

6 June 2025

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

Dear ██████████

RE: Governance Review – Discussion Paper

The Financial Services Council (FSC) welcomes the opportunity to provide comment on APRA's Governance Review Discussion Paper.

Recent events have demonstrated the importance of superannuation funds having robust governance in place by ensuring well skilled and well qualified directors in the management of superannuation funds. Given the significant size and importance of the superannuation system in Australia, the FSC believes that it is paramount that board directors for superannuation funds are professionally qualified to the important role of managing the nearly \$3 trillion of APRA-regulated Australian retirement savings. This is true, regardless of whether a board is operating with a full independent model or equal representation model.

The FSC is supportive of principles underpinning the Discussion Paper that propose uplifting the standards of governance among superannuation funds. The FSC also supports APRA maintaining a balanced approach to oversight that acknowledges that superannuation funds should be provided with the flexibility to choose the Board arrangements that best suit the needs of its members, as long as the directors have the right qualifications and skills mix.

The FSC's comments are contained in the Attachments to this letter.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

The FSC welcomes the opportunity to meet to discuss the matters outlined in this submission. If you would like to arrange a meeting, please do not hesitate to contact me.

Yours sincerely,

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Policy Director, Superannuation

Attachment 1: Summary of Comments and Recommendations

Proposal Area	Proposal	Comment	Recommendations
1. Skills and capabilities	1.1. Identify and document the skills and capabilities necessary for the board overall, and for each individual director	Support with the exception of including behavioural attributes in the skills matrix document.	<p>Rec 1: APRA not require that behavioural attributes be included in a skills matrix document.</p> <p>Rec 2: APRA reflect on the requirement to set individual criteria for directors as Board skills should be assessed at a whole of Board level.</p>
	1.2. Evaluate existing skills and capabilities of boards and individual directors	Support with flexibility for verification and evaluation.	<p>Rec 3: APRA consider how to provide flexibility to regulated entities in their assessment and verification of skills and capabilities.</p>
	1.3. Take active steps to address gaps through professional development, succession planning and appointments.	Support	No recommendations.
2. Fitness and propriety	2.1. Require regulated entities to meet higher minimum requirements to ensure fitness and propriety of their responsible persons.	<p>Mostly support however, do not support the proposal to notify APRA about a director actively undergoing an investigation regarding fitness and propriety before a determination has been reached.</p> <p>Further clarity required as to the meaning of regulatory reference in this section.</p>	<p>Rec 4: APRA should not require funds to notify APRA when any questions of fitness and propriety arise, before they have been investigated to ensure that procedural fairness and privacy is maintained.</p> <p>Rec 5: APRA provide clarity around how it defines matters to be considered during fit and proper assessments and consider how each of these factors weights to ultimately determine appropriateness for board appointees.</p>

Proposal Area	Proposal	Comment	Recommendations
	2.2. Require SFIs, and non-SFIs under heightened supervision, to engage proactively with APRA on potential appointments.	Not supported.	Rec 6: APRA consider how to better utilise its existing supervisory relationships to have informal conversations about recruitment of board directors instead of creating sweeping powers for intervention.
3. Conflicts management	3.1 Extend current RSE licensee conflict management requirements to banks and insurers so they are also required to proactively identify: <ul style="list-style-type: none"> a. proactively identify actual and potential conflicts of interest and duty b. avoid or prudently manage conflicts c. take remedial action when conflicts are not disclosed or managed properly. 	No comment.	No recommendations.
	3.2 Require regulated entities to consider perceived conflicts, in addition to actual and potential conflicts.		
4. Independence	4.1 Require that at least two independent directors (including the Chair) are not members of any other board within the entity's group	Do not support owing to the costs to organisations with complex structures.	Rec 7: APRA reconsider the proposal to require at least two independent directors for each related entity owing to the significant cost this would cause to businesses with complex structures.
	4.2 Make minor amendments to the independence criteria, including extending the prohibition on directors who are substantial shareholders in a regulated entity or group from being considered independent, to include material holdings of any type of security	No comment.	No recommendations.

Proposal Area	Proposal	Comment	Recommendations
	4.3 Extend 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.		
5. Board performance review	5.1 Require SFIs to commission a qualified independent third-party performance assessment at least every three years which covers the board, committees and individual directors.	Supported in principle but not supportive of the mandated timeframe.	Rec 8: APRA remove the stipulated time limit for board assessments and instead adopt a principles-based approach to independent board assessments.
6. Role Clarity	6.1 Define APRA's core expectations of the board, the Chair and senior management.	Support in principle but expectations should be consistent with existing legislation and practice.	Rec 9: APRA ensure that any guidance provided in relation to the role of the Chair or other directors be consistent with case law and generally accepted market practice.
	6.2 Provide additional guidance on which APRA requirements may be delegated to board committees and senior management.	Support in principle however the guiding principle should be as is in existing Corporations Law which essentially allows for all powers to be delegated except for a select few.	Rec 10: In clarifying which Board powers can be delegated, APRA consider existing legislation and prudential standards, which essentially allow for all powers to be delegated, except for a select few.
7. Board Committees	7.1 Extend the current requirement for bank and insurer boards to have separate risk and audit committees, to apply to SFI RSE licensees as well. Repeal this requirement for non-SFI banks and insurers, allowing flexibility for smaller entities.	Supported but the Standard should allow for flexibility as to which committee deals with matters.	Rec 11: APRA allow flexibility with regard to whether a risk or audit committee deals with a particular matter.
	7.2 Mandate that only full board members can be voting members of APRA-required board committees.	No comment.	No recommendations.

Proposal Area	Proposal	Comment	Recommendations
8. Director tenure and board renewal	7.3 Impose a lifetime default tenure limit of 10 years for non-executive directors at a regulated entity.	Supported in principle but the tenure should be 12 years as opposed to 10. Provide a principles-based approach for funds to easily determine if they can extend tenure, without application to APRA.	<p>Rec 12: If APRA are to pursue a lifetime limit for Board directors, make this twelve years and not specify terms.</p> <p>Rec 13: APRA apply a principles-based approach for funds to determine if extra tenure is required. This should include consideration for extension where a director should require their tenure extended and where a director has been appointed to the role of chair.</p>
	8.1 Require regulated entities to establish a robust, forward-looking process for board renewal.	Supported.	No recommendations.

Attachment 2: Comments on Proposals

Proposal 1: Skills and Capabilities

1.1 Documenting Skills and Capabilities

The FSC is supportive of formalising a requirement for superannuation funds to identify and document the skills and capabilities necessary for the board and for individual directors.

A board that is diverse in both skills and experience is essential to good governance and the FSC believes that no matter whether a board operates with an independent or equal representation board model, boards will ultimately benefit from utilising tools such as skills assessments and matrices to ensure they are meeting the needs to their individual organisations. This is particularly critical where boards have shareholder-appointed directors or other related stakeholders in director roles – these candidates must also meet the requisite skills and capabilities required to contribute to the collective board skills.

Notwithstanding the FSC’s support for the proposal in principle, it should be noted that there is an important distinction to be drawn between requiring funds to identify behavioural attributes and having them included in the skills matrix.

Attributes are of a different nature to skills. They are personal traits or behavioural qualities that each director would be expected to have whereas skills are acquired competencies. A skills matrix assists in assessing the collective skills of the board and identifying gaps.

The ASX Corporate Governance Council ‘Corporate Governance Principles and Recommendations’ (ASX CGC Guidance) focuses on skills and describes the matrix as a tool that can help the board identify gaps in collective skills¹, this same analysis cannot be applied to attributes which are expected of all directors. The ASX CGC Guidance references the Governance Institute of Australia’s Good Governance Guide “Creating and Disclosing a Board Skills Matrix”, which says a skills matrix “identifies the current skills, knowledge, experience and capabilities of the board... and any gaps in skills or competencies that can be addressed in future director appointments”.²

Skills matrices should focus on individual acquired skills while individual behavioural attributes should form part of the fund’s initial and ongoing fit and proper assessments. This is already required as part of the existing SPS 520 requirements. For example, clause 19 notes:

“for the purposes of the SIS Act and for the purposes of determining whether a person is fit and proper to hold a responsible person position, the criteria are whether...(a) it would be prudent for an RSE licensee to conclude that the person possesses the competence, character, diligence, experience, honesty, integrity and judgement to perform properly the duties of the responsible person position.”

It is therefore not supported that individual behaviour characteristics be required to form part of a wider skills matrix.

Recommendation 1:

APRA not require that behavioural attributes be included in a skills matrix document.

¹ ASX Corporate Governance Council. (2019). *Corporate Governance Principles and Recommendations: 4th Edition*. p. 13 ([Link](#))

² Governance Institute of Australia. (2015). *Good Governance Guide: Creating and Disclosing A Board Skills Matrix*. p. 1 ([Link](#))

In addition, while the skills of individual directors need to be assessed and considered as part of an assessment of the collective skills of the board, there should not be a requirement to specify the minimum skills required of individual directors, short of pinpointing exactly what skills are missing from a matrix and targeting those skills.

A board acts as a collective decision-making body and the focus should be on making sure that all necessary skills are reflected across the board, as a whole. There is a risk that in being too specific about subject matter expertise, a director who may be able to bring the skills to fill a gap, does not have the other required skills. While skills can be enhanced through education and application, if a skill is specified as a minimum skill, it is something the director would be required to have day one and so cannot be addressed through training.

Recommendation 2:

APRA reflect on the requirement to set individual criteria for directors as Board skills should be assessed at a whole of Board level.

1.2 Evaluating existing skills and capabilities

The FSC is overall supportive of the requirement to evaluate existing skills and capabilities. However, the Discussion Paper identifies shortcomings observed as including “not verifying skills or capabilities, often relying heavily on self-assessments”.

It is recommended that in requiring verification, APRA give consideration as to how to continue to allow flexibility to Boards to verify the skills and capabilities of individual Board members. For example, an entity may engage an independent external provider to assist with verification of each director’s skills at least on one occasion, but on other occasions it may be that a self-assessment is challenged and verified through the observations of peers and the Chair.

Recommendation 3:

APRA consider how to provide flexibility to regulated entities in their assessment and verification of skills and capabilities.

Proposal 2: Fitness and Propriety

2.1: Increasing minimum requirements of fitness and proper

The FSC agrees broadly with the intent of proposed changes to the fit and proper test to provide more guidance to regulated entities. However, the FSC does not believe it is appropriate for funds to be notifying the regulator as soon as it holds concerns about an individual director’s fitness and/or propriety, before a finding against said director has been made.

The FSC is concerned that requiring notification when concerns arise that may reasonably impact a person’s fitness and propriety, even before a determination has been reached, prejudices the outcome of any potential review. The determination of any fit and proper review may ultimately be that the person is fit and proper, but prejudicial and potentially unsubstantiated information has already been provided to a regulator. This concept does not align well with APRA’s current Prudential Practice Guide SPG 520 which provides in clause 39 that “where an RSE licensee becomes aware of information that could lead to an assessment that a person is not fit and proper, taking reasonable steps as required under SPS 520 **would generally include providing the person with a fair opportunity to put matters to the RSE licensee.**”

The appropriate use of information from a privacy perspective is also identified and clause 40 of the practice guide notes: “RSE licensees may have obligations under the Privacy Act 1988 (Privacy Act) relating to how they collect and use information about responsible persons. The obligations include informing responsible

persons that information will be collected about them and the ways in which the information may be used and disclosed.”

The FSC therefore recommends not proceeding with any requirement to notify APRA before a finding has been made.

Recommendation 4:

APRA should not require funds to notify APRA when any questions of fitness and propriety arise, before they have been investigated to ensure that procedural fairness and privacy is maintained.

The FSC agrees in principle with dealing with the poor practices outlined in the Discussion Paper including narrowly defined processes that fail to generate meaningful outcomes.

The FSC does however, submit that there should be flexibility given to the factors that are considered. For example, while a person may have served on a board previously, and performance of that organisation is relevant, it may not necessarily be appropriate to exclude a candidate simply because their previous organisation did not perform to expectations. That is not to say there would not be circumstances where a previous board performance was a relevant reason to exclude, however, it's important that factors are weighed appropriately and board candidates, their qualifications and performances are considered holistically.

In relation to APRA proposing to codify matters which should be considered in relation to fit and proper assessments, clarity is sought as to what is meant by the term 'regulatory reference' in this context. APRA should also provide clear guidance as to what it considers to be 'reputational risk' and how this will be assessed.

Recommendation 5:

APRA provide clarity around how it defines matters to be considered during fit and proper assessments and consider how each of these factors weights to ultimately determine appropriateness for board appointees.

The FSC notes that APRA has indicated intentions to review existing reporting obligations, including those related to FAR and reduce them where appropriate so as to ease reporting burden on entities. The FSC is supportive of this endeavour.

2.2: Requiring some entities to engage proactively with APRA on potential appointments.

While it may be appropriate for APRA to have some oversight of board appointments, the FSC believes this power should be suitably limited. It would not be appropriate for APRA to ultimately make decisions about who can and cannot be a board member for a regulated entity.

Superannuation funds should be provided the flexibility to choose the Board structure and directors that they determine is most appropriate for achieving the goals and outcomes of that particular fund.

While the FSC understands that APRA wishes to ensure that strong governance practices are being instilled in regulated entities, such as considering reputational risk and improving fit and proper assessments, this can be done through existing supervisory relationships. It should not be done by allowing APRA to essentially intervene in an independent process.

Board appointments should be driven by a review of the needs of the Board through a skills matrix assessment and the appropriateness of appointees determined through the fit and proper process.

For the avoidance of doubt, the FSC does not support APRA being provided powers to be involved in the interview process related to the appointment of a director nor with APRA advocating for legislative change that would provide it with the power to veto potential board directors.

Recommendation 6:

APRA consider how to better utilise its existing supervisory relationships to have informal conversations about recruitment of board directors instead of creating sweeping powers for intervention including a positive requirement to consult with APRA on Board appointments.

Proposal 4: Independence

4.1: Requiring that at least two directors, including the Chair, are not members of any other related boards.

Although the FSC makes this submission primarily in relation to its superannuation fund trustee members, it is worth noting that some of these trustees are part of larger, much more complex businesses. While the RSE Board in these organisations is necessarily independent, requiring that at least two directors, including the Chair, not sit on any other board within the entity group will have severe implications on organisations with complex structures.

Many large entities, particularly those who have merged and absorbed other companies over time, have corporate structures with multiple boards operating under a Non-Operating Holding Company. Often, the various boards under this structure will maintain the same membership to ensure consistency of approach across the organisations. To require that each board under this structure maintain a different chair alone makes the proposal an extremely costly exercise.

The FSC submits that the benefits of requiring at least two independent directors on each subsidiary board outweighs the benefits and will lead to a substantial increase in operating costs.

Recommendation 7:

APRA reconsider the proposal to require at least two independent directors for each related entity owing to the significant cost this would cause to businesses with complex structures.

Proposal 5: Board Performance Review

5.1 Requiring SFIs to commission a qualified independent third-party performance assessment.

While the FSC is supportive in principle of having a requirement to commission independent assessments of the Board, it submits that having a specified time limit can be relatively restrictive and may yield unhelpful results. For example, if the Board had just undergone a significant period of transition, an independent review assessing that point in time would not yield purposeful results.

The FSC recommends approaching this with a principles-based approach which allows for flexibility.

Further clarity is also required as to APRA's expectation of the content of independent assessments and how APRA expects to use the submitted reports. For example, if there will be a requirement for funds to report to APRA on progress against the report's recommendations.

Recommendation 8:

APRA remove the stipulated time limit for board assessments and instead adopt a principles-based approach to independent board assessments.

Proposal 6: Role Clarity

6.1 Defining the role of the board, chair and senior management.

The FSC notes that while the role of the Board Chair is not dealt with in the Corporations Act, it has been the subject of considerable analysis, including in case law³ and in guidance.

The ASX CGC guidance includes a short commentary about the role of the Chair and notes that the role should be set out in the board charter⁴. AICD publications include further discussion, including 'Role of the Chair' (2020) and the more detailed publication, 'Chairman of the Board' (2nd edition 2013).

In addition, the opinion of Michael Hodge KC and Sonia Tame, 'Directors' section 180 duty of care and diligence & regulatory compliance obligations', published by AICD, contains useful commentary, in particular at paragraph 47 which sets out some expectations in relation to the Chair but also notes that "much will depend on the particular company's circumstances and the arrangements in place with the particular director who is a chair of the board."⁵

The FSC submits that whatever guidance is provided, it should be consistent with case law and generally accepted market practice.

Recommendation 9:

APRA ensure that any guidance provided in relation to the role of the Chair or other directors be consistent with case law and generally accepted market practice.

6.2 Providing guidance on which APRA requirements may be delegated to board committees.

The FSC supports the proposal by APRA to provide additional guidance on which APRA requirements may be delegated to board committees and senior management.

The FSC notes that board delegation is dealt with in the Corporations Act, specifically Section 198D which provides a broad power of delegation subject to any constraint in the company's constitution. Directors may delegate any of their powers to a committee of directors, a director, an employee of the company or any other person. The exercise of the power by the delegate is as effective as if the directors had exercised.

Ultimately though, under section 190 of the Corporations Act a director remains responsible for the power delegated unless certain conditions are satisfied. Further, there are some powers which must be exercised by directors themselves. For example, a directors' declaration in relation to the financial statements (section 295) and approval of the annual directors' report (section 298).

Delegation is also considered in certain existing APRA standards, for example SPS 510, clause 9 expressly provides for delegation to management. There is a lack of clarity as to whether this is tempered by other provisions, for example, by SPS 530 clause 8 which provides that the Trustee must be responsible for particular matters relating to investment governance.

³ For example: Australian Securities and Investments Commission v Mitchell (No 2) [2020] FCA 109; Hall and Ors v Poolman and Ors [2007] NSWSC 1330; ASIC v Rich [2003] NSWSC 85.

⁴ ASX Corporate Governance Council. (2019). *Corporate Governance Principles and Recommendations: 4th Edition*. p. 7 ([Link](#))

⁵ Australian Institute of Company Directors, Michael Hodge KC and Sonia Tame. (2024). *Directors' section 180 duty of care and diligence & regulatory compliance obligations*. p. 19 ([Link](#))

As such, the FSC submits that any such clarification should be rooted in the principles of the Corporations Act and existing SPS 510. That is, Board powers should be able to be delegated unless there is a clear justification for it to be regarded as incapable of appropriate delegation such that it must be exercised by the board. It is also submitted that APRA should consider whether as an alternative to not allowing a matter to be delegated, there should instead be limits on an ability to delegate in a specific case – such as to a board committee rather than to management.

Recommendation 10:

In clarifying which Board powers can be delegated, APRA consider existing legislation and prudential standards, which essentially allow for all powers to be delegated, except for a select few.

Proposal 7 – Board Committees

7.2 Requiring RSEs to have a separate risk and audit committee.

The FSC does not oppose the institution of this requirement but submits that APRA give consideration to providing flexibility in relation to whether a matter is dealt with by a risk or audit committee.

For example, under the current SPS 510, clause 33 states that:

“the Board Audit Committee must establish and maintain policies and procedures for employees of the RSE licensee to submit, confidentially, information about accounting, internal control, compliance, audit, and other matters about which the employee has concerns. The Committee must also have a process for ensuring employees are aware of these policies and for dealing with matters raised by employees under these policies.”

This is inconsistent with ASIC Regulatory Guide 270 on whistleblower policies which proposes either an audit committee or risk committee to oversight of whistleblowing. It is noted that if a whistleblowing policy is part of a regulated entity’s risk management framework, it may be more appropriate for the Risk Committee to have oversight rather than the Audit Committee, to reduce overlapping responsibilities between committees, and to raise matters as needed to the Audit Committee.

Recommendation 11:

APRA allow flexibility with regard to whether a risk or audit committee deals with a particular matter.

Proposal 8 – Director Tenure and Board Renewal

8.1 Imposing a lifetime default tenure limit of 10 years.

The FSC is supportive in principle of moving a limit on director tenure from guidance to a Standard, effectively creating a clear and enforceable limit. However, the FSC does not support the proposal of 10 years and would recommend making the limit 12 years.

The FSC notes that tenure of a reasonable length can enhance Board governance. For example, the ASX CGC Guidance notes that “in relation to... (length of service as a director), the Council recognises that the interests of a listed entity and its security holders are likely to be well served by having a mix of directors, some with a longer tenure with a deep understanding of the entity and its business and some with a shorter tenure with fresh ideas and perspective. It also recognises that the Chair of the board will frequently fall into

the former category rather than the latter.”⁶ This reinforces the importance of extended leadership to maintain stability and effective governance.

Recognising that longer tenure has benefits, the FSC submits that 12 years would be a more appropriate limit than the proposed 10 years. By adopting a 12-year tenure limit, boards can better facilitate leadership transitions, ensuring that experienced directors have sufficient time to assume chair positions and provide steady guidance.

Furthermore, if a tenure cap is established, there is no need for additional restrictions on term length, allowing organisations the flexibility to structure board terms according to their operational needs. Current practice varies, with some entities utilising equal-length terms while others adopt a model of longer initial terms followed by shorter renewals. A 12-year tenure limit accommodates these differences without compromising governance effectiveness.

Recommendation 12:

If APRA are to pursue a lifetime limit for Board directors, make this twelve years and not specify terms.

The FSC is also supportive of providing flexibility to funds to determine on a case-by-case basis where a director may be afforded an extra term, without having to apply to APRA. In some instances, there may be a genuine reason for a director to have their tenure extended for example:

- Delivering a large project
- Delivering an SFT
- Recent significant board or executive turnover
- Recent market activity related to that Director’s specific skill set.

Maintaining consistency and corporate knowledge can be equally as important as ensuring that board appointee’s experience does not get ‘stale’ and as such providing flexibility on director tenure, without fully undermining the principle of tenure limits is desirable.

An issue that should be considered separately for exemption is the appointment to the role of chair. Tenure is an important factor when considering who should be the Chair of a board. As such, it should not limit a person’s ability to be appointed to such position, simply because they are nearing the tenure limit. While the FSC is not proposing that a person should be allowed a full extra ten (or twelve) years, there should be some leniency to allow a chair to continue in that position for up to two terms, in spite of any tenure limits.

⁶ ASX Corporate Governance Council. (2019). *Corporate Governance Principles and Recommendations: 4th Edition*. p. 14 ([Link](#))