

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

Via Email: PolicyDevelopment@apra.gov.au

6 June 2025

Governance Review – Discussion Paper

Thank you for the opportunity to provide a submission in response to APRA's Governance Review Discussion Paper.

We welcome APRA's consideration of the governance practices included in the discussion paper. We note that many of the discussion paper proposals align with ART's current governance structures and practices. Where any future regulatory standards or guidance changes, ART will comply.

ART believes that with all regulation there is an important guiding principle of balancing prescription and guidance, and we have provided feedback to that end.

ART is available to assist APRA by providing further information on any of the matters raised in this submission. [REDACTED], Public Policy and Government Relations Manager, is the primary Australian Retirement Trust contact regarding our submission and can be contacted at [REDACTED].

Yours sincerely,

[REDACTED]

[REDACTED]
[REDACTED]
Chair
Australian Retirement Trust

Proposals – Australian Retirement Trust responses

Proposal 1 – Skills and capabilities

Require regulated entities to:

- a) identify and document the skills and capabilities necessary for the board overall, and for each individual director
- b) evaluate existing skills and capabilities of boards and individual directors
- c) take active steps to address gaps through professional development, succession planning and appointments.

ART is supportive of this proposal.

Good corporate governance should focus on the cumulative skills of the board as a whole, while enhancing individual assessments. ART believes that the *diversity* of skills and perspectives of *individual* directors is important to support *collective* decision-making.

Too narrow a focus on individual directors' skills can weaken the board's collective responsibility, where all directors share accountability for decisions. Notions of individual director responsibility based on individual skill sets should be carefully calibrated against the dominant principle of collective corporate governance.

With respect to the proposals relating to individual directors, ART believes that the focus should be on both acquired skills and experience as well as continuous improvement, learning and development for all directors. This is especially important given rapidly changing operating environments, for instance, technological developments. The regulatory approach in this respect should be principles based and adaptive and avoid an unnecessarily prescriptive, compliance approach.

ART undertook a refresh of its Skills Matrix Criteria in early 2025 to ensure it aligns with the skills required for the organisation. The updated Skills Matrix Criteria is available in the [Fit and Proper Policy](#) on the website.

Proposal 2 – Fitness and propriety

Require regulated entities to meet higher minimum requirements to ensure fitness and propriety of their responsible persons.

Require SFIs, and non-SFIs under heightened supervision, to engage proactively with APRA on potential appointments.

ART is supportive of the proposal to clarify minimum requirements to ensure fitness and propriety of responsible persons. ART makes the general observation that APRA must be able to exercise its ability to take enforcement action in an unfettered way, if and when required. There is a foreseeable risk that if APRA is intricately involved in the appointment, and even implicit approval, of directors, that it may give rise to a perception of a conflict or risk when considering decisions around any potential enforcement action for boards or individuals that have been through this APRA process prior to appointment. It is important for confidence in regulatory bodies to be maintained and careful consideration of the proper role for a regulator in this area is required.

At a more practical level, the following should be considered and addressed in future guidance:

- There is potential overlap between this proposal and the accountable person suitability requirements under the Financial Accountability Regime. Regulatory overlap should be avoided.
- If proactive engagement with APRA is required on potential appointments (for Significant Financial Institutions (**SFIs**) and non-SFIs under heightened supervision), timing impacts on entities' requirements to fill board vacancies will need to be considered (for example, prior engagement with APRA may impact the ability of a regulated entity to comply with the legislated obligation¹ to fill board vacancies in 90 days). Attention will need to be applied to ensure proposals do not frustrate legislated obligations.
- Notifying APRA if concerns arise around a person's fitness and propriety before a determination has been reached, especially if the concerns are unsubstantiated, may have unintended legal consequences for an organisation, and potentially prejudicial impacts on the affected individual.

In any changes, APRA should consider the breadth of different nomination and appointment processes across different sectors and the different structures within each sector. The processes for listed entities in banking, superannuation and insurance are different to those processes which apply where the bank, superannuation fund or insurer is either member based, owned by an offshore parent, an internal trust or otherwise constituted.

The process for nomination and appointment of ART Board directors is set out in the [ARTPL Constitution](#). This was approved by APRA in 2022. As the ARTPL Board directors (from time to time) are the shareholders of ARTPL as the corporate trustee, the Board has external nomination processes to enhance the governance of the trustee. The external nomination process is in place to prevent the Board appointing its own nominees. Applications are considered by one of two nominating bodies (depending on the category of appointment) who consider all matters required under ART's Board Nomination, Appointment, Removal and Renewal Policy before formally

¹ Section 89(3) of the *Superannuation Industry (Supervision) Act 1993*

proposing a nominee to the Board. The Board cannot nominate a candidate, and the Board must assess and then unanimously approve the appointment (with a re-nominating director excluded from being entitled to vote in such an appointment). The nomination and appointment process for ART Board directors is already well considered and intended to ensure that candidates are put forward for appointment through an external process. No individual shareholder has a right of appointment, an important safeguard against an inappropriate or improper appointment. The ART process detailed above is one example where potential involvement by the regulator needs further consideration, specifically when and with whom APRA would seek involvement given the breadth of nomination processes and different ownership (and thus nomination processes) across the three sectors.

Proposal 3 – Conflicts management

Extend current RSE licensee conflict management requirements to banks and insurers so they are also required to:

- a) proactively identify actual and potential conflicts of interest and duty
- b) avoid or prudently manage conflicts
- c) take remedial action when conflicts are not disclosed or managed properly.

Require regulated entities to consider perceived conflicts, in addition to actual and potential conflicts.

ART supports the extension of the conflicts management requirements that are in place in superannuation and apply to RSE licensees to banks and insurers. ART's conflicts management policy and controls are set out in a [summary of the policy](#) that is publicly available on the ART website.

Proposal 4 – Independence

Note: This proposal relates to banking and insurance entities only. The definition of independence for RSE licensees is prescribed by legislation and would not be affected by this proposal

Strengthen independence on regulated entity boards by:

- a) requiring that at least two of their independent directors (including the chair) are not members of any other board within the entity's group
- b) making minor amendments to the independence criteria, including extending the prohibition on directors who are substantial shareholders in a regulated entity or group from being considered independent, to include material holdings of any type of security

Notwithstanding that this proposal is not intended to apply to RSE licensees and only to banking and insurance entities, ART makes the following general comments regarding independence of board directors.

ART has three independent directors on its board and believes the cohort of independent directors adds to the overall effectiveness of the ART Board. ART's Board Nomination, Appointment, Removal and Renewal Policy as approved by APRA in 2022 contains an APRA approved definition of independence. ART's policy is available [online](#).

We believe that it would be timely to review the definition of an independent director. While outside the scope of this process, ART believes the prohibition on independent directors of an RSE licensee being a member of the fund should be reconsidered.

There is strong alignment between a director of an RSE licensee's duty to act in the best interests of members and the interests of a member of the fund. To prohibit directors being a member of the fund they govern serves no principle or purpose.

While acknowledging this is outside of the current scope of this review, ART believes that it should be appropriate for an independent director of an RSE licensee to be a member of the fund because of this alignment of interests.

Further ART believes that it is timely to review the existing legislated definition of independence to ensure it aligns with current standards and expectations.

Proposal 5 – Board performance review

Require SFIs to commission a qualified independent third-party performance assessment at least every three years which covers the board, committees and individual directors.

ART is supportive of this proposal. ART already undertakes independent third-party performance assessments every 3 years and most recently completed this activity in 2024.

This is a proposal where striking the right balance between prescription and principles in the standard (as distinct from guidance) will be important to support effective, fit for purpose processes and outcomes.

Proposal 6 – Role clarity

Define APRA's core expectations of the board, the chair and senior management.

Provide additional guidance on which APRA requirements may be delegated to board committees and senior management.

ART supports this proposal and welcomes opportunities to delegate matters currently reserved for the board to board committees or senior management to allow the board more focus on strategic matters.

Some example principles that may be considered for delegation include:

- **Items that are endorsed by a specialised board committee are not required to also go to the board for approval.** ART considers requiring some items to also go to a board is duplication and adds no strategic value to board considerations. For example, CPS 511 Remuneration, states the board is responsible for the entity's remuneration framework and effective application. ART considers this overarching responsibility is appropriate for the board. ART suggests APRA may consider expanding the accountability of the role of the Remuneration Committee (People and Nomination Committee at ART) to be able to have the board's delegation to review some remuneration related matters that the Prudential Standard currently reserves for the board. For instance, it is questionable that a material, enhanced governance benefit is derived from the board reviewing and approving the material risk taker, and risk and financial control variable remuneration on a cohort basis especially where these roles are not executives. The Remuneration Committee, who are required by APRA to have the skills, experience and expertise to exercise independent judgement and a clear understanding of good risk management, would be better placed to review and approve these matters.
- **Items that are of a technical nature where there is no qualitative overlay should remain for approval at a board committee with that subject matter expertise.** ART notes board committees are responsible for ensuring controls are in place for those matters. For example, under SPS 160 Defined Benefit Matters, an RSE licensee must set a shortfall limit, approved by the board, for each defined benefit fund within its business operations. Another example under the same prudential standard, includes that a restoration plan may be developed in consultation with the employer-sponsor and RSE actuary and must be approved by the board. ART suggests APRA may consider amending the wording of the Prudential Standard to allow for a board committee to have the delegation to provide the required approval given, in ART's case, the Audit & Finance Committee has the subject matter expertise and is responsible for ensuring these items have been appropriately recommended. Requiring board approval in this case is further duplication.

There are occasions when the publication of prudential standards explicitly references the board, whilst possibly not intended to require the board to approve a certain matter. This gives rise to an implicit expectation that the board itself will be involved, with delegation to a board committee not possible, or at least not clear. This remains the case notwithstanding the overriding ability of the board to delegate any matters in accordance with s198D of the *Corporations Act 2001*. ART believes that APRA could give greater guidance in individual prudential standards around the appropriateness of the board's ability and decision to delegate matters to management. Rather than specifying matters that could be delegated, it may be helpful for APRA to advise of matters that APRA recommends it would be prudent for a board to retain. Unless prudential standards that state that the board must or should do something are changed, it will remain a debateable question of when boards can otherwise delegate. This can be improved and overcome through clarity in regulatory issuances, whether in standards or in guidance.

Proposal 7 – Board committees

Extend the current requirement for bank and insurer boards to have separate risk and audit committees, to apply to SFI RSE licensees as well. Repeal this requirement for non-SFI banks and insurers, allowing flexibility for smaller entities.

Mandate that only full board members can be voting members of APRA-required board committees.

ART supports these proposals, which reflects current practices at ART.

ART implemented a change to its committee structure effective 1 July 2024 to have separate risk and audit committees.

ART has also appointed a small number of experts as advisors to key committees who are **not** voting members of the board committees they serve. ART values experts as advisors to its committees, especially if matters are to be delegated by the board. The advisors supplement and complement existing skill sets and experiences by providing particular skills, capabilities *and external perspective* as priorities and needs of the organisation and external environment change.

Proposal 8 – Director tenure and board renewal

Impose a lifetime default tenure limit of 10 years for non-executive directors at a regulated entity.

Require regulated entities to establish a robust, forward-looking process for board renewal.

ART currently operates with a tenure limit of 12 years in line with current APRA guidance. This tenure limit was approved by APRA in 2022 at the time of the merger to create ART.

Importantly, when QSuper and Sunsuper merged to form ART, the tenure limits for directors were not reset and the existing tenures carried over from QSuper and Sunsuper to ART.

ART believes that any tenure guidance for directors should strike the appropriate balance of continuity, experience, and fresh perspectives within the board. If APRA sets a new default tenure limit, then ART will comply with any new tenure limit provided, as we do now.

ART recommends that APRA allow for some flexibility where the enforcement of a hard limit (irrespective of the number of years proposed) could lead to an undesirable outcome.

As flagged, this may include an avenue for the Board to determine an extension beyond a term limit in a range of foreseeable or exceptional circumstances, some of which are set out below. There is a case that any such extension should not be considered beyond an additional 12 months, unless approved by APRA.

Examples where an extension could be beneficial beyond a hard limit include:

- Where an experienced, tenured director is chairing a significant board committee (e.g. Audit or Risk) during oversight of a particular regulatory action or inquiry, it may be preferable that the director continues in their role beyond a hard coded tenure limit.
- Where a CEO departs an organisation (especially in an unplanned succession) it may be highly desirable to have stability and continuity in the Chair role during a transition.
- Where a preferred successor candidate to the Board (e.g. in a committee chair role) is identified but not available to immediately join the Board, it may be preferable to have an incumbent serve in the role to bridge to the identified appointee's availability.

The broader point here is that there should be a capacity for the Board to provide for time bound extension where a hard tenure limit (irrespective of whether that is 10 or 12 years or any other proposed tenure) would lead to a sub-optimal outcome for the entity and those it serves.