

6/06/2025

General Manager
Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority
Via email to PolicyDevelopment@apra.gov.au

Dear General Manager

Governance Review Discussion Paper submission

AustralianSuper welcomes the opportunity to provide a submission to the Governance Review Discussion Paper.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Over 3.5 million Australians are members of AustralianSuper, and we invest over \$365 billion of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

AustralianSuper recognises the critical role strong and sound governance plays in delivering our purpose. We believe that the success of AustralianSuper can be directly linked back to the quality of the Fund's governance over an extended period of time. We see continual improvement in our governance as an important driver of AustralianSuper's ongoing success and we appreciate the opportunity to provide feedback on this important topic.

It is a core tenet of both APRA's prudential framework and leading governance codes¹ that the primary responsibility for good governance and prudent risk management and accountability resides with the board and senior management of the entity. This is a core belief of AustralianSuper and we support APRA in its continuing efforts to apply this long-standing principles-based approach to the prudential framework to the industry as a whole. We support the objective of improving governance standards while encouraging proportionality, flexibility and evidence-based application of principles.

Principles-based governance maintains strong outcomes while allowing for diversity of practice according to the size, business activity and strategic requirements of the institutions being supervised. Diversity of practice is an important feature of the Australian superannuation system which has led to a degree of innovation and competition in Australia that is not seen in pension systems in comparable countries around the world.

¹ See, e.g., Financial Reporting Council, UK Corporate Governance Code 2024, <https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/>

Innovation and competition in the Australian system has been to the direct benefit of members, driving innovation in investment strategies and product development, ultimately leading to higher investment returns for members.

Competition is a powerful discipline on boards to continually improve their governance arrangements because good governance leads to better outcomes for members. Competition and the ongoing need to invest in improved systems, continues to drive funds to strengthen risk management and deliver better services to members. An environment of increased superannuation industry consolidation has increased these positive competitive forces, as funds position themselves to navigate a future of significant opportunity, where it is clear that success will be achieved only by those funds that consistently deliver for their members.

AustralianSuper would caution APRA not to use this Governance Review in a misguided way to deal with old problems which are more appropriately addressed through these competitive forces and the regulator's existing supervisory powers. It would be unfortunate if, as a result of this Review, we end up with an overly prescriptive approach to governance that imposes conformity on the superannuation funds and dulls innovation.

For superannuation funds, *Superannuation Industry (Supervision) Act 1993* (SIS Act) obligations require boards to prioritise the interests of members. Maintaining a principles-based approach supports both the independence of the sector and the accountability of boards for delivering strong outcomes to members, while ensuring the regulatory framework promotes competition and remains flexible, adaptive, and focused on substance over form. We believe that any reforms arising from this review should be directed towards enhancing the effectiveness of directors, rather than increasing compliance obligations for their own sake. Effective governance is best achieved through a focus on outcomes and sound judgement, rather than prescriptive rules. The capability of the board, the strength of its ethical culture, and robust succession planning are far more reliable safeguards for members' interests than rigid tenure requirements. It is important that trust in trustee accountability is maintained, and not diminished by the imposition of one-size-fits-all rule-making that could constrain innovation and the ability of funds to respond to the needs of their members.

We welcome APRA's clear statement that key proposals in the paper would not involve changes to the equal representation model under which employer and employee groups can nominate directors to boards of superannuation funds. This model has consistently delivered strong retirement outcomes for members.

AustralianSuper has two nominating bodies, the Australian Industry Group and the ACTU who each own 50% of the Trustee of AustralianSuper. This arrangement has worked well for AustralianSuper ensuring that the Fund remains focussed exclusively on the needs of members; it also provides two bodies who have a strong interest in the continuing success of AustralianSuper and who see it as their responsibility to ensure that AustralianSuper has directors who have the necessary skills, experience and commitment to deliver that success.

Our submission addresses most of the proposals raised in the Discussion Paper, with particular emphasis on Proposal 8 – Director tenure and board renewal. AustralianSuper recognises the importance of balancing experience and renewal for effective governance, ensuring that directors are well equipped and supported in their capacity to challenge management while also delivering strong strategic leadership grounded in breadth and depth of experience and commitment to the fund.

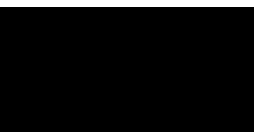
It is important to recognise the advantages that key long-tenured directors can bring to boards, including accumulated experience, corporate knowledge and stability in leadership. Superannuation is a long-term investment, and long-serving directors provide important continuity in governance. In AustralianSuper's case we would particularly stress that the long-standing involvement of senior office holders from the two sponsoring bodies has a particularly important role to play. Therefore, AustralianSuper recommends that APRA should not impose arbitrary prescriptive director tenure limits for superannuation fund boards but accept that funds need the flexibility to reappoint directors in exceptional circumstances who have special skills and experience and recognise that directors who are senior office holders with important sponsoring bodies have a particularly important ongoing role to play. AustralianSuper accepts that such an approach could work within a framework that specified a tenure limit where it is accepted that in the normal course of events directors would not expect to be reappointed once their time on the board has reached this limit.

AustralianSuper currently operates on the basis of a 12 year tenure limit with provision to reappoint directors beyond this limit in exceptional circumstances. No directors currently have tenure beyond the 12 year limit and the average tenure of directors is 5.7 years. It is AustralianSuper's view that any tenure limit short of 12 years would undermine the dynamics of board behaviour, weaken the capacity of boards to challenge management and would be poor governance.

Further detail on our feedback is set out in the Attachment to this submission.

We would be pleased to provide additional information or to discuss this submission in further detail. If that would be of assistance, please do not hesitate to contact me or [REDACTED], Head of Government Relations & Public Policy ([REDACTED]).

Yours sincerely



Chief Strategy Officer

Attachment: Key Issues

Proposal 1 - Skills and capabilities

The Discussion Paper proposes that all regulated entities identify and document the skills, capabilities and behavioural attributes that the board needs to deliver on its strategy and perform its role – including any specific expectations for the chair, chair of board committees and other individual directors. The paper further proposes that the board evaluate the skills and capabilities and take active steps to remedy any gaps.

AustralianSuper utilises a **Board Skills Matrix** which represents the key skills and experience that the board is looking to achieve in its membership, at an individual and collective level. Director skills are reviewed annually against the skill domains, and the results are used to assess the individual and collective experience and skill levels of the directors on the board. These skills levels are determined by a combination of individual self-assessment and collective recalibration and are approved by the board. AustralianSuper aims to address any identified gaps or weaknesses through professional development and succession planning. When a vacancy occurs on the board, the Chair as part of a consultative process, writes to the relevant sponsoring body, or both sponsoring bodies if the vacancy is for an independent director, setting out the skills requirements of the board. The AustralianSuper board then needs to approve any nomination. We consider the Discussion Paper's proposals to be consistent with our existing approach.

Diversity on boards

We note that the Discussion Paper would benefit from also considering the value of board diversity, including a diversity of skills and experiences. The Australian Institute of Company Directors has identified the positive impacts that board diversity can have on organisational governance, including:²

- better decision making and problem solving;
- increased innovation and creativity;
- improved company reputation and stakeholder relationships; and
- enhanced understanding of the customer market.

AustralianSuper has a Diversity, Equity and Inclusion Policy which includes measurable objectives for achieving gender diversity on the board. We value a diverse board, which leverages varied skills, experiences, and backgrounds of directors to enrich decision-making with a wider range of viewpoints. Diversity may include factors such as gender, age, ethnicity, cultural background, disability, sexuality. We

² AICD, Why is Board Diversity Crucial to an Organisation's Success? <https://www.aicd.com.au/board-of-directors/diversity.html>

encourage APRA to also consider diversity in skills, education, and professional experience. We consider that the APRA governance framework would be strengthened if it were to include the benefits of diversity.

Board skills should be considered in aggregate

We recognise and support the principle that all directors of superannuation funds should possess a minimum level of foundational skills to discharge their duties effectively and in the best interests of members. Our Fit and Proper Policy and Board Skills Matrix include minimum requirements for individual directors and committee members. However, the proposals in the APRA Discussion Paper risk becoming overly prescriptive and technical, potentially creating unintended barriers to board renewal and diversity, and undermining the effectiveness of the board as a whole. It is appropriate that directors demonstrate a baseline of core competencies such as financial literacy, regulatory understanding, and governance capabilities, to ensure effective collective oversight and decision-making. These fundamental skills are the basic building blocks of a well functioning board. However, they need to be seen in the context of how individual directors work together. Focussing on a narrow prescriptive list of technical skills in isolation is unlikely to lead to an effective board.

The effectiveness of a board lies in its collective capability, not only in individual technical skills. The Hayne Royal Commission in steering attention away from rules prescribing director numbers or composition or prescribing particular forms of nomination or selection processes emphasised the importance of “ensuring that the board is, as far as possible, constituted, at all times, by directors who, *together*, will form a skilled and efficient board.”³ It is not without significance that *together* is italicised in the original text.

If APRA were to adopt an approach of mandating detailed, technical, and role-specific skillsets for every individual director, there is a real risk that this would diminish the collective capability of the board by skewing decisions to those directors with recognised skills on a particular subject and marginalising other directors. We consider the relevant expertise of directors on particular subjects needs to be well balanced with the collective responsibility of the board as a whole.

The process may be seen to effectively give APRA a de facto veto over director appointments, as prescriptive skill requirements shift the responsibility for assessing the appropriateness of appointments from boards to the regulator. This would undermine the board’s ability to determine the mix of skills best suited to its strategy and members. For a system that has benefited extensively in the past from the innovation and competition that has come from diversity of practice, providing a government agency with prescriptive powers over the selection of individual directors runs the risk of homogenising superannuation boards and dulling the innovative and competitive spark that has underpinned the success of Australia’s superannuation system.

³ The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report Volume 1 [2.4.1].

Where a capability gap is identified, we suggest an approach to raise the overall skill of the board through professional development, rather than imposing hard barriers on individual appointments. This is the approach that AustralianSuper has adopted with technology skills. Rather than seek out an individual director with technology skills, or look for consultants, the board has consciously set about raising the technology skills of all directors.

Overall, the focus should remain on ensuring that the board as a whole has the right mix of skills, with minimum standards for individuals, and that any gaps are addressed through a balanced, principles-based approach to board capability and succession planning.

Finally, we welcome the clarifying statement in the Discussion Paper that this proposal would not involve any changes to the equal representation model. As Hayne found, superannuation fund directors are trustee directors and the focus should be on ensuring that these directors have the necessary skills, capability and character – regardless of how the directors are appointed. This approach by Hayne is also consistent with previous prudential and legal reviews of superannuation and indeed bank and financial services governance models.

Recommendation: While we support proposals to raise minimum standards for directors and boards, the right balance needs to be struck so that focussing on individual director skills does not undermine the capacity of the board to work effectively *together*. We reiterate AustralianSuper's support for the importance of a board's collective competence per the SIS Act and suggest APRA avoids unintended disqualification of otherwise fit directors through formulaic skills assessments. Skills matrices should remain entity-specific and flexible to reflect strategic evolution, rather than codified into overly rigid categories. APRA should also consider the inclusion of diversity in its framework.

Proposal 2 - Fitness and propriety

APRA proposes to require regulated entities to meet higher minimum requirements to ensure fitness and propriety of their responsible persons. The Discussion Paper further outlines triggers for a fit and proper assessment and proposes requirements for SFIs to engage proactively with APRA on potential appointments.

We note, however, that some of the additional matters to be introduced to assess fitness and propriety that are subjective have the potential to be interpreted in different ways causing potentially destabilising uncertainty. As part of our fitness and propriety assessments, AustralianSuper assesses any actual, potential or perceived conflicts as well as potential reputational risk and the potential impact on the Fund and members. We recommend that careful attention be paid to the construction of these requirements and the role that APRA might play in assessing them, to ensure that there is no scope to interpret or apply these requirements politically, especially in hindsight.

Recommendation: We consider that additional prescriptive regulation that includes subjective or opaque director assessment criteria could destabilise board decision making. Trustee boards are best placed to assess their own capability needs and the strengths of prospective directors in alignment with fund strategies. We also encourage APRA to align reporting thresholds with FAR to prevent dual-reporting burdens.

Proposal 3 - Conflicts management

The Discussion Paper proposes to extend requirements that apply to RSE licensees relating to conflicts management to banks and insurers, including to:

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

The Discussion Paper also proposes to extend requirements to all regulated entities to consider perceived conflicts, in addition to actual and potential conflicts.

Superannuation funds are subject to comprehensive and robust requirements to identify, manage, and avoid conflicts of interest. Under APRA's prudential framework, RSE licensees are required to have a board-approved conflicts management framework in place. This framework must ensure that all potential and actual conflicts are identified, assessed, and either avoided or prudently managed, with priority always given to the interests of members. The SIS Act further reinforces these obligations by requiring trustees and directors to act in the best interests of members and to prioritise those interests in the event of a conflict.

APRA's current guidance recognises that a sound conflicts management framework includes continual assessment, regular review, and transparency, with registers to record relevant duties and interests. The responsibility for managing conflicts sits with the RSE licensee, as the entity best placed to understand the context and nuances of its own business.

Where APRA identifies concerns with how a fund is managing conflicts, it is well equipped to address these matters directly through its existing supervisory toolkit, including supervisory reviews, thematic assessments, and, where necessary, remedial action.

Perceived conflicts may be applied subjectively

A requirement to address 'perceived conflicts' outlined in the Discussion Paper, would be subjective and open to interpretation, which may lead to unintended consequences. While AustralianSuper already considers and manages perceived conflicts, we suggest that an increased focus on this may become politicised. For example, it could create adverse incentives for directors to be targeted by external campaigns aimed at manufacturing a perception of conflict, even where no actual or material conflict exists. As community debate becomes more polarised, this possibility needs to receive careful consideration.

The subjective nature of a 'perceived conflict' requirement could also materialise in post hoc assessments of board decisions. A board may have reasonably and diligently concluded at the time that there was no material conflict, only to have that judgement questioned retrospectively on the grounds of perception, rather than substance.

While it is important for funds to consider how conflicts might be perceived by external stakeholders, the focus should remain on identifying, disclosing, and prudently managing actual and potential conflicts. Transparency and openness are fundamental to this process, but perception alone should not override a reasoned assessment by the board.

In addition, APRA's current guidance in *Prudential Practice Guide SPG 521 Conflicts of Interest* (SPG 521) states that a director might be expected to represent the interests of the body that nominated or appointed them, and that this expectation could result in the director having an obligation to that body.

We do not agree that a director has a real or perceived conflict solely by virtue of their nomination to the board. The inclusion of 'perceived conflict' in the Discussion Paper, alongside APRA's assertion in SPG 521, appears inconsistent with the statement in the paper that this proposal would not involve changes to the equal representation model. Treating nomination as a conflict – whether real or perceived – risks undermining the established governance structure and the intent of equal representation and, as outlined in our comments on Proposal 1, would be inconsistent with the findings of the Hayne Royal Commission. If APRA were to incorporate this material from current guidance into enforceable standards, it could well compromise the legislated intent of the Parliament and cause destabilising confusion.

The representative trustee system is common across pension systems in all OECD countries with trustees aligned only to the interests of members. These trustees face no conflict between the interests of members and shareholders of parent companies.

Recommendation: We support extending current superannuation conflict management requirements to banks and insurers to reduce inconsistencies; however, we recommend that increased public disclosures of such registers to be subject to materiality thresholds and privacy protections. Additionally, we recommend that APRA continues to address perceived conflicts within guidance rather than standards, to avoid issues of subjective interpretation and application of what may be regarded as a perceived conflict. We also recommend that APRA recognises that there is no prima facie structural conflict between the interests of members and the interests of shareholders in profit-to-member funds.

Proposal 4 - Independence (Banks and Insurers only)

The Discussion Paper proposes to strengthen independence on boards of banks and insurers operating under a group structure. This proposal relates to banking and insurance entities only. We acknowledge that

this review will not extend to legislation such as the SIS Act and support APRA's stated aim that this review will not involve any changes to the equal representation model.

Proposal 5 - Board performance review

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

AustralianSuper recognises that board performance reviews are an important governance tool that fosters discussion on whether the board is meeting its objectives, performing well overall, and continuing to successfully deliver on its purpose of helping members achieve their best financial position in retirement. Most importantly, AustralianSuper has found that regular board performance reviews are an effective way of helping boards improve how they work together, use their time effectively and deliver on their responsibilities.

Our board evaluation policy requires the board to formally consider whether it is meeting the objectives it has collectively set. Part of this process includes consideration of the board's overall skills, culture, and dynamics. The evaluation process also includes an assessment of how individual directors have performed each year. An internal evaluation process is undertaken annually under the leadership of the board chair with the option of involving an independent expert. An external independent review is undertaken every third year (at a minimum). The process for assessing the performance of the board and directors may include face-to-face meetings between directors and the chair (or the external consultant where an independent review is undertaken), observation of board and committee meetings by an external consultant, the completion and evaluation of self-assessment questionnaires, group discussions, and meetings with the chairs of each committee and the chair of the board (or a combination of these processes).

Board evaluation at AustralianSuper gives all directors the opportunity to provide constructive feedback, which assists the board as a whole and directors individually to improve their ability to contribute to the work of the board. The board discusses the outcomes of each performance review and uses this information as the basis for considering how it can add further value to the board's performance. The board evaluation process also allows the board to identify opportunities to address knowledge gaps in broad and specific areas, and to identify the skill and experience requirements it may need in the future.

We note that no detail is provided on what APRA would consider to be 'credible and appropriately qualified experts' to conduct the external assessments. If a narrow definition is applied in this context, engaging a potentially limited number of experts may become challenging and/or prohibitively costly. For example, would positive assurance be required?

Recommendation: We support the proposal to require SFIs to conduct triennial external reviews, as well as narrowing the scope of annual reviews. APRA should outline a wide range of attributes it seeks in an independent third-party expert including how APRA views the nature of the relationship between the third-party expert and the board concerned.

Proposal 6 - Role Clarity

The Discussion Paper proposes to define APRA's core expectations of the board, the chair and senior management in its prudential standards. APRA further proposes to provide additional guidance on which APRA requirements may be delegated to board committees and senior management.

We support APRA in providing clarity of the roles between boards and management. It is important that this review reinforces the established delineation of roles, with boards retaining ultimate responsibility for the sound and prudent management of the fund's operations and strategy. We note this in relation to recent prudential consultations, where certain recommendations have created tension by proposing a shift of traditional management responsibilities to the board. For example, AustralianSuper's submission to APRA's consultation on *Prudential Practice Guide SPG 530 Investment Governance* (SPG 530) highlighted that, in relation to investment valuations, funds should be empowered to determine the governance and level of delegated responsibilities that meet their needs, while acknowledging that the board maintains ultimate responsibility.⁴

Recommendation: While the AustralianSuper board is confident in its role in delivering outcomes for members, we support APRA's proposal to define core expectations of boards, chairs and senior management generally, in order to provide guidance on requirements that may be delegated to board committees and senior management. We support APRA in focussing its changes to allow boards to concentrate on strategic matters that deliver value for members.

Proposal 7 - Board Committees

The Discussion Paper suggests extending the existing requirement for bank and insurer boards to maintain distinct risk and audit committees to also apply to SFI superannuation funds. It also proposes repealing this requirement for non-SFI banks and insurers, providing flexibility for smaller entities. Furthermore, APRA proposes to mandate that only full board members can be voting members of APRA-required board committees.

AustralianSuper has a separate Risk and Compliance Committee which oversees effective risk management, enterprise-wide risk governance, compliance management, conflicts management, the Whistleblower program, and promotes a risk and compliance-aware culture.

The AustralianSuper board also includes a Finance and Audit Committee. This committee oversees the business plan review, financial management, and financial reporting requirements. It ensures adequate and accurate accounting and financial reporting processes, compliance with all applicable financial regulatory and statutory reporting requirements, and taxation obligations. The committee also manages an effective and

⁴ AustralianSuper, **Submission to APRA consultation on draft prudential practice guide on investment governance**, March 2023.

independent internal and external audit program and an assurance program that includes independent reviews. It also oversees the work on the Long Run Cost Shape of the Fund which assists the board with its objective to deliver value to members at a competitive cost.

However, we believe that there is a role for specialist members of committees who have skills that you would not normally find in a director. In fact, their specialist skills may be so narrow that they would not be well suited to the role of a director. However, on specific committees their contribution can be invaluable. To perform this invaluable role they need to be full members of the committee, be engaged and invested in outcomes and be respected by management as having the full authority of a committee member. For this to happen they need to be a voting member of the committee. AustralianSuper has three specialist committee members on the Investment Committee who are not directors. These specialist committee members make an invaluable contribution, a contribution that they could not make if they were consultants or advisers. Moreover, the board is highly supportive of this arrangement believing that the involvement of these three specialists as full members of the Investment Committee materially assists the board with its responsibility for the sound and prudent management of AustralianSuper's investments.

Recommendation: We support the proposal to require separate risk and audit committees for SFIs across all APRA-regulated industries. However, we recommend that specialist committee members on specific committees who have skills not normally found in a director but who can make an invaluable contribution that could not be replicated by an adviser or consultant, should be full members of the committee and exercise full voting rights.

Proposal 8 - Director Tenure and Board Renewal

The Discussion Paper proposes a 10-year lifetime tenure limit for non-executive directors with the possibility of a two-year extension to be granted by APRA in limited and exceptional circumstances.

AustralianSuper recognises that balancing experience with renewal is essential for effective governance, as it ensures that funds benefit from seasoned expertise while also embracing fresh perspectives. Renewal allows for the infusion of new ideas, diverse skills, and innovative approaches, helping funds adapt to changing environments and challenges. A board composed solely of long-tenured members may risk becoming stagnant or overly comfortable, potentially compromising its ability to critically evaluate decisions. We also acknowledge that renewal can reduce the possibility that long time directors might become captured by, and potentially less likely to effectively challenge, fund executives. However, there is also the possibility that the rapid turnover of directors might make the board less able to challenge management particularly if the board is dealing with long serving executives. It needs to be acknowledged that the superannuation sector has a long history of highly influential long serving Chief Executives.

We believe that imposing mandatory term limits on all directors without exceptions is not the most effective approach to achieving effective governance, and no clear justification for doing so is provided in the Discussion Paper.

The importance of continuity and experience of long-term directors is recognised by academic studies and regulation overseas.⁵ The UK Corporate Governance Code, for example, does not impose mandatory director tenure limits. Instead, it adopts a principles-based approach, allowing for companies to provide a clear explanation in circumstances where retaining the services of a long serving director is in the company's best interests, reflecting the importance of stability and experience. This flexible framework recognises the value of both board continuity and refreshment, and enables companies to tailor governance practices to their specific circumstances and strategies.

Imposing mandatory term limits on non-executive directors is a blunt approach to regulating governance which potentially focuses on individual directors at the expense of considering the Board as a whole. It undermines the value that skilled and experienced directors with deep institutional knowledge can bring to ensuring the best outcomes for members. Outlined below are some of these benefits.

8.1 Benefits of long-tenured directors

- Accumulated experience and corporate knowledge
- Stability in leadership
- Continuity in governance

8.1.1 Accumulated experience and corporate knowledge

Accumulated experience in director tenure refers to the depth of knowledge and understanding that directors gain over time. This includes familiarity with the organisation's operations, strategic goals, and industry dynamics. Directors with long tenure often bring historical context to decision-making, enabling them to foresee potential challenges and opportunities based on past experiences. They can also build strong relationships with stakeholders, which can be invaluable for governance and strategic alignment.

8.1.2 Stability in leadership

Stability in leadership plays a crucial role in fostering trust and continuity within superannuation funds. Stable leadership provides a sense of reliability and predictability, which is essential for building trust among stakeholders, such as fund members, employees and regulators. Stable leadership ensures that long-term strategies are implemented effectively. This continuity can lead to better decision-making, as leaders with a

⁵ See, e.g., Ben-Amar, W., Francoeur, C., Hafsi, T., & Labelle, R. (2013). What makes better boards? A closer look at diversity and ownership. *British Journal of Management*, 24, 85–101.

deep understanding of the fund's history and objectives are better equipped to navigate challenges and seize opportunities.

Moreover, stable leadership contributes to a cohesive organisational culture, where shared values and norms are reinforced over time.

8.1.3 Continuity in governance

Long-serving directors provide continuity in governance, which is important in superannuation given that it is a long-term investment. They facilitate management succession and generational changes on the board.

Further to this, strict tenure limits may have the unintended consequence of significantly narrowing the pool of directors to be chosen as chair or chairs of committees. Committee chairs are often selected from among directors who have already completed one or two terms, which are usually three or four years in length. Imposing rigid tenure caps could mean that by the time a director has gained experience on the board and understanding of the fund to be an effective committee chair, they are already approaching the end of their permitted service.

8.2. Tenure limits and the need for fund discretion

While AustralianSuper recognises the role of board renewal in supporting strong governance and outcomes for members, we consider it important for funds to retain sufficient discretion to manage director appointments in a way that aligns with their specific risk profiles and fund strategies. Outlined below are our reasons for supporting fund discretion in director appointments.

- There is no justification for prescriptive time limits
- Rigid tenure limits may not be in the best interests of members
- APRA's power to approve an extension is a veto authority in all but name

8.2.1 There is no justification for prescriptive time limits

The Discussion Paper acknowledges that introducing mandatory time limits would make Australia's framework more prescriptive than other overseas countries and justifies this on the basis that APRA lacks 'formal power to address tenure through the reappointment process', i.e., it does not have a veto power.

This argument ignores the outstanding performance of Australia's superannuation system when compared with overseas countries where the prudential regulator has a veto power. The countries referenced in the paper – The Republic of Ireland, Singapore and the United Kingdom all rank below Australia in the Mercer CFA Institute Global Pension Index. Two of the world's top-ranked pension plans, those of the Netherlands and Iceland (ranked no.1 and no. 2), have equal representation governance models and are not subject to a regulator veto power or prescribed tenure limits.

The argument in the paper also ignores APRA's existing power under the SIS Act to apply to the Federal Court to remove a director.

8.2.2 Rigid tenure limit not in members best interests

APRA's current position on Board Renewal set out in *Prudential Practice Guide SPG 510 Governance* (SPG 510) provides guidance on maximum tenure limits – not rigid rules. While it notes 'there would be limited circumstances in which maximum tenure limits exceeding 12 years would be appropriate', the discretion to extend tenure remains with the fund. We consider this to be an appropriate response for the following reasons.

- Funds are best placed to evaluate the collective and individual performance of directors and to determine whether a director's continued engagement and contribution remains valuable.
- Differences across funds, including size and membership, mean that reasonable discretion is more likely to deliver better outcomes for members than inflexible rules.

AustralianSuper seeks to balance new appointments bringing fresh perspectives with a small number of long-serving board members who carry deep knowledge of the fund's evolution, contributing to its strong long-term performance. Our Board Renewal Policy embeds this approach and is consistent with SPG 510. This approach results in a Board comprised of people with well-rounded skills and experience who are committed to the values of the fund.

8.2.3 Veto authority in all but name

The Discussion Paper acknowledges that APRA does not have formal approval or veto powers. Other proposals in the paper are aimed at uplifting skills and capability, ongoing fitness and propriety assessments and conflicts management. In combination, this should ensure that the right people are appointed to boards and importantly reappointed based on the skills, experience and the contribution they make.

It is therefore surprising that APRA is proposing to use power to approve or deny an extension request and consequently determine whether a non-executive director remains on a board.

8.3 Additional considerations if APRA applies prescriptive tenure limits to directors

While AustralianSuper's recommendation is for APRA to avoid prescriptive tenure limits for directors, we provide some further considerations to ensure any new requirements are practical, proportionate and help to deliver outcomes for members.

8.3.1 Tenure limits should not be less than 12 years

If APRA is to impose a maximum tenure, we recommend that the limit be no less than 12 years. This approach is aligned with the length of director terms, as director terms in the superannuation sector are most

often set at three or four years in duration. A 12-year term limit is a practical multiple of these standard terms, allowing for three or four full terms and facilitating orderly succession planning.

This number is also consistent with existing policies. Under SPS 510, super funds are required to have a policy for the nomination, appointment and removal of directors, including defined director terms in office and maximum tenure period. The current APRA guidance in SPG 510 references 12 years as a benchmark for director tenure. Many funds have structured their governance frameworks around this benchmark, and a sudden shift to a shorter tenure would be highly disruptive to existing succession plans. Retaining a 12-year limit respects the investments funds have made in governance processes and avoids unnecessary churn of high-quality directors.

8.3.2 Exclude tenure on predecessor funds from lifetime maximum limits

AustralianSuper suggests that tenure limits should not automatically include service on all predecessor funds. SPG 510 already requires RSE licensees to develop and implement a considered approach for assessing each director at the end of the maximum tenure period to determine whether it is appropriate for the individual to be reappointed, including having regard to periods of time served on the board of a predecessor fund. Many superannuation funds have undergone mergers, successor fund transfers and restructures, forming boards completely different to their predecessors and, in many cases, without taking onboard members of senior management from the predecessor fund. In these circumstances, having served on the predecessor board would not present a risk to the director's ability to exercise independent judgement. Including service on all predecessor fund boards in tenure limits, without allowing funds to take a considered approach, could unfairly disqualify experienced directors from current boards, which have new and different mandates, cultures, risk profiles, executive teams and governance.

8.3.3 Allow extension beyond 12 years on an exceptions basis

If a 12-year tenure limit is adopted, funds should have the flexibility to extend a director's tenure in exceptional circumstances on an exceptions basis. This approach is consistent with the ASX Corporate Governance Principles. A fund's board is best placed to assess whether a director's continued service is in the best interests of members, taking into account individual and collective board performance, continued independence of thinking and the absence of conflicts. A prudent fund should carefully balance the advantages of having a small number of long-serving directors with the benefits of strategically renewing and refreshing its board members. AustralianSuper accepts that having a capacity to extend a director's tenure in exceptional circumstances would need to work within a framework where it is accepted that in the normal course of events directors would not expect to be reappointed once their time on the board has reached the tenure limit.

Funds should be required to inform APRA of any decision to extend tenure beyond 12 years, providing a clear justification for the extension. In addition to confirming that the director continues to meet all baseline

requirements, funds should outline the specific exceptional circumstances that make an extension appropriate and in members' best interests. The key principle informing this decision would be the board forming a view that an extension is a better outcome for members than appointing a new director. A particular circumstance we have in mind is the need to reappoint a senior office holder of one of the two AustralianSuper shareholders. One of AustralianSuper's great strengths is that the two sponsoring shareholders have been great supporters of the fund and take their responsibility to nominate talented directors who strengthen the fund very seriously. Much of this close and very supportive link between AustralianSuper and the two sponsoring shareholders has come from the practice of having the senior officer holders of the two bodies sit on the AustralianSuper board. Losing the senior office holders from the AustralianSuper board because of tenure limits runs the distinct risk of weakening the sense of responsibility that the two shareholders feel for the ongoing success of AustralianSuper which would only be to the detriment of the fund and the members.

More broadly, AustralianSuper believes that the responsibility for board composition and performance should remain with the fund's board, in line with their fiduciary duties and strategic objectives and not become a matter under the direct control or direction of the regulator.

Recommendation

We recommend that:

- APRA does not impose prescriptive director tenure limits. While board renewal is important for maintaining effective oversight, introducing fresh perspectives and supporting strong governance, superannuation funds are best placed to determine the approach to director renewal that aligns with their members, obligations and strategies. Allowing funds this discretion ensures that board composition continues to reflect the skills, experiences and continuity required to deliver outcomes for members.
- Should APRA propose a tenure limit, the limit should not be less than 12 years, consistent with current APRA guidance. Importantly, funds should have the ability to extend a director's tenure beyond 12 years in exceptional circumstances, on an exceptions basis, where the board determines that the director's continued contribution remains in the best interests of members; exceptional circumstances should include the need to reappoint the most senior Australian Industry Group and ACTU appointees, which are the senior office holding owners of AustralianSuper.