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APRA Governance Discussion Paper

COBA welcomes the opportunity to provide feedback on APRA's *Governance Review Discussion Paper*. As the industry association representing Australia's customer-owned banks (mutual banks and credit unions), COBA has worked with its members to review and provide feedback on these proposals. COBA appreciates the commitment from APRA to not introduce any new routine reporting requirements on non SFIS as part of this governance standards review.

Strong governance is essential to maintaining a resilient financial system and delivering the best outcomes for consumers. COBA members understand the importance of trust and confidence, evident in the sector embracing the Customer Owned Banking Code of Practice and the Scams Safe Accord.

In terms of the specific proposals within the *APRA Governance Review Discussion paper*, COBA is supportive but is keen to work with APRA to ensure that the measures to take into account the unique model that drives customer owned banking in Australia. Clearer guidance should be provided around skills and capabilities, fitness and propriety and director tenure. COBA is aware there are no mandated tenure limits in any other jurisdiction and as such, is not supportive of a mandated 10 year tenure limit as proposed. APRA should, however, promote a 12 year limit as part of its formal guidance and where there are exceptions e.g. during a merger or other significant transformation, should seek formal advice from the ADI concerned. This 12 year limit should only apply to appointments at a single ADI and not as a total for an individual director across the sector. In reality, a 12 year limit aligns with the majority of customer owned banks constitutions and allows for cost effective and orderly board succession.

In developing this response, COBA consulted widely within its member base, discussing proposals with member Board chairs and Directors, CEOs and company secretaries. Overwhelmingly their view is that APRA should test 3 simple things – does the ADI board have the appropriate mix of skills and experience around their table, are their governance processes formalised e.g. director and board performance assessments, director professional development, succession planning, conflicts of interest, etc. And finally, is there an assurance process in place to test whether these processes are effective.

COBA acknowledges APRA's extensive engagement with our sector on these Guidelines and notes that it is intended that relevant proposals be implemented over a multi-year program. COBA is keen to engage proactively with APRA as the program progresses and work with the sector in supporting any needed uplift.

The sector is proud of its reputation and is committed to ensuring robust governance practices that support the ongoing success and development of mutual banking, a vital banking alternative for Australian consumers. Please feel free to reach out to me if you have any queries on this response.

Yours sincerely

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COBA Submission on APRA Governance proposals

Summary points

- COBA supports efforts to strengthen and maintain good governance across APRA-regulated entities, as this delivers better consumer outcomes and a stronger financial system.
- APRA's proposals reflect sound governance principles and are broadly consistent with existing practice across most ADIs.
- The governance standards proposed should recognise and support the distinctive features of the mutual model, such as its simplicity, lower risk profile and for some customer owned banks, the importance of community representation on boards.
- COBA supports a 12 year limit in APRA guidelines (not as a mandate), with this limit applying to director appointments at individual organisations and not as a total sector limit.
- In proposing a mandated tenure limit, APRA would be an outlier amongst global and Australian regulatory peers. Most customer owned banks already apply tenure limits within their constitutions.
- Good governance requires that Boards give due consideration to succession planning, director professional development and ensuring Boards retain the right mix of skills, expertise and values alignment. APRA should test the assurance processes around these practices to assess board performance and director independence.
- The focus should be on independence of thought and action and consider specific circumstances that may require some directors staying with a board for a longer period, for example, during a major transaction or strategic transformation, or to avoid the immediate loss of corporate memory where there has been significant board turnover.
- COBA does not support public disclosure of a conflicts register given the nature of the mutual model and its existing commitment to openness and transparency with its owner member base. This direct engagement was a factor in customer owned banks not figuring prominently in the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* and not being the subject of serious scandal, fines or actions by ASIC.
- The next consultation should include both the proposed draft standards and supporting guidance. This will provide greater clarity on how APRA intends for the proposals to operate particularly in conjunction with existing prudential standards and for example, the circumstances under which director tenure may be extended.

Mutual entity governance

Mutual banks and credit unions vary in size, structure and history and are trusted by over 5 million Australians to safeguard their funds and support their ambitions. With that trust comes a deep responsibility and an obligation to be accountable and to adopt good governance practices. Customer owned banks have a proud history dating back 150 years, serving their local communities, providing trusted banking services and putting their customers first. They have a track record of service and innovation, being the sector to install the first ATM, the first to operate an EFTPOS facility and the first to market with the New Payments Platform.

Customer-owned banks account for around two thirds of all domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market-leading customer satisfaction in the retail banking market. Collectively, the sector holds over \$182 billion in assets and is the fifth largest holder of household deposits with COBA members ranging in asset size from around \$200 million to \$25 billion in assets. Underpinned by a different ownership structure, mutual banks operate for the benefit of their customer owners but do not distribute earnings to their owners.

The trust in which they are held by their customers is evident in the fact that the mutual banking sector faced no Hayne Royal Commission issues, has not been subject to significant scandals nor faced ASIC fines. Customer owned banking directors serve the interests of their owner members whether through honouring a historic common “bond” or through shared characteristics such as geographic location, occupation, or affiliation. This common bond has often been reflected in the election of directors from the membership base by the membership and has served to reinforce the mutual bank’s mandate to act in the interests of its members and operate profitably so funds can be redeployed for further innovation and better services for members.

Terms of office vary, commonly spanning three or four years, with annual director elections designed to ensure renewal. Most customer owned banks have adopted fixed tenures, either through constitutional changes or board policy with tenure limits of 12 years or less¹ commonly specified. These approaches allow for board renewal and ensure that new skills and fresh perspectives are brought to bear in board strategy and decision making.

Board remuneration varies significantly across the sector, reflecting differences in institutional size, complexity, and resourcing. Larger customer owned banks pay appropriate remuneration to secure experienced non-executive directors often from other sectors. This brings diversity of thought, experiences and new skills to the sector. Smaller institutions based in local communities may pay lower director remuneration, with board roles often considered a way to give back to and support the local community.¹

APRA views on regulatory proportionality

COBA welcomes proposals by APRA to consider the business model of customer-owned banks relative to their larger investor-owned, commercial peers. In considering the relative simplicity of the mutual banking model, the customer and outcomes focussed approach, and the unique ownership structure, APRA has recognised the inherent lower risk profile attached to mutuality.

APRA’s stated objective to ‘apply proportionality and reduce compliance burden where possible’ is welcomed. APRA’s Statement of Expectations requires the regulator to ‘minimise the costs and burdens of regulatory requirements for regulated entities, including by applying proportionate requirements, considering different businesses models, and taking a principles-based approach to

¹ COBA Aon NED Survey 2023 shows the lowest two quartiles of entities by remuneration.

regulation, ultimately to benefit consumers'. The mutual banking model clearly benefits consumers as the rich history of the sector attests.

The discussion paper uses the Significant Financial Institution (SFI) designation to provide a threshold for additional proportionality. COBA has a long-held view that APRA should increase the threshold for an institution to be designated as an SFI to at least \$50 billion and understands that APRA is intending to review these thresholds pending the outcomes of the Council of Financial Regulators review.

In discussing APRA's governance proposals with COBA member Board Chairs and Directors, they believe the regulatory focus should be on seeking answers to the following:

1. Does the board have directors with the right skills, expertise and values in line with the mutual banking model?
2. Is the board functioning well and managing its governance responsibilities?
3. Does the board have assurance processes in place to test the first two questions?

The diversity of the customer owned banking sector reflects the diverse the communities we serve. As APRA moves forward with its proposals, careful consideration should be given to how any new requirements may impact customer owned banking and the unique elements of mutual banking governance that has served the sector and its customers well for over 150 years.

Proposal 1: Skills and Capabilities

COBA supports APRA's proposal to require entities to identify and document the skills, capabilities and behavioural attributes necessary to deliver on the ADI's strategy. Alongside the Fit and Proper (Proposal 2) requirements, this will ensure that entities have the 'right people on the board'.

COBA supports APRA's proposed approach to align 'targeted skills, capabilities and minimum criteria' to "an entity's business needs, size and complexity".² This aligns with the Bank of International Settlements (BIS) governance principles, which provide that the board should comprise 'individuals with a balance of skills, diversity and expertise, who collectively possess the necessary qualifications commensurate with the size, complexity and risk profile of the bank'.³ The board as a collective must have the right capability and skills, given the full board is responsible for an entity's governance.

Regulated entity responsibility

COBA supports APRA's proposal that it be the responsibility of each regulated entity to identify the attributes needed for its board to deliver on the organisation's strategy and fulfil its role. As the prudential regulator, APRA's role is to hold entities accountable for adherence to prudential standards. To further assist, APRA could provide high-level guidance on best practice across the financial sector.

Individual directors

COBA supports the intent to raise minimum standards for directors. Higher minimum standards will help guide nominations processes. It is important however to strike the right balance, ensuring skills, capabilities and 'fit and proper' requirements are not overly prescriptive and inadvertently limit the potential director pool. The most effective boards benefit from a diversity of skill, expertise and experience and it is important that mutual ADIs can still access a broad director talent pool.

APRA should clarify its expectations in relation to individual directors and identify required skills – for example, differentiating between the roles of Chairs, committee chairs and other directors. APRA guidance should draw the distinction between the specific roles requiring specialist skills e.g. Chair of the Audit and Risk Committee, compared to general director skills. The Australian Institute of Company

² APRA Governance review discussion paper March 2025 page 16

³ [BCBS Corporate governance principles for banks](#)

Directors (AICD) and the ASX Corporate Governance Principles make this distinction and offer guidance on these specific roles.

Contemporary industry experience

It is important that views on 'contemporary industry experience' extend beyond major bank experience. Given the dominance of investor-owned, commercial banks, COBA members have noted that a narrow interpretation of contemporary industry experience may make it difficult to identify directors who understand the culture, values and operating models of mutual ADIs. This can lead to a longer director search for an individual who has the mutual ethos and the relevant cultural alignment. A narrow interpretation also underplays the value that broader financial services experience brings to mutual boards.

While banking experience is crucial, it would not be appropriate or effective to require mutual ADI boards to be comprised solely of bankers. As the AICD, the Governance Institute and indeed the ASX Corporate Governance Principles and Recommendations state, it is important to structure the board to 'collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value'.⁴

High performing boards are always diverse, comprising directors with different skills, backgrounds and experiences who can challenge management and who operate in the best interests of mutual bank "owners". A board comprised solely of one profession can heighten risks of groupthink, undermining diversity of thought and the collective accountability required for effective governance.

Unique mutual banking characteristics

As noted earlier, the 'common bond' remains a core value proposition for many COBA members. Mutual ADIs should continue to have the flexibility to include board representation linked to their member bond, if required by their member approved constitutions. In some instances, a lack of member representation may prove a significant risk if business interests diverge widely from customer interests.

In electing director representatives linked to a member bond, nominees should bring requisite director professional skills to the board, however the lens of relevant skills should include the ability to represent customer interests. The BCBS Corporate governance principles outlines the importance of 'understanding the community' noting that:

*'the board collectively should have a reasonable understanding of local, regional and, if appropriate, global economic and market forces'*⁵

APRA has previously expressed concern about the limitations of mutual member elections, which combined with the 'one member one vote' principle' may limit an entity's control over board composition. In reality, most mutual banks manage this through a formal nomination process and augment skills or expertise through other means if needed e.g. consultants, technical or sector advisors. APRA should consider providing additional guidance on how ADIs could supplement board skills under the new proposals e.g. director professional development, special purpose directors, etc.

Proposal 2 – Fitness and propriety

COBA supports strengthening fit and proper standards to improve consistency across entities and ensure directors (and operational leaders) are capable, ethical, and suitable for their roles.

⁴ [ASX Corporate Governance Principles and Recommendations 4th Edition February 2019](#)

⁵ Basel Committee on Banking Supervision Guidelines Corporate governance principles for banks (July 2015) page 13

The fit and proper process should remain entity-led, with APRA providing guidance rather than taking a more direct and interventionist role. COBA acknowledges that APRA has stated it does not intend to take a direct approval role in board or executive appointments however the requirement for some SFIs and non-SFIs to ‘engage proactively with APRA on potential appointments’ presents risk not only to the individual entity but to APRA. COBA suggests APRA clarify how this process is intended to work to avoid any misconceptions and clearly outline roles and responsibilities so that risk, expectations and perceptions are carefully managed.

In situations where APRA proposes to ‘intervene’ in an entity’s governance processes, there should be clarity and agreement around how risks of uncertainty and perceptions of undermining a boards’ authority to make informed decisions about its composition and leadership, will be managed.

APRA’s guidelines should avoid unnecessary prescription beyond ensuring alignment of nominations processes with the customer owned bank’s business model and its strategic and operational priorities and risks.

Further guidance

In considering further guidance, APRA should address the following:

- **How to consider perceived conflicts of interest.** Without clear parameters, there is a risk of subjective or inconsistent application that could unduly affect candidate assessments.
- **Use of character references.** In practice, such references may be incomplete, inaccurate, or biased, and an overreliance on them may not meaningfully enhance assessment rigour. Objective and verifiable criteria should remain central.
- **Assessing the time capacity of non-executive directors.** This can be difficult to assess as board roles and workloads vary over time depending on the strategic priorities and requirements of the board. In practice, directors often serve on multiple boards and bring valuable insights and experience from other sectors as well as governance expertise. Some directors may also retain full time employment, which can provide continuing skill development. Directors should be assessed on their contribution and performance rather than a rigid interpretation of time commitments.

Financial Accountability Regime

As APRA has noted, ADIs are subject to the Financial Accountability Regime (FAR) legislative regime. APRA’s intent to align role definitions and use FAR reports where possible is supported.⁶ Given a shared goal of reducing any unnecessary compliance burden, COBA is keen to work with APRA to explore opportunities to streamline the interaction between the proposed governance regime and the existing FAR.

Proposal 3 – Conflicts management

The proposal for all entities to have robust conflict management policies in place is supported and is in line with existing requirements under the Corporations Act and AICD guidance. A consistent policy foundation is essential for identifying, assessing and managing actual, potential, and perceived conflicts of interest. Most customer owned banks have relevant arrangements in place however the

⁶ To reduce reporting obligations, APRA will examine whether it can align role definitions and rely on reports it receives under the FAR rather than requiring two sets of reports (although this will not apply to categories of responsible persons who are not accountable persons under the FAR).

proposals may trigger some entities revisiting their constitutions and revising policies to ensure they remain fit for purpose.

Further guidance

To support consistent implementation, COBA suggests APRA provide clear guidance on what constitutes 'relevant duties and interests' in the banking context. This is especially important for customer owned banks where board members may have close community or professional ties driven by their member bond.

Public disclosure

COBA does not support an additional requirement for public disclosure of conflict of interest registers. Customer owned banks already disclose relevant duties and relevant interests through annual reports to their member owners. Requiring entities to maintain internal registers for supervisory review only may strike a more effective balance between transparency, regulatory oversight, and the practical realities faced by smaller mutual ADIs. If APRA proceeds with disclosure, guidance should be provided on formats and content. Without clear expectations, practices may vary widely, undermining relevance, transparency and comparability.

Proposal 4: Independence (in group structures)

Most customer-owned banks operate as ADI parents with a small number of unregulated subsidiaries. These are commonly used for functions such as securitisation, charitable foundations, or ancillary services. Only a limited number of subsidiaries in the sector are regulated. Many are not material, such as an insurer in run-off.

There is some concern that APRA's proposed requirement for two independent directors could inadvertently extend to these minor subsidiaries. For mutual ADIs, most subsidiaries are immaterial from a financial and prudential risk perspective and applying this requirement would be disproportionate and burdensome.

The cost of appointing additional independent directors to these subsidiaries outweighs the limited governance benefit. These roles are unlikely to attract experienced directors due to the narrow remit and lower visibility of other operations. Directors on such boards may not have access to the same level of information as their peers on the parent board, further limiting their effectiveness.

APRA should confirm this requirement does not apply to unregulated subsidiaries. Without this clarification, there is a risk this requirement will impose substantial cost without delivering commensurate prudential benefits.

This issue is significant for other APRA-regulated mutual financial services groups or those considering future corporate group structures as an alternative to full consolidation. While this is not yet a widespread practice among mutual ADIs, it may become relevant in future. APRA's framework should retain flexibility to accommodate a future evolution in group structures, particularly where this could support innovation and structural efficiencies. APRA should consider whether a less prescriptive approach would be preferable in this context.

Proposal 5: Board Performance Assessments

Around three-quarters of mutual ADIs, irrespective of SFI status,⁷ already conduct external board performance assessments,⁸ with a three-year cycle being the most common.⁹ There is strong support within the sector for continuing these practices in a proportionate and fit-for-purpose way that reflects each entity's business model.

APRA's proposal to apply flexibility for non-SFIs by not mandating external assessments is supported, however many non-SFI mutual ADIs already voluntarily undertake these reviews as good governance practice. It is appropriate that the regulatory regime continues to align with the commensurate risk and maintains a focus on reducing the regulatory burden on non-SFIs.

Further guidance

To improve board performance assessments for all entities, APRA should provide further guidance on the following:

- **'Credible experts' for external assessments.** A definition of who is deemed a credible expert would assist entities to improve their external assessments. However, it is important to avoid narrow criteria that restricts the pool of suitable providers, driving up costs and pushing entities towards consultants whose approaches are tailored to large, investor-owned models.
- **Annual internal assessments.** APRA could provide guidance on improving the quality and rigour of annual internal assessments for all entities, including whether it intends to narrow the scope of annual assessments for non-SFIs, given the proposed narrowing for SFIs following a triennial external review.
- **Indicators of performance.** APRA should adopt or reference relevant criteria that already exists through other organisations including the Australian Institute of Company Directors and the Governance Institute. Guidance on existing standards for performance should support consistency, transparency, and uplift across the sector.

Proposal 6: Board Role Clarity

COBA supports APRA's proposals to outline the core prudential focus of the board, chair and management and provide scope for the board to delegate activities to board committees and senior management. COBA looks forward to working with APRA to further discuss relevant areas for delegation.

By its own admission, APRA's prudential framework has 'increased in size and complexity over time'.¹⁰ As a result, consideration and response around compliance and regulatory requirements now dominates the agenda for many boards reducing time available for discussion of strategic and other important initiatives. Boards now spend a significant portion of time on operational and compliance matters (i.e. what is happening now) rather than strategic issues (i.e. what does a future state look like).

As APRA has highlighted, this leads to the 'tendency for some board agendas to be overweight on operational matters, sometimes at the expense of strategic issues'.¹¹ In today's rapidly changing environment, strategic risk is a critical challenge for all Boards and especially those of regulated entities

⁷ APRA proposes to require SFIs to conduct external board performance assessments.

⁸ COBA Aon NED Survey 2023

⁹ The remainder do it on a more frequent basis.

¹⁰ APRA Modernising the Prudential Architecture Information Paper, page 5.

¹¹ APRA Governance Discussion Paper, page 25

and it is imperative that boards have sufficient time to consider these issues. APRA's proposal offers an important opportunity to address this imbalance.

Boards need to strike the right balance between when to lead, when to partner with senior management and when to leave the responsibility to management.¹² It is crucial that APRA's proposals do not unduly impact that dynamic and disrupt the appropriate balance, thereby reducing board performance and effectiveness.

Proposal 7: Committees

COBA supports APRA's proposal to allow flexibility for non-SFIs to combine their risk and audit committees if they choose to do so. However, some non-SFIs may opt to retain separate committees in line with their preferred governance structure and committee workloads. APRA should also consider the role of internal and external audit, and the advice provided to Audit and Risk committees as part of an entity's assurance and governance regime.

Proposal 8: Board Renewal

COBA supports the principals and benefits of board renewal and APRA's proposed requirements on succession planning. A renewed board brings fresh ideas, new perspectives and new skills to the governance of an institution. Clarifying expectations around tenure and requirements for succession planning will assist with improved board renewal practices.

As APRA notes there is a 'trade-off' with a tenure limit, as experienced directors bring institutional level knowledge to better challenge management, understand the nuances of mutual ADIs or to deal with situations where an entity may be engaged in a significant transaction or transformation process. It is important to strike the right balance between risk and reward with prudential guidelines supporting boards in maintaining regular and robust board assessments and renewal processes rather than specifying rigid tenure caps which are not imposed in any other jurisdiction.

Regulators and governance stakeholders generally consider there is a point in time where there is a likely loss of independence, and that this point is generally around the 9-12 years mark. Ultimately, where and whether a director loses effectiveness depends upon the characteristics of the individual director and the board that they are part of.

Through a Queensland University of Technology study, Elms & Pugliese (2023)¹³ examined the issue of tenure limits versus assessing the independence of directors, finding that this varies on a director level. Long tenure may lead to director entrenchment and a loss of effectiveness (the 'loss of independence' hypothesis). APRA acknowledges this is not uniform with many long-serving directors providing valuable institutional knowledge (the 'knowledge acquisition' hypothesis) and continuity, whereas newer directors offer fresh perspectives but lack deep contextual understanding. New directors need time to become familiar with an organisation and feel comfortable in appropriately challenging senior management with a degree of authority and experience.

APRA's current proposals place undue emphasis on tenure rather than on director performance and a director's individual ability to remain independent and effectively challenge management. While a tenure limit is a simple instrument, it is blunt and does not effectively assess performance or independence. Elms & Pugliese (2023)¹⁴ demonstrate significant variation in contributions from directors in board meetings with more than 9 years in tenure, suggesting that while on average [they]

¹² Charan, R., Carey, D., & Useem, M. (2013). *Boards that lead: When to take charge, when to partner, and when to stay out of the way*. Harvard Business Review Press.

¹³ Elms, Natalie & Pugliese, Amedeo (2023) Director tenure and contribution to board task performance: A time and contingency perspective. *Long Range Planning*, 56(1), Article number: 102217.

¹⁴ Elms & Pugliese (2023)

observe a decline as tenure increases, instances of highly valuable contributions offered by longer tenured directors also exist'. Enforcing strict tenure limits may mean regulated entities lose higher performing directors which is not in the interests of the customer or the regulator.

APRA should instead focus on whether a board is governing effectively, conducts regular and independent assessments of directors, has a track record in addressing non-performing directors and has robust succession plans in place. APRA's acknowledgment that 'many directors of long tenure are highly experienced and make a strong contribution throughout their directorships' would support an alternative approach other than mandated tenure limits.

Regular assessments (either internal or external) allow boards to test how tenure affects the performance of individual directors, and these board assessments could occur within a structured framework or set of principles provided by APRA rather than through rigid limits or APRA discretion alone. Stronger guidance-based tenure expectations should further enhance renewal practices while allowing boards to manage succession in a tailored and orderly way, accounting for individual director performance, strategic imperatives, board composition and renewal.

Other issues

Mergers

Where entities are engaged in a merger, the composition of the new entity's board, senior management and the nature of the new entity itself are key considerations and may require tenure extensions to ensure a seamless transition. This should be considered where there is a merger of equals, a board member merging into a larger entity, or a board member of an acquiring entity. In practice, some mutuals retain policies that confirm that mergers do not grant an automatic tenure extension or refresh.

Transition arrangements

If APRA resolves to proceed with proposed tenure limits, transitional arrangements will be required within the mutual banking sector to support an orderly shift to the new framework. This may include extensions for some directors to preserve sufficient board experience. COBA is seeking APRA's commitment discuss and work through appropriate transition arrangements.