Australian Banking Association

Governance Review – Discussion Paper

APRA

6 June 2025

Australian Banking Association

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Key Recommendations

- APRA should incorporate changes to their governance principles through guidelines with an element of discretion, rather than inflexible requirements in the Standard. Any changes should be designed to support and work alongside prevailing requirements, rather than creating any contradictions.
- Industry believe that board skills and capability assessments should be conducted on a collective basis, to ensure appropriate diversity of representation and ensure there are sufficient high-quality directors available.
- Responsible persons, under APRA's proposals for fitness and propriety, should be replaced by those deemed Accountable Persons (APs) under the Financial Accountability Regime (FAR), and this change should not extend the FAR AP settings beyond their current scope.
- We believe that APRA's proposal to require at least two independent directors (including the chair) of a regulated entity to not be members of any other board within the entity's group (particularly in the case of non-operating holding companies (NOHCs)) is likely to increase costs, reduce efficiency, increase resourcing requirements, and create unnecessary duplication without necessarily delivering a clear improvement in governance standards. APRA should consider exempting NOHCs from this requirement.
- We do not believe it is necessary for APRA to become involved in the recruitment process unless there are specific concerns about an entity's practices, particularly to the extent that this exceeds what is required under the FAR. Additional clarity on what proactive engagement with APRA on potential appointments would look like is necessary before it could be supported by the ABA.
- We note that the extension of all superannuation practice on conflicts of interests may not be appropriate in the context of ADIs, given it is different laws, and there are already existing conflict management obligations in place.
- The ABA seeks confirmation of our understanding that the requirement for a majority of independent directors applies only to subsidiaries that are also regulated by APRA.
- The ABA welcomes APRA's proposal to provide clarity around matters currently requiring Board approval to be delegated to Board Committees, enabling further time for the full Board to focus on strategy, risk and high-end discussion.
- Industry proposes that if the tenure limit of 10 years is introduced, the discretion as to the extension of director limits to 12 years should be granted by the individual firm, to ensure appropriate flexibility in recruitment practices.

Policy Lead: [redacted]

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

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ABA submission to APRA

The ABA welcomes APRA's consultative approach on its proposals to reform and strengthen governance standards in the financial services industry. Ensuring appropriate standards of governance at financial firms is a key focus for both industry and regulators. This review provides an excellent opportunity to strengthen governance, while at the same time reducing duplication and providing clarity about board roles and responsibilities.

The ABA support strong effective governance and note the importance of facilitating a wide base from which to select directors (current and future) to ensure effective leadership and oversight by boards of critical financial institutions. We also note the importance of proportionality in the implementation of these reforms. Members seek clear and consistent guidance, which would avoid increasing or duplicating existing regulatory requirements, especially given the interaction between these proposals and the FAR requirements.

We look forward to working with APRA throughout the various stages of this consultation process. It is important that industry concerns are appropriately addressed to ensure smooth implementation of the proposals.

The ABA supports the aims of the proposals, although the actual detail of how these proposals will be codified into Standards and Guidance will be key to ensuring their success. In particular, some of the proposals on skills matrices, APRA notification on appointments, conflict management and director tenure will need to be drafted appropriately. Notwithstanding this, we note that best practice would be for APRA to incorporate these principles through principles and guidelines with an element of discretion, rather than inflexible requirements in the Standard.

Given the framing of the discussion paper around its eight proposals, our submission will be similarly framed on those topics.

1) Skills and capabilities

The ABA agree that ensuring boards have access to a broad range of skills and capabilities is an essential component of good governance. As noted in the discussion paper, Paragraph 19 of CPS 510 *Governance* currently requires that boards ensure that directors and senior management "collectively have the full range of skills needed for the effective and prudent operation of the institution, and that each director has skills that allow them to make an effective contribution to Board deliberations and processes". Further, as also noted in the discussion paper, listed entities are already subject to similar expectations under the *ASX Corporate Governance Principles and Recommendations* (CGPR).

Efforts to make sure that these principles are effectively implemented are to be supported. However, we believe that there should be caution on implementing additional measures in cases where there has been no evidence of poor performance and that these additional measures should not introduce new complexities.

Some clarity would be helpful in outlining what is requested in the proposal. For example, it is unclear whether the skill matrices (and the assessments) are about whether or not the skills and capabilities are available on an individual or collective basis. The ABA would note that there are already existing processes whereby directors are individually assessed for fitness and propriety. This would appear to be the more appropriate place for individual assessment rather than through the skills matrix.

Industry believe that it would make sense for the skills matrix to be on a collective basis, to ensure appropriate diversity of representation and ensure there are sufficient high-quality directors available. However, the discussion paper makes reference to minimum requirements for individual directors. Our view is that it is more important to ensure expertise across the entire board rather than ensuring each

director meets a certain standard across all skills and capabilities. Furthermore, a director who may identify as being an expert with a particular skillset may run the risk of being subject to additional scrutiny or potential liability compared to other directors that have not identified themselves as experts in that skill.

ABA members seek confirmation that any assessment of individual directors, and any related documentation, would not be publicly released. We do not believe there is justification for making public the assessment of individual directors across skills and capabilities, given the primary purpose is to ensure the board collectively as a whole has the right mix of skills and capabilities.

The ABA note that under CGPR Recommendation 2.2 listed entities already "should have and disclose a board skills matrix setting out the mix of skills that the board currently has or is looking to achieve in its membership", with such matrices published in Corporate Governance Statements. The ABA believe such existing disclosures are sufficient, with unlisted entities requirements rising to this level.

The ABA also note the discussion paper's reference to the need to verify skills and capabilities and agree that this is good practice in governance, rather than relying on self-verification by directors. However, we seek confirmation that such verification can be done within company entities, rather than seeking third-party verification which will add additional costs, particularly for smaller institutions. Ultimately, the ABA believe that there should be flexibility in how regulated entities implement verification of director skills.

Finally, with respect to how this proposal interacts with others in the discussion paper, particularly the ones on 'fitness and propriety', there is a large amount of overlap as is acknowledged in the discussion paper. Part of the benefits of this governance review should be the simplification and harmonisation of these requirements. APRA should carefully monitor the overlap to ensure that banks are not duplicating either their assessments or reporting in these cases.

2) Fitness and propriety

The ABA welcomes APRA's commitment to strong requirements to ensure fitness and propriety of responsible persons and the need to ensure that such checks are not just 'light touch' or 'tick the box' exercises, but a genuine commitment to high standards. Notwithstanding that, we believe that this needs to be balanced in a way to ensure that its implementation is both practical and not excessively burdensome, particularly in areas where there are existing requirements under the Financial Accountability Regime (FAR).

One issue is the scope of the requirements. Under the FAR, there are clear accountability requirements for those deemed accountable under the FAR (Accountable Persons or APs). Given the legislative consideration given to deeming those as accountable, it does not seem clear why APRA's fitness and propriety requirements extend to all those deemed as Responsible Persons (RPs) under CPS 520 *Fit and Proper*, beyond those deemed as APs.

This is particularly the case when additional reporting obligations are proposed. While the ABA welcomes APRA's consideration of aligning role definitions and relying on reports it receives under the FAR, the fact that they would seek to impose reporting obligations on RPs who are not APs under the FAR does not seem justified. Accordingly, the fitness and proprietary requirements should only apply to those persons deemed to be accountable under the FAR. In making this suggestion, we consider that the existing FAR definitions for identifying APs are appropriate and should not be expanded.

The other concern relates to APRA taking an enhanced role in the succession plans and nominations prior to appointment or public announcement at significant financial institutions (SFIs) or non-SFIs that are in heightened supervision. Fundamentally, recruitment and retention of management is a responsibility of firms and their own policies on such recruitment. We do not believe it is necessary for APRA to become involved in this process unless there are specific concerns about an entity's practices, particularly to the extent that this exceeds what is required under the FAR and we note it may impact on ASX-listed companies' ability to comply with its continuous disclosure obligations.

We seek additional clarity on what early engagement with APRA would look like. While our conversations with APRA, including at industry workshops, have suggested that it would not necessarily be prescriptive and burdensome, until industry sees what the requirements are it will be difficult to assess the ultimate practicality of such moves. We also note that given the existing notification responsibilities under the FAR (e.g. 21-day registration period), it is not clear why these are insufficient for APRA's purposes or whether such early engagement would be confined to this period. It is also unclear whether such engagement would be sought for interim appointments.

The ABA also notes that the FAR provides those affected by disqualification a right of review, both from the internal decision maker but also through the Administrative Appeals Tribunal. It is not clear from this discussion paper as to how procedural fairness and the right of review would be implemented were APRA to make a decision as to the fitness and propriety of a prospective candidate and how this could affect their reputation and employability.

3) Conflicts management

The ABA recognises the importance of requiring firms to proactively identify and manage conflicts of interest. We note the existing requirements to include a process for identifying, monitoring and managing potential and actual conflicts of interest under CPS 220 *Risk Management*, with directors' duties also imposing requirements for board directors.

While we accept there may be benefits in ensuring consistency across all sectors, there are some components of the current SPS 521 that may cause some issues with respect to its implementation in the banking sector. In particular, the requirement to 'develop registers of relevant duties and relevant interests and make them public', which would be extended down to all Responsible Persons. We note that the extension of the superannuation practice on conflicts of interest may not be appropriate in the context of ADIs, given they are operating under different laws, and there are already existing requirements as noted above.

Of concern is that such public disclosure could lead to client confidentiality being disclosed inappropriately. For example, a Responsible Person could be made to publicly disclose a relationship with a client that had not already publicly disclosed that it was a client of the bank.

We also note that banks are already required to make public related party disclosures in financial statements under AASB 124, which together with the requirements under CPS 220, would in the view of members meet the key objectives of transparency and proactive management that APRA is seeking, without imposing additional reporting burden or breaching client confidentiality.

Additionally, as noted in the discussion paper, these considerations are already taken into account in fitness and propriety assessments undertaken by banks.

It is not clear from the discussion paper exactly what additional documentation is required on conflicts, including the level of detail required. Having certainty on this would allow for better assessment of

whether the costs of collecting and maintaining a register would be material, although we understand that the practice and guidance provided to superannuation entities in SPS 521 and SPG 521 is intended to be indicative, including in assessments of materiality.

In general, the ABA believes that the most important part of conflict management is ensuring that boards have appropriate policies and processes in place to identify and manage them. We do not believe the benefits provided by additional public disclosure are worth the challenges of that implementation.

If the requirement to develop registers were to be extended to banks, we believe, for the reasons outlined above, that these should not be automatically disclosed publicly. Rather they should form part of a bank's internal conflict managements processes and could, upon request, be disclosed to APRA for assessment.

4) Independence

The ABA notes APRA's focus on intra-group conflicts of interest and its proposals to strengthen independence requirements. Concerns have been raised about the ability of the sector to ensure sufficient availability of high-quality directors if this proposal were introduced, particularly given the increases in requirements for directors outlined in other proposals in this discussion paper and directors would typically avoid joining multiple boards in the same industry (e.g. ADIs) to avoid potential conflicts of interest.

However, these concerns are more prevalent among smaller entities, particularly those with strong ties to local and regional communities. Notwithstanding those concerns, the ABA does not believe these proposals are unworkable, provided some concerns among certain cohorts are addressed.

Firstly, the ABA seeks confirmation of our understanding that the requirement for a majority of independent directors applies only to subsidiaries that are also regulated by APRA. Extending it to all subsidiaries would, in our view, make it impractical for many organisations to be able to attract sufficient high-quality independent directors.

Secondly, we note the implementation challenges for those banks that operate under a non-operating holding company (NOHC) structures to the requirement that "two of their independent directors (including the chair) are not members of any other board within the entity's group". We believe that this proposal has the potential to reduce the effective operation of some boards within these companies by reducing visibility and transparency of operations.

We note the existing protections on conflict management, as well as the proposal to conduct triennial independent performance assessments, will provide comfort on board performance. We also note that, if implemented, it would add substantive duplicative requirements, additional cost and resourcing requirements without delivering a clear improvement in standards. Furthermore, allowing the same directors to sit on a NOHC and licensed entity does not impact director independence since companies would typically have conflict management protocols in place.

Some areas of concern that have been raised by members include:

- The average fee for non-executive directors for companies with a market cap between $2,530 million and $6,974 million is $209,014 and for chairs is $351,898.[1] Particularly in the case where listed companies are already subject to ongoing scrutiny from shareholders

[1] See *A Review of 2023 Board Director Fee Adjustments*, Guerdon and Associates, 12 February 2024.

regarding the amount of fees paid to directors, APRA's proposal would add substantive cost to companies given the changes that would be required to various boards and committees.

- The proposal would increase companies' demand for additional non-executive directors that have required experience in ASX-listed, regulated entities (ADI, superannuation or insurance). Given the demand increase, this would put strain on the already limited talent pool of directors in the relevant industry since directors would be precluded from joining multiple boards in the same industry (e.g. ADIs) to avoid conflicts of interest.

- To increase efficiency and unnecessary duplication, NOHCs and licenced entities often hold concurrent meetings. Appointing different independent directors, including the chair, will reduce the ability for companies to hold concurrent meetings thereby increasing duplication and associated costs, particularly with regards to the efficient running of board meetings and ensuring that all NOHC directors receive required reporting for the licenced entity, which would still be a subsidiary of the NOHC.

If the suggested proposals are implemented, APRA should consider exempting NOHCs established to support APRA-regulated entities from this requirement.

The ABA believe that it is possible for a director (including a chair) to remain independent and act in the best interest of more than one entity if serving on multiple boards within a corporate group. Cross-directorships can be beneficial in ensuring that the entities are aligned and in sharing insights gained from elsewhere in the group. We acknowledge that cross-directorships can give rise to concerns on conflicts of interest, but note that there are already strong protections and requirements in place to manage real or perceived conflicts of interest and assess the independence of each director. Furthermore, all directors, whether independent or not, are required to act in the interests of the entity of which they are a director.

Finally, the ABA notes APRA's proposed change to its definition of independence. The discussion paper says that one of the aims of this consultation is to streamline and simplify proposals. The ABA believe that introducing additional changes to the definition of independence, especially when there are clear and well-established principles already in place under *ASX Corporate Governance Principles and Recommendations* (CGPR) Recommendation 2.3, could introduce unnecessary complexity.

We acknowledge that not all APRA-regulated entities are listed, but suggest that the intent should be to bring all entities up to a pre-existing high standard, rather to introduce new definitions. Similarly, changes that would modify existing understandings, such as removing "materially" from the current definition in CPS 510 or replacing "independent judgement" (which is used in CGPR) with "objective judgement", must be taken with care.

We note that 'independent' and 'objective' judgement have different meanings, particularly when used together. For example, 'independence' refers to freedom of conditions that may impair the ability to carry out responsibilities in an unbiased manner and 'objectivity' is an unbiased mental attitude that allows professional judgement, to fulfill responsibilities, without compromise.[2] Given APRA identified in its problem statement that the issue relates to directors considered to be independent under the current prudential standard as showing a lack of independent judgement, we think APRA should consider whether the revision in the proposed definition to 'objective judgement' is necessary.

Finally, we note the introduction of the reference to 'acting in the interests of the regulated entity' given s181 of the Corporations Act requires directors to act in good faith in the best interest of the corporation

[2] See for example the definition in Global Internal Audit Standards: The Institute of Internal Auditors Complete Global Internal Audit Standards.

and s187 allows directors of wholly-owned subsidiaries to act in the best interest of the holding company subject to conditions set out in the Corporations Act.

5) Board performance review

The ABA notes the potential for these requirements to be duplicative for listed entities that are already required to comply on an 'if not, why not' basis with CGPR Recommendation 1.6, which include requirements to (a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and (b) disclose for each reporting period whether a performance evaluation has been undertaken in accordance.

We also note that CGPR recommends that "The board should consider periodically using external facilitators to conduct its performance reviews", which would cover the independent third-party assessment requirements of the proposal. While obviously not all banks and APRA-regulated entities are listed, APRA could consider including a triennial requirement in guidance rather than a strict three-year interval, as companies may have valid reasons for not conducting an external review at the three-year mark as the review may be postponed to allow for new directors, or the chair to settle into their role before undertaking such review. We also note that APRA should not seek to inadvertently increase compliance costs (noting costs for external reviews can be significant) through the reporting requirements on this proposal, especially for smaller institutions.

6) Role clarity

The ABA welcomes the discussion paper's focus on finding ways to "facilitate better delegation to board committees and management" from boards, allowing them to spend more time on forward-looking strategy, risk and oversight. In principle, the central board responsibilities outlined in the discussion paper appear reasonable and we look forward to seeing further details on those, as well as those for chair and senior management responsibilities as the consultation progresses. The ABA note that as a starting point, it may be reasonable to assume that powers can be delegated unless there is a justification that a matter is core to a board's responsibilities.

Noting APRA's call for feedback on specific examples that would be more appropriately delegated to committees or senior management, some examples raised by members include:

- CPS 511 *Remuneration*, in particular Paragraph 52 (b) (for SFIs) that requires the board to approve the variable remuneration outcomes "on a cohort basis for highly-paid material risk-takers, other material risk-takers and risk and financial control personnel". We would suggest that such work could be delegated to the Remuneration Committee.

- CPS 230 *Operational Risk Management*. Although not in force yet, it is anticipated that the requirement of the board to approve the BCP and overall tolerances for the disruption of all critical operations may require boards to devote considerable time getting across documents to a highly granular level of detail, especially as it relates to third-party service providers, that could be better delegated.

- APG 120 *Securitisation*. Paragraph 60 states "the Board of directors and senior management must put policies and procedures in place that outline how the ADI will ensure it is not providing implicit support for a securitisation". This could instead reflect that it is the responsibility of

management to put these in place, and the Board's responsibility should be to satisfy itself that these are in place, and challenge management on their effectiveness.

The ABA would be pleased to work with APRA on further specific examples of where role clarity could be included, including on board requirements outlined in Attachment A of APS 117 *Interest Rate Risk in the Banking Book*, Part A of CPG 110 *Internal Capital Adequacy Assessment Process and Supervisory Review,* and the annual policy review requirements in APS 221 *Large Exposures* and APS 222 *Associations with Related Entities*.

7) Board committees

Given this proposal is a current requirement for the banking industry, we limit our comments to welcoming the application of proportionality in regulation through repealing this requirement for non-SFI banks and insurers. The impacts of excessive regulatory burden, while an issue for all banks, can be particularly acute for small- and medium-sized enterprises.

8) Director tenure and board renewal

The discussion paper acknowledges that the proposal to introduce a prescriptive hard limit on non-executive director tenure would be out of step with international practice and a movement away from a flexible, principles-based approach that APRA considers best practice in other areas.

While the ABA agrees with APRA in its goal to ensure well managed turnover of directors, we believe that a hard limit of 10 years would be difficult to introduce without challenges, even with the potential for APRA to grant a two-year extension in "limited and exceptional circumstances".

There are several reasons why the timing of a hard limit after 10 years would introduce challenges. For example, banks may identify an exceptional candidate, that would add materially to the capability of a board, who may not become available for a period (e.g. six months to a year) that would lead to an existing director going over the 10-year limit. It is not practical for companies to have to rely on being granted an extension to be able to approach and secure a director in a competitive market, especially in advance of having any knowledge as to how long such an application process might take.

Instead, industry would like to propose that if the limit of 10 years is introduced, the discretion as to the extension to 12 years should be granted by the individual firm, to ensure appropriate flexibility in recruitment practices. In such situations, it may be appropriate for APRA to seek an explanation of a firms reasoning in granting an extension, or, alternatively, such flexibility could be withheld from firms that APRA has identified as having issues with director independence.

Given that the discussion paper acknowledges that the literature does not identify a specific timeline, instead a range of 9-12 years, a simpler way of ensuring this flexibility would be to change the limit to 12 years rather than 10 years. This is consistent with some industry practice; for example, where Chairs are appointed for an additional term as a director for succession purposes.