requirements for directors in respect of conflicts management. It would introduce an entirely subjective element into considerations of conflict that are intended to be measured and managed (including in avoidance if required) on an objective basis. The legal requirement has always been, and should continue to be, that the conflict needs to be not merely perceived, but actual or potential and significant such that a person can't perform their role as a director (for example, if as a director they had a significant interest or role in the main service provider for a fund, such that they were "stepping" out of the room for significant parts of each meeting).

Notification to APRA of possible adverse fit and proper assessment prior to board determination

30. The proposed requirement that an entity notify APRA when concerns arise that may reasonably impact a person's fitness and proprietary, even before a determination, creates a "hair trigger" notification obligation. Such a process would deny due process to a person who is the target of any complaint. An obligation to notify APRA should only arise if, and when, the board has determined that the person is not fit and proper.

Further, such a trigger would be difficult to comply with as it is not clear when the notification should be made: for example, would it apply when an allegation is first made or when the entity has discussed the allegation with the director? What if the allegation was made by a third party and the board can do nothing further but wait for due process to occur?

31. The Committees have a number of concerns with the requirement for proactive engagement with APRA as contemplated (noting the existing requirement of APRA's Prudential Practice Guide SPG 520.39) for the following reasons:
 - (a) The proposals paper does not explain what this involves or the consequences of engagement/consultation with APRA. APRA would need to be clear about why and what it proposes its powers to be in relation to the consultation process.
 - (b) The impact of the requirement for proactive engagement on a superannuation trustee's ability to comply with the SIS Act requirement to fill a director vacancy in 90 days does not appear to have been considered.
 - (c) This should not be linked with the Financial Accountability Regime obligation for dealing with regulators in an open, constructive and co-operative way—this is beyond APRA's powers (and not in the nature of prudential review).
 - (d) This type of matter ought to continue to be dealt with as it is currently in the normal supervisory relationship with APRA without prescription as a prudential matter. This matter is better dealt with as a relationship issue with APRA, not as a prudential engagement matter in all cases.

Evaluating reputational risk

32. The Committees are concerned that the proposed requirement for a board to evaluate and consider reputational risk (in appointing or, indeed, retaining a director under a new fit and proper standard requirement) could result in a director being determined not to be fit and proper because of unproven allegations made against them. This would be entirely prejudicial to the individual concerned and inconsistent with the presumption of innocence.
33. Further, it would also expose the board appointment process to becoming politicised as reputations are often affected within the political arena: for example, how should a board attempt to evaluate the worth of a candidate whose reputation may be affected by their political views or their views on political matters (eg, climate change)?

Application to all responsible officers or only directors

34. It is not clear whether Proposal 2 is intended to apply to all responsible officers or only directors.
35. If it is intended to apply beyond directors, adjustments to the principles involved are likely to be required.

Proposal 3: Conflicts management

36. APRA proposes to create a single cross-industry set of conflict management requirements.
37. The Committees support this requirement in principle as strong and robust conflict management should be a fundamental feature of all regulated financial services organisations. Similarly, recognition of perceived as well as actual or potential conflicts of interest is an extension to the general principle that should be recognised as a matter of policy.
38. In outlining the detail of conflict management requirements, the Committees believe it will be critical that APRA be precise in its specification of the duties of the relevant financial services entity and the obligations owed to relevant stakeholders and to expressly recognise the differences that exist. The duties and obligations are quite different across different entities, and, for example, it would be wrong to blur the duties that a superannuation trustee owes to a member under the SIS Act to the fact no express duty is owed by a director of an authorised deposit-taking institution (**ADI**) to its customers. For clarity, the sources of the relevant duties and obligations can be briefly summarised as follows:
 - (a) for a director of a superannuation trustee and the trustee: duties and obligations to members as specified in the SIS Act, the Corporations Act and at general law;
 - (b) for a director of the holder of an Australian Financial Services Licence (**AFSL**) and the AFSL holder: duties and obligations to customers as specified in the Corporations Act and at general law; and
 - (c) for a director of the responsible entity of a registered managed investment scheme and the registered scheme: duties and obligations to members as specified in the Corporations Act and at general law.
39. Having regard to the different duties and obligations owed by banks and insurers to their customers, the Committees do not see a strong policy basis for requiring the public availability and disclosure to customers of duties and interests in a conflicts register. This should be seen as a matter for internal governance and prudential supervision by APRA rather than a matter of public record in dealing with customers. The Committees do not support such a public disclosure requirement.

Proposal 4: Independence

40. This proposal is made by APRA in the context of the problem statement described by APRA that it has observed instances of poor conflict management where entities do not fully consider potential or actual intra-group conflicts.
41. The Committees fully support strong and clear guidance from APRA that a core obligation of the board of a regulated banking or insurance entity is to have in place robust and effective mechanisms to manage potential or actual group conflicts and to be able to demonstrate this to APRA at any time in the context of any issue confronting the entity. That core obligation is also a feature of the common law and Corporations Act statutory obligations imposed on directors. However, the Committees are concerned that the rigid proposal requiring two independent directors and the chair

not to be on any other group board does not allow sufficient flexibility to allow regulated banking and insurance entities to appropriately structure their business activities and may conflict with proper group governance and fiduciary duty obligations.

42. Proper management of a potential or actual conflict of interest in the context of a regulated banking or insurance entity as a member of a corporate group requires nuance and specific consideration of the issue in question and the Committees note that:
 - (a) Many entities in a corporate group that includes a regulated banking or insurance entity may be engaged in activities that are entirely aligned with the regulated entity and involve no potential or actual conflict of interest. Corporate groups have structures to reflect a variety of issues, including history of the formation of the group, functions and business activities performed within the group, tax efficiency considerations, geographic location of businesses and regulatory requirements;
 - (b) Management of a potential or actual conflict of interest may involve a variety of solutions, including separate professional advisor representation, assessment of arm's length terms of a proposed arrangement, member approvals and independent expert opinions. Independence of board group composition is only one issue that needs to be considered in this context and may not be a complete means of resolution.
 - (c) A potential or actual conflict of interest may be a feature of the structure of the corporate group that includes a regulated banking or insurance entity or may only arise in the context of a transaction specific situation. Where the conflict arises as an essential feature of group structure, structural board separation may be an appropriate mechanism to manage the conflict issue. Where the conflict is transaction-specific, structural board separation is much less likely to be an appropriate mechanism to manage the issue.
43. Against these issues of managing a potential or actual conflict of interest is the more extensive and overarching requirement that the directors of a regulated banking or insurance entity act with care, skill and diligence in administering the business of the entity and the corporate group. Depending on the business activities, corporate structure and risks that may need to be managed within a corporate group, it may undermine proper governance of the group if two independent directors and the chair of the regulated entity are prevented from being directors of other entities within the corporate group. Proper governance may require their active involvement in these entities. A fundamental requirement in satisfying the duty of care, skill and diligence is that all directors have a proper understanding of the key issues confronting the business and are in a position to identify and act on red flags.
44. The proposition that the chair must not be a member of the boards of group entities is particularly problematic from the perspective of case law concerning the role of the chair in guiding the agenda of issues to be the subject of director focus.
45. The Committees submit that this proposal is too restrictive. A more appropriate method to address the problem statement would be for APRA to provide firm guidance that a regulated banking or insurance entity must at all times be able to clearly demonstrate that they are appropriately managing any potential or actual conflict of interest that exists within the corporate group. The guidance may indicate that one

way of demonstrating the management of that conflict may be for independent directors not to be members of certain boards within the entity's group where there is a structural conflict, recognising that this might be only one way of demonstrating proper conflict management.

46. APRA also proposes to extend the prohibition on directors who are substantial shareholders from the independence criteria to include material holdings of any type of security.
47. APRA has identified the example of a substantial debt holder and suggested they may be subject to the same influence as substantial equity holders.
48. The Committees recognise that a debt or hybrid security holding may give rise to the same conflict concern as an equity holding, albeit not going to issues of corporate voting and control in the same way as an equity holding.
49. A point of detail is there is a difference in terminology between "substantial" and "material" as referenced in the proposal. For clarity, the term "substantial" should only be used in the context of debt and hybrid securities as 5 per cent or more of the principal amount of debt outstanding (or issued capital in the case of some hybrids).
50. Finally, APRA proposes to extend the requirement for bank and insurer boards to have a majority of independent directors to include boards of entities with a parent that is regulated by APRA or an overseas equivalent.
51. The Committees are concerned that this proposal is expressed too broadly and vaguely.
52. The problem statement references inconsistent treatments for bank and insurer boards and past concerns about available directors and subsidiaries with APRA-regulated parents or overseas equivalents.
53. However, the proposal as literally expressed would impose independence requirements on any entity in a group that is not an APRA-regulated entity (compare paragraph 43 of CPS 510) and to entities in a group that is not regulated by APRA at all but are part of a group that is regulated by a foreign prudential regulator.
54. We expect such a broad scope is not intended by APRA and we invite APRA to more clearly specify what it proposes.

Proposal 5: Board performance review

55. The Committees do not object to the concept of an independent triennial board review. However, the Committees strongly recommend that it should be clear that any recommendations from the review are not compulsory to implement, but should be for the relevant board to consider. This is because the board alone is responsible for its governance, and the board is best placed to consider the implications of a recommendation.
56. APRA also contemplates submission of the board performance reviews, which are confidential and subject to privacy issues. This is a requirement with the potential to impact candour of review participants. The Committees submit that a more appropriate requirement would be for a regulated entity to have a policy requiring it to

periodically engage an external review and to confirm to APRA that it has undertaken and considered the findings of that external review.

Proposal 6: Role clarity

57. The two elements of Proposal 6 are to:
- (a) define APRA's core expectations of the board, the chair and senior management; and
 - (b) provide additional guidance on which APRA requirements may be delegated to board committees and senior management.
58. Like APRA, the Committees have also observed a growing confusion on at least some APRA-regulated boards (mainly superannuation trustee boards) as to their role. Some APRA prudential standards and statements made by APRA to boards about directors' personal responsibility and accountability (especially for incidents that have arisen) have contributed to that confusion.
59. Specifically, those boards have difficulty reconciling the short, high-level definition of the role of the board being ultimately responsible for the sound and prudent management of the institution with the role of overseeing, challenging and holding to account management.
60. One of the by-products of that confusion has been a reluctance by some boards to delegate decisions to management and, we would argue, the ever-growing volume of board papers that now consistently run well into the hundreds of pages.
61. The Committees support APRA's proposal to amend its prudential standards to include a clear articulation of the primary roles of the board, the chair and senior management. That articulation should be consistent with the body of case law developed in recent years concerning those roles (including the role of the chair).
62. In that regard it is important that any enumeration of non-delegable duties of directors not undermine generally understood corporate law principles of delegation and reliance (see, for example, the discussion of non-delegable duties in the *Centro*¹ and *James Hardie*² cases). Director powers should expressly be considered delegable unless otherwise specifically identified.
63. To this effect, it is suggested that existing prudential standard provisions should clarify this is the case. For example, SPS510.9 says: "*The Board, in fulfilling its functions, may delegate authority to management to act on behalf of the Board with respect to certain matters, as decided by the Board*". But then provisions of other prudential standards use language that could reasonably be interpreted to suggest this general principle is limited in specific cases (for example, Investment Governance—SPS530.8(a) and, effective 1 July 2025, Member Outcomes—SPS515.08, SPS511.11, SPS515.17). It would be helpful if it could be clarified that this principle applies notwithstanding the provisions in other standards unless a standard expressly prohibits delegation. It would also be helpful if SPS510 could clarify that as well as delegating to management, the board can delegate to board committees. This is a particular issue, for example, in the case of SPS530.8(a) above: it is currently unclear

¹ *ASIC v Healey* [2011] FCA 717.

² *Shafron v ASIC* [2012] HCA 18.

whether the matters identified as board responsibilities can be delegated to an investment committee (which, in fact, has the specific expertise in these matters).

64. The Committees caution APRA against being overly prescriptive, as this could prevent entities from adopting measures that are most appropriate to their particular circumstances and/or are capable of delivering better prudential outcomes.

Proposal 7: Board committees

65. The Committees have no concerns to express about the proposals regarding board committees. However, we do note that the succession planning will need to be well considered in order to comply with the requirement and to constitute an additional board committee.
66. We also note that charters for APRA-mandated board committees will need to be carefully reviewed to clarify the role of non-voting attendees to guard against the risk of those attendees inadvertently stepping into a shadow director role.

Proposal 8: Director tenure and board renewal

67. The Committees are generally supportive of the limit on director tenure and engendering a strong culture of discussion at the board level around succession planning. In the context of large or listed companies a tenure limit of 10 years is generally seen as consistent with best practice (in the listed context, in determining independence).
68. In the context of RSE Licensees, and in particular, those based on the equal representation model, the proposal may cause difficulty with existing term limits. Nominations and elections are often on a four-year cycle. On this basis the Committees consider that a 12-year limit would be more practical. This can also be considered in the context that the level of training and onboarding for a new superannuation director may be significant, and so a period of 12 years would permit more value being contributed across three terms (rather than two terms).
69. There are good reasons, advancing stakeholder interests, why specific exceptions should apply to a tenure limit. These include most notably:
- where there is recent M&A activity that may require ongoing representation for integration purposes;
 - where a long-standing director is appointed to the chair role in what otherwise would be their last term of office. In this situation the typical principle adopted is that person be entitled to serve a further full term beyond the tenure limit; and
 - where there have been unexpected board retirements that mean ongoing corporate memory is available for a transitional period.

This list is not exhaustive. There may be many fact-specific circumstances that suggest the best interests of stakeholders will be advanced by an exception to the tenure limit. Any APRA policy on a tenure limit should recognise this principle.

70. Regarding the ability to apply to APRA for an exemption from the 10-year limit (or potentially 12 years in the case of superannuation funds), the Committees are of the view that this should be a matter for the relevant board to consider. Boards are governed by their relevant constitution (and trust deed where relevant), and by their accompanying policies. Ultimately, boards are accountable to their stakeholders for the governance of their company (or trust fund) and must act in the interests of their entity or members (as relevant) and are best placed to determine the circumstances that should justify an exception to the tenure limit.
71. On this basis we recommend that, rather than an application process, any exceptions of two years should be determined appropriately by the board itself (perhaps with an obligation to record the written justification). In the case of a listed entity there should be no specific period for any exception but an “if not, why not” disclosure obligation should apply to conform with the approach of the ASX Corporate Governance Principles concerning independence (and specifically requiring that disclosure obligation address the APRA expectation).
72. For the sake of completeness, the Committees also wish to note that:
- (a) the Committees are not aware of any evidence of the length of any director’s tenure adversely affecting the prudential standing of any particular APRA-regulated institution;
 - (b) directors with tenure of more than 10 years often develop significant levels of corporate knowledge, which are of significant value to the board;
 - (c) prudential regulators in other countries have not sought to impose tenure limits; and
 - (d) there are other avenues at APRA’s disposal, which could be used to address concerns about any particular director’s position and influence over the entity.
73. Finally, if APRA proceeds to implement this proposal, there will need to be some appropriate transitional arrangements put in place to avoid prejudicing boards that have a significant proportion of directors with longer tenure. The Committees believe a transition period of nine years (i.e., three three-year election cycles for most entities) would be suitable.

The Committees would be happy to engage further with APRA on this topic. Please reach out to Nathan Hodge, Chair (Submissions) of the Superannuation Committee [REDACTED], Philippa Stone, Chair of the Corporations Committee [REDACTED] and/or Pip Bell, Co-Chair of the Financial Services Committee [REDACTED] if there is anything arising out of this submission which APRA would like to clarify or discuss further.

Yours faithfully



James Popple
Chief Executive Officer