

6 June 2025

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

Via email to [PolicyDevelopment@apra.gov.au](mailto:PolicyDevelopment@apra.gov.au)

Dear General Manager,

## Consultation on APRA Governance Review

### Introduction

Cuscal Limited (ASX: CCL) ("Cuscal") appreciates the opportunity to comment on the proposed amendments to Prudential Standards CPS 510 (Governance) and CPS 520 (Fit and Proper).

We support APRA's objective to enhance governance practices within regulated entities. As a member of the Australian Banking Association ("ABA"), Cuscal has contributed to the ABA submission and our positions are largely aligned in principle. In this bilateral submission, Cuscal would like to reinforce areas we believe require further consideration to ensure the changes lead to the desired outcomes.

Our submission has been developed with emphasis on strong risk management practices and good governance principles while balancing operational cost, reducing duplication, and supporting sustainable compliance outcomes. Our key recommendations are:

- **Board skills and capabilities:** We recommend that APRA retain the existing standard to allow board skill and capability needs to be defined collectively for the board without prescribing the specific skills and capabilities required for the chair, chairs of the board committees and other individual directors.
- **Fitness and Propriety:**
  - We recommend that APRA closely align fitness and propriety requirements with the FAR, withdraw the proposal to notify APRA of potential concerns regarding a person's fitness and propriety before a formal determination, and ensure sufficient consultation with the industry on new fitness and propriety assessment requirements and transitional timeframes.
  - We recommend that decisions on appointment and succession planning should remain with the regulated entities. Engagement and notification requirements should align with existing FAR requirements and reporting timelines.
- **Conflicts management:** We recommend not mandating public disclosure of conflicts and retaining the option for APRA to request a copy of conflict registers to fulfil their supervisory duties, as appropriate.

Our detailed perspectives and detailed recommendations are provided below.

### About Cuscal

Cuscal Limited (ASX: CCL) ("Cuscal") is an ASX listed entity and Authorised Deposit-taking Institution (ADI) and holds an Australian Financial Services Licence (AFSL). Cuscal is regulated by APRA as a non-significant financial institution (non-SFI). Cuscal is an end-to-end payments provider that services more than 90 established and challenger brand clients within Australia's financial system and payments landscape, including the mutual banking sector. As a B2B provider, Cuscal facilitates its clients' connections to the infrastructure layer of the Australian payments market, allowing its clients to focus on the user experience or application layer for their own end customers.

For further information on Cuscal, please refer to our website at [www.cuscal.com](http://www.cuscal.com).

## Detailed Key Recommendations

### 1. Board Skills and Capabilities

*APRA proposal: Defining and documenting the skills and capabilities necessary for the board overall, and for each individual director*

Cuscal acknowledges that effective governance necessitates the board collectively possessing the requisite skills and capabilities to support the organisation's strategic objectives and to manage risk. Upon reviewing APRA's proposal, we agree with several aspects. Specifically, we endorse APRA's requirement to identify and document the collective skills and capabilities needed by the board to execute organisational strategy. Furthermore, we support the ongoing review and assessment of these attributes within a documented skills matrix and the need for rigorous assessment of these requirements and ongoing focus on director development and succession to address gaps. Cuscal also supports the enhancement of the skills matrix for directors to ensure there is sufficient coverage of skills and experience across all core parts of its operations, including material risk classes.

However, we do not believe that further prescriptive minimum requirements for individual directors are necessary to achieve strong governance noting that the proposal goes further than the current requirement for a skills matrix under the ASX Corporate Governance Principles and Recommendations, which requires only collective information about the board. We hold the view that APRA's current stipulation, which mandates that each director to have 'skills that allow them to make an effective contribution to board deliberations and processes', is both sufficient and appropriate. Role descriptions for directors already specify the skill and capability expectations, which feed directly into the formulation of the collective board skills matrix. This enables focus on whether directors in these roles meet the necessary criteria and collectively cover all required skills and capabilities while avoiding duplication. Each director may still be assessed against the collective skills matrix to inform board development and succession planning. When applied effectively, it leads to sound governance by ensuring appropriate skills coverage and role clarity without necessitating individual skill profiling of each director.

A Board functions as a collective decision-making body where all directors share responsibility for Board decisions. Applying prescriptive skill and capability need to individual directors may highlight imbalance and over-reliance on specific directors' expertise. There is also a risk of individual accountability if specialised skills are confined to specific directors. It is also important for there to continue to be a pathway available for highly skilled directors from non-regulated entities to join a regulated entity Board. The proposed focus on individual skills and qualifications does not sufficiently value directors who can bring different perspectives and diversity of thought and relevant practical experiences to a board.

Overall, Cuscal supports APRA's governance reforms, emphasising the importance of collective board capability and continuous evaluation of director skills, especially amid rapidly evolving landscape in the payments sector. Recognising that emerging risks may outpace the board's current expertise, we endorse the use of external specialist advisers in a time-bound capacity to complement director experience. In line with APRA's Proposal 7 (Board Committees), these advisers should not have full voting rights, ensuring board accountability while providing timely access to contemporary specialist expertise. This practice addresses provisional skills needs and supports formal board capability through succession planning or director training, which may take longer to resolve.

#### **Recommendation:**

We recommend that APRA retain the existing standard to allow board skill and capability needs to be defined collectively for the board without prescribing the specific skills and capabilities required for the chair, chairs of the board committees and other individual directors.

### 2. Fitness and Propriety

*APRA proposal: Imposing higher minimum requirements to ensure fitness and propriety of responsible persons*

Cuscal supports APRA's emphasis on ensuring that regulated entities appropriately manage the risks that responsible persons who are not fit and proper pose to their business and financial standing. We believe that this objective should work in tandem with the Financial Accountability Regime ("FAR"), which already includes taking reasonable steps to deal with APRA in an open, constructive and cooperative way and to prevent matters from arising that would adversely affect the prudential standing or prudential reputation of the entity and avoid the unintended consequences of excessive compliance cost and operational burden. APRA's intent to examine whether it can align role definitions and rely on reports it receives under the FAR rather than requiring two sets of reports is welcomed.

Cuscal's primary view on this proposal relates to the requirement to notify APRA of potential concerns regarding a person's fitness and propriety before a formal determination. This could pose operational challenges and may result in the sharing of

potentially prejudicial and unsubstantiated information. It also raises questions about applicable confidentiality obligations and protections for those disclosing such information.

Regarding APRA's proposal to broaden the criteria and mandatory reassessments, along with enhanced reviews, Cuscal believes that this would introduce additional operational costs and compliance efforts arising from internal and external assessments. We therefore request that these changes be phased in with appropriate transitional arrangements and seeks clarity on what additional checks APRA expects beyond the current three-yearly probity checks.

APRA's proposal to include changes in personal circumstance posing potential reputational risk as a trigger for a fit and proper reassessment requires clarity on the definition of reputational risk with discretion for regulated entities to determine a materiality threshold that is commensurate with their size, scale and complexity.

**Recommendation:**

We recommend that APRA closely align fitness and propriety requirements with the FAR, withdraw the proposal to notify APRA of potential concerns regarding a person's fitness and propriety before a formal determination, and ensure sufficient consultation with the industry on new fitness and propriety assessment requirements and transitional timeframes.

*APRA proposal: Requirement for SFIs, and non-SFIs under heightened supervision, to engage proactively with APRA on potential appointments*

Cuscal recognises the need for APRA to be informed of critical appointments in order to fulfil its oversight role. However, the proposal for Significant Financial Institutions (SFIs) and non-SFIs under heightened supervision to engage proactively with APRA on potential appointments or public announcement could delay time-sensitive recruitment and prolong board succession processes, particularly for smaller entities like Cuscal where appointment windows are often short and tightly scheduled due to availability of suitable candidates with niche experience and subject to continuous disclosure obligations.

We believe that decisions on appointment and succession planning should lie with regulated entities, taking into account internal protocols that are consistent with APRA's minimum standards. APRA's role is best suited to establishing these minimum standards and supervising compliance, rather than being actively involved in recruitment practices. Engagement and notification with APRA should be aligned with existing FAR requirements and reporting timelines.

**Recommendation:**

We recommend that decisions on appointment and succession planning should remain with regulated entities. Engagement and notification requirements should align with existing FAR requirements and reporting timelines.

### 3. Conflicts Management

*APRA proposal: Require regulated entities to consider perceived conflicts, in addition to actual and potential conflicts. Maintain and disclose registers of duties and interests.*

Cuscal recognises APRA's intent to harmonise conflict management standards across all regulated industries by extending existing standards for Registrable Superannuation Entities ("RSE") licensees to insurers and ADIs. Listed ADIs like Cuscal are already subjected to current conflict management requirements including CPS 220 Risk Management, and directors' duties under the *Corporations Act 2001*, which require directors to act in the best interests of the company and disclose material personal interests, including perceived conflicts.

While we support the principle of transparency through disclosure of conflicts, Cuscal challenges the need to extend the requirement to public disclosures, which may lead to several unintended consequences:

- Misinterpretation of disclosed conflicts due to lacking context resulting in reputational harm and distorted perception;
- Compromised commercial confidentiality, unintended disclosure issues, and privacy implications;
- Deterrent for qualified individuals from serving on the boards due to heightened scrutiny of their personal and professional interests; and
- The inherently subjective nature of "perceived conflict" could lead to over-reporting or defensive declarations, potentially obscuring material risks. Given the potential broad interpretation of perceived conflict, there needs to be a clear framework and illustrative scenarios outlining when perceived conflicts should be treated as material for disclosure and remediation purposes.

We propose that APRA consider proportionality in achieving transparency and retain access to conflicts register as part of its supervisory remit.

If this proposal for public disclosure is adopted, an option for APRA to consider is to allow a summarised aggregate view of conflicts without explicit requirement to naming individuals. This balances transparency and visibility with confidentiality and privacy of directors.

## **Recommendation:**

We recommend not mandating public disclosure of conflicts and retaining the option for APRA to request a copy of conflict registers to fulfil their supervisory duties, as appropriate.

## **Feedback on other APRA proposals**

### **Director tenure and board renewal**

*APRA proposal: Require regulated entities to establish a robust, forward-looking process for board renewal. Impose a lifetime default tenure limit of 10 years for non-executive directors at a regulated entity.*

Cuscal's current practice is largely aligned with APRA's proposal. Cuscal supports APRA's rationale for mandating a 10 year tenure limit to encourage impartial judgement, greater openness to new approaches and effective challenge of management. Cuscal also endorses the possibility of an extension at APRA's discretion acknowledging that board tenure extension can have merit in certain situations especially when continuity, strategic execution or skill and knowledge dependency are crucial. We recommend that APRA provides clear guidance on cases where extension would be considered and apply an efficient extension process that is not onerous, administratively burdensome or prolonged.

Cuscal supports APRA's proposal for regulated entities to establish a forward-looking and robust board renewal process. We believe that well-defined renewal frameworks and rigorous performance evaluations are effective in maintaining board effectiveness.

### **Board Independence**

*APRA proposal: requiring that at least two of their independent directors (including the chair) are not members of any other board within the entity's group, 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, and extending the current requirement for bank and insurer boards to have a majority of independent directors to include boards of entities with a parent that is regulated by APRA or an overseas equivalent*

We seek clarification on the rationale behind deeming a director "not independent" based on a material holding of non-voting securities. It remains unclear how such holdings lacking voting rights, could compromise a director's independence from the regulated entity. Furthermore, we seek clarification on the proposed materiality threshold for these holdings. This proposal raises the bar for the definition of 'independent' and brings into question the nature of conflicts purportedly arising from holding such securities. We seek justification for considering a director 'not independent' if they are associated with a substantial shareholder, such as an institutional investor, that does not control the entity and has no other connection to the company. Moreover, extending this concept to directors who hold, or are associated with entities holding, a "material" amount of non-voting securities in the regulated entity seems unwarranted, and the origin of this concern is unclear. Determining whether "material" equates to a value equivalent to a 5% shareholding and understanding how this could affect independence without voting rights are key concerns.

The proposal to extend the majority independence requirement to boards of entities with a parent regulated by APRA or an overseas equivalent warrants careful consideration to prevent unintended consequences and ensure practical governance structures within regulated groups. While the requirement for independent directors on the board of a regulated subsidiary of a Non-Operating Holding Company (NOHC) who are not also on the NOHC board has some merit, it could also foster a divergence of strategy between the NOHC and its subsidiary. This issue could be amplified if, for instance, the Chair of a regulated NOHC could not also be a director of a regulated subsidiary, and vice versa. Such a restriction would be complex based on fundamental governance principles if a balance is to be struck between the legitimate interests of shareholders in regulated groups and the specific interests of regulated subsidiaries. Not every governance measure should be predicated on an assumption of a crisis scenario, and all directors, regardless of their independence status, are obligated to act in the best interests of the entity they serve. These proposals seem to operate under a different assumption. While proposal 4(c) appears consistent with Proposal 4(a) if limited to the boards of banks and insurers, it would become unworkable if every subsidiary of these regulated entities were required to maintain a majority of independent directors. Furthermore, this

proposal could potentially complicate the identification and attraction of suitable directors who also meet the proposed skills, expertise, and tenure requirements.

## Board Performance Review

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

While this specific amendment does not apply Cuscal as a non-SFI, this practice aligns with the ASX Corporate Governance Principles and Recommendations, which is standard for listed Australian companies. We also agree with the principle that regulated entities should not be mandated to implement every recommendation that arises from an independent review.

## Role Clarity

*APRA proposal: Define APRA's core expectations of the board, the chair and senior management*

Cuscal welcomes APRA's intention to define its core expectations for the board, the chair, and senior management, as well as to provide additional guidance on the delegation of requirements to board committees and senior management.

We would strongly support amendments to prudential standards that remove operational obligations from the board, enabling a greater focus on strategic direction, succession planning, and the effective oversight of risk management and compliance. However, it is crucial that boards retain the discretion to determine which matters are reserved for board consideration and which are delegated to Board committees or to senior management. Mandating delegation could reduce the board's ability to exercise its fundamental responsibility for guiding and monitoring the entity. The clarification of roles for the chair and senior management should also be principles-based to allow for flexibility in implementation.

## Board Committees

*APRA proposal: Repeal the requirement to have separate risk and audit committees for non-SFI banks, allowing flexibility for smaller entities.*

Cuscal welcomes the flexibility for non-SFIs to not be required to have separate risk and audit committees as better practice instead of enforcing it as a mandatory requirement to reduce administrative burden and complexity for smaller entities.

We trust that our feedback and recommendations will assist APRA in its review. If we can be of any further assistance, please feel free to contact me at 

