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### **Consultation on draft Prudential Standard CPS 511 Remuneration**

The Westpac Group (**Westpac**) appreciates the opportunity to provide a submission in response to the draft Prudential Standard and discussion paper for CPS 511 Remuneration that were released for consultation on 23 July 2019.

Westpac supports an enhanced regulatory framework to govern remuneration practices, including through stronger and more consistent expectations across APRA-regulated entities. Our view is that an enhanced regulatory framework should support the following principles:

1. To account for and reflect the interests of key stakeholders including shareholders, customers, boards, management, other employees, regulators and the broader community while acknowledging the distinct and appropriate roles of each stakeholder;
2. To deliver to and support Australian regulatory developments including the Banking Executive Accountability Regime (**BEAR**), the recommendations of the Hayne Royal Commission and other recent industry reviews while leveraging international better practice where appropriate;
3. To support simplicity, practicality and APRA's objective to promote stability in the financial system, while mitigating or, where possible, eliminating the risk of unintended consequences arising through the framework's implementation; and
4. To encourage the design of remuneration arrangements which promote effective management of both financial and non-financial risks, sustainable performance and long-term soundness.

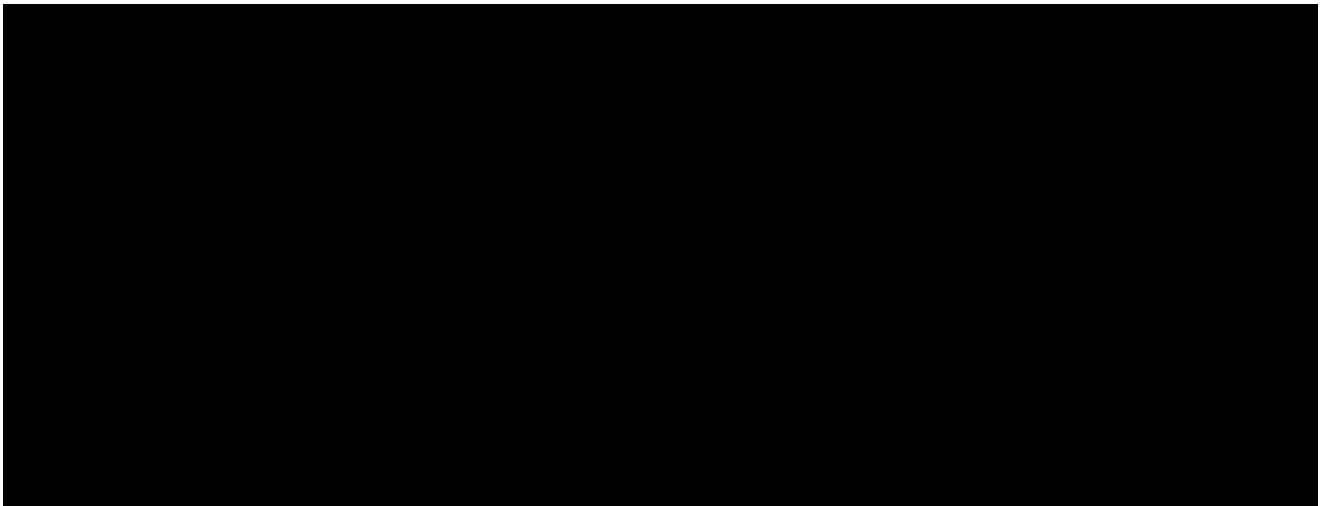
Having regard to these principles, we have identified three substantive issues in APRA's proposal which we consider to be uncommercial and recommend for further review by APRA (refer Attachment 1). Outside of these substantive issues, we are generally supportive of the proposal and we have therefore not responded to each individual consultation question.

We have also suggested alternatives for consideration in line with the above principles, reflecting the enhancements that we have already made to our remuneration design and practices which in our view align directionally with external developments.

We request that APRA consider transitional provisions, possibly similar to those adopted under the BEAR, to allow industry participants appropriate time to design and implement the required changes. In addition, or as an alternative, we recommend that APRA consider the implementation of a tiered approach to the reforms, focusing on minimising unintended consequences and reducing the immediate impact on employees and entities that will be most affected and that will have limited capacity to manage the transition.

We would appreciate the opportunity to meet with APRA to discuss our submission and the enhanced regulatory framework for remuneration more generally. In the meantime, please contact us if you have any specific questions or comments in relation to our submission.

Sincerely



**Attachment**

Attachment 1: Westpac's commentary on substantive issues recommended for further review by APRA

**Westpac's commentary on substantive issues recommended for further review by APRA****Substantive issue 1: Proposed limits on financial performance measures***Paragraph 38*

*For any variable remuneration arrangement of an APRA-regulated entity, financial performance measures must not comprise more than 50 per cent of total measures used to allocate variable remuneration. Each individual financial performance measure must not comprise more than 25 per cent of total measures. Financial performance measures include but are not limited to:*

*(a) revenue, profit and volume based measures;*

*(b) share-based measures that reflect changes in the value of shares and dividends paid or the return on the number of shares issued; and*

*excludes risk-adjusted measures and an RSE licensee's investment return measures.*

**Summary of Westpac's overall position**

We recommend that APRA retain the current principles-based approach for the design of variable remuneration under Prudential Standards CPS/SPS 510, specifically to:

- encourage behaviour that supports long term financial soundness, effective management of both financial and non-financial risk and sustainable performance and aligns remuneration with prudent risk-taking; and
- allow for adjustments to reflect the outcomes of business activities, the risks related to those business activities and the time necessary for outcomes to be reliably measured.

We recommend that APRA introduce new requirements for entities to:

- balance financial and non-financial measures when allocating variable remuneration (without the use of prescriptive weighting limits); and
- consider non-financial performance in remuneration design and outcomes through a range of tools and frameworks.

We have interpreted paragraph 38 as requiring that the proposed 50% weighting limit and the 25% individual weighting limit for financial performance measures:

- could apply to determination of an entity-wide variable remuneration pool in addition to individual variable remuneration arrangements; and
- applies across the variable remuneration awarded in a given financial year, irrespective of the performance period to which the awarded remuneration relates.

Westpac does not support the proposal for the reasons set out below.

- Noting APRA's important role in supervising entities and assessing the extent to which entities have appropriately designed variable remuneration, we believe that responsibility for determining the type and weighting of performance measures should be retained by an entity's board (or management with board oversight where appropriate), having regard to the entity's strategic priorities, risk profile and stakeholder interests in line with principles-based regulatory guidance. The existing approach in CPS/SPS 510 provides flexibility for an entity's board to respond to shifting focus areas and developments in the economic and competitive environment, and is consistent with existing practices across non-financial services industries.

- Based on our understanding, the proposed requirements could potentially apply to the determination of an entity-wide variable remuneration pool. It is our view however that responsibility for determining the pool is more appropriately a matter for the discretion of an entity's board. For Westpac, the variable remuneration pool reflects overall financial performance, with economic profit typically the predominant measure, and can be modified to take into account a broad range of financial and non-financial risk measures. This multi-faceted approach is designed to support the effective management of both financial and non-financial risks, sustainable performance and long-term soundness and would be negatively impacted by the application of prescriptive limits which are difficult to apply in this context.
- In Westpac's view, APRA's proposed approach does not fully consider the role of other frameworks or tools that entities may leverage to factor non-financial considerations into variable remuneration design and outcomes for employees. Westpac has made substantial progress in recent years to strengthen its frameworks and tools. These now include:
  - satisfaction of mandatory minimum behavioural, risk management and compliance requirements to be eligible for a fixed pay increase or variable remuneration;
  - scorecard assessments to determine short term variable remuneration (**STVR**) for the Chief Executive Officer, Group Executives and General Managers which contain financial and non-financial metrics and mandatory risk-based metrics;
  - a performance management system for most other employees that comprises individual goals which are not weighted and assesses behaviour equally alongside goal achievement;
  - in-period adjustments (upwards or downwards) to employees' variable remuneration outcomes, including through a scorecard modifier for the Chief Executive Officer, Group Executives and General Managers;
  - deferral of variable remuneration aligned to the time horizon of key risks to support a focus on sustainable business outcomes and provide an incentive for employees to continue to behave in a way which is consistent with our financial soundness;
  - discretion to delay the delivery, release and/or payment of deferred variable remuneration, including where an employee is under investigation for potential misconduct or is implicated in any legal or regulatory proceedings which may result in significant financial and/or reputational impact to Westpac<sup>1</sup>;
  - malus to reduce employees' unvested deferred variable remuneration, including where the Board determines, having regard to circumstances or information which has come to light after the grant of the deferred equity or cash, all or part of an initial award was not justified, or where the Board determines it is appropriate to respond to significant misconduct where such misconduct may result in significant financial and/or reputational impact to Westpac; and
  - clawback of deferred variable remuneration awarded in respect of performance periods commencing on or after 1 October 2019, for up to 7 years after the date of the award, in circumstances such as serious and gross misconduct justifying dismissal.
- APRA's proposed requirement for weighting limits to apply across total variable remuneration does not acknowledge the distinct purpose of STVR and long term variable remuneration (**LTVR**) components. At Westpac, the purpose of STVR is to ensure a portion of remuneration is variable and linked to the delivery of agreed targets for financial and non-financial measures that support Westpac's strategic priorities, with the ability to exceed the target amount when exceptional performance is achieved. The

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<sup>1</sup> There is support for the delay in vesting of awards in the case of an ongoing investigation in the UK. Refer Prudential Regulation Authority's Supervisory Statement SS 2/17 of April 2017, paragraph 4.15.

purpose of our LTVR is to align executive accountability and remuneration with the long term interests of shareholders by rewarding the delivery of sustained Westpac performance over the long term.

- The proposed weighting limits for financial performance measures do not reflect the predominant market practice for LTVR in Australian listed companies<sup>2</sup> or other highly regulated jurisdictions (including the UK<sup>3</sup>, where responsibility is placed on boards and management to ensure the proper weighting of factors, having regard to general principles set out by the regulators). For example, the structure of LTVR generally includes one or two financial performance measures to ensure that the remuneration is paid or vests only if it is sustainable according to the long term financial performance of the entity as a whole. We believe this is (at least partly) reflective of a difficulty in selecting and assessing non-financial performance objectives over the longer term. Accordingly, at Westpac, the 2019 LTVR award for the Chief Executive Officer and Group Executives includes two financial performance measures, namely a relative total shareholder return hurdle and a return on equity hurdle.
- Changing the performance measures in variable remuneration to meet APRA’s proposal could have unintended consequences, for example, LTVR metrics based on non-financial measures could result in vesting of awards even where there has been a material adverse impact to an entity’s shareholders through the non-delivery of shareholder value over the longer term. It is our view that poor non-financial performance is likely to negatively impact a listed company’s share price to the detriment of stakeholders. Non-financial performance can therefore already be seen to influence variable remuneration outcomes in a way that does not require specific measures to be included in all variable remuneration arrangements.
- The following table sets out the prevalence of financial performance measures in variable remuneration for a selection of Westpac’s employee groups which is broadly aligned to market practice, to support holistic assessment of performance.

Employee group	STVR <sup>4</sup> for FY19	LTVR for FY19	Total variable remuneration <sup>5</sup> for FY19
Chief Executive Officer	Total financial measures range between 50% and 55%, with no individual financial measure greater than 25% of total measures.	100% total financial measures and certain individual financial measures exceed 25% of total measures.	80% to 85% total financial measures and certain individual financial measures exceed 25% of total measures.
Group Executives	Total financial measures range between 40% and 55%, with no individual financial measure greater than 25% of total measures.		

<sup>2</sup> Refer “2018 Executive remuneration trends: Movement under the spotlight”, PwC Australia July 2019.

<sup>3</sup> Refer Prudential Regulation Authority’s Remuneration Rule 15.4 and “Guide to Directors’ Remuneration 2018”, KPMG UK December 2018.

<sup>4</sup> Reflects the typical range of STVR financial measures used in scorecards and an initial classification of underlying individual STVR metrics within each scorecard category, assuming each individual metric is equally weighted.

<sup>5</sup> Reflects the typical target pay mix of STVR and LTVR where relevant.



Employee group	STVR <sup>4</sup> for FY19	LTVR for FY19	Total variable remuneration <sup>5</sup> for FY19
General Managers	Total financial measures range between 30% and 50%, with no individual financial measure greater than 25% of total measures.	No financial measures (unhurdled).	20% to 35% total financial measures and individual financial measures do not exceed 25% of total measures <sup>6</sup> .
Other employees without a STVR scorecard and who do not participate in LTVR	Not applicable	Not applicable	Not applicable

Per APRA's proposed approach, Westpac would not satisfy the requirements in respect of total variable remuneration for the Chief Executive Officer and Group Executives. Westpac would only meet the requirements for General Managers if the unhurdled LTVR was considered variable remuneration given it is at risk and subject to forfeiture. In addition, for our broader employee base which does not participate in a weighted scorecard approach for STVR or LTVR, we assume that our approach to performance management with no explicit weighting for financial measures at an individual level would meet the intent of APRA's proposal.

- In our view, in addition to the points above, limiting financial performance measures is likely to be negatively received by some stakeholder groups, in particular certain shareholders and proxy advisors who generally consider non-financial measures to be subjective and difficult to quantify. Our engagements with these stakeholders indicate that financial performance measures remain the preferred method of incentivising the achievement of results over the longer term and mitigate the risk of entities prioritising other interests over shareholder value creation. As previously mentioned, we believe it is the responsibility of an entity's board to determine the type and weighting of performance measures and the board is accountable to shareholders in this regard. Shareholders may vote against a company's remuneration report at the Annual General Meeting, including where it is perceived that remuneration outcomes for key management personnel do not align with business results, shareholder experience or the longer term financial soundness of the company. The expectations of shareholders and proxy advisors are a strong accountability standard for boards in applying remuneration frameworks, and balanced with the expectations of other stakeholder groups, including customers, are an important consideration in setting measures for determining variable remuneration.
- As previously indicated, we also have concerns regarding the definition of variable remuneration proposed by APRA which replicates the definition under the BEAR. As illustrated in the above and as highlighted to APRA previously, we remain of the view that APRA should revise the proposed definition of variable remuneration to encompass awards that are at risk and subject to forfeiture without necessarily being based on specified objectives. This approach aligns with international better practice based on the view that remuneration is either fixed or variable, and remuneration which is not fixed and is at risk and subject to forfeiture must therefore be variable<sup>7</sup>.

<sup>6</sup> Assumes LTVR is considered variable remuneration.

<sup>7</sup> Refer European Banking Authority's Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013, page 33, paragraph 117ff.

## Substantive issue 2: Proposed deferral requirements for variable remuneration

### Paragraph 53

A significant financial institution must, for a Chief Executive Officer (CEO), defer 60 per cent of their total variable remuneration for at least seven years from the inception of the variable remuneration component. Vesting of this 60 per cent may only occur after four years from the time of inception and no faster than on a pro-rata basis.

### Paragraph 54

A significant financial institution must, for a senior manager other than its CEO and for a highly-paid material risk-taker, defer 40 per cent of their total variable remuneration for at least six years from the inception of the variable remuneration component. Vesting of this 40 per cent may only occur after four years from the time of inception and no faster than on a pro-rata basis.

### Paragraph 55

Paragraphs 53 and 54 do not apply in respect of any person with variable remuneration of less than AUD \$50,000 in a financial year.

## Summary of Westpac's overall position

We recommend that APRA:

- amend the proposed deferral portions and minimum deferral periods;
- maintain the proposed pro-rata vesting approach; and
- increase the proposed applicability threshold to \$150,000.

As an alternative, we suggest that APRA consider the implementation of a proportionate approach to deferral which is more aligned to existing obligations under the BEAR, requirements in other regulated jurisdictions (including the UK which is based on a tiered approach) and the time horizon for risk issues to crystallise, for example:

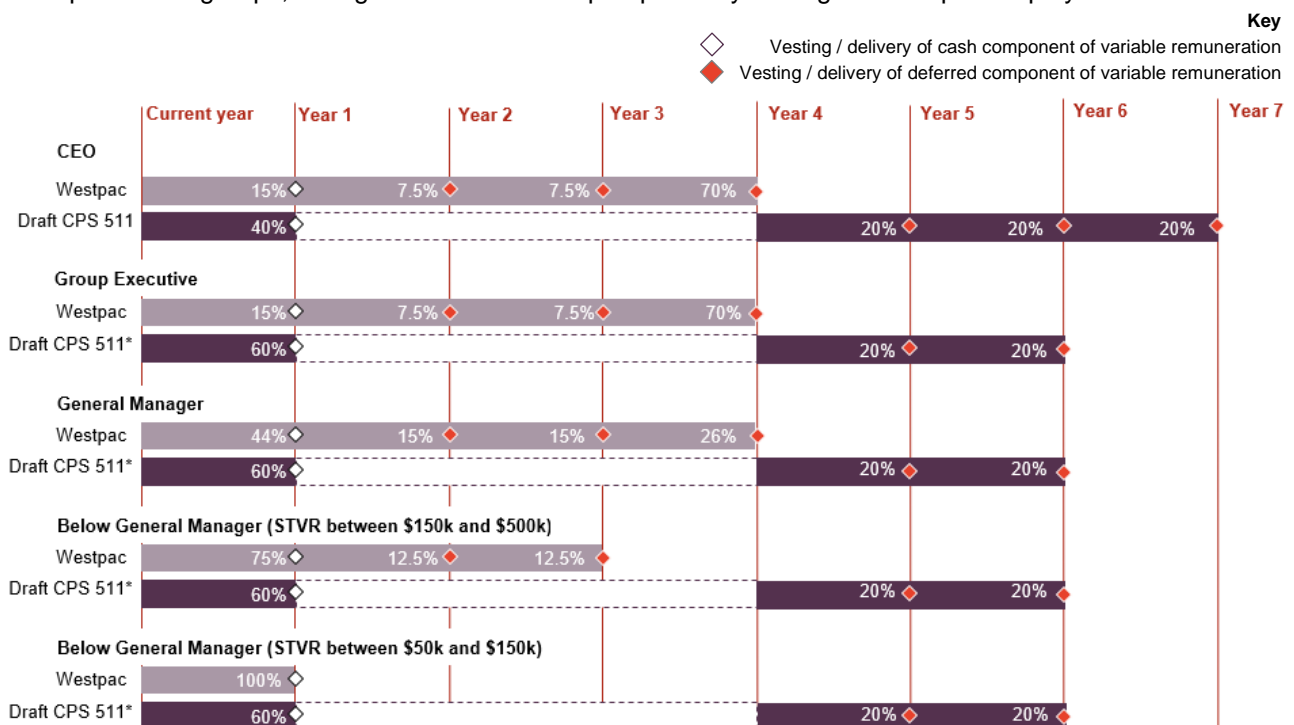
- *Chief Executive Officer*: 60% of total variable remuneration deferred for at least 5 years;
- *Other accountable persons*: 40% of total variable remuneration deferred for at least 4 years; and
- *Senior managers and highly-paid material risk takers*: 40% of total variable remuneration deferred for at least 3 years.

Westpac does not support the proposed deferral requirements for variable remuneration, for the reasons set out below.

- The proposed deferral periods for Significant Financial Institutions (**SFIs**) vary significantly from current practice and would be among the longest in the world for senior executives where a typical requirement is a three year deferral period<sup>8</sup>. In our view, the implementation of the proposed approach is most likely to result in a significant and broad range of unintended consequences, for example:
  - a negative impact on an entity's ability to attract best-in-class employees including from other industries and overseas financial institutions recognising that we compete in a global market for talent;
  - a rebalancing of remuneration arrangements and increased costs to deliver a higher proportion of remuneration as fixed pay (with a lower quantum of total remuneration at risk);

<sup>8</sup> Refer Financial Stability Board's sixth progress report on Implementing the Principles for Sound Compensation Practices and its Implementation Standards, 17 June 2019, page 32.

- an increase in overall remuneration quantum, including through an increase to fixed pay and the use of role-based allowances as was observed in the UK and EU following the implementation of the remuneration reforms mandated by Capital Requirements Directive IV<sup>9</sup>;
  - increased affordability challenges associated with compensating new hires for unvested deferred remuneration accumulated in line with significant deferral obligations at their previous employer; and
  - general increased pressure and other employment related costs to retain critical employees who may elect to leave Australian financial services given less onerous remuneration arrangements in other sectors or jurisdictions.
- The illustration below sets out the typical vesting profiles and portions for variable remuneration for a selection of Westpac employee groups relative to an interpretation<sup>10</sup> of how APRA's proposal would impact these groups, noting LTVR is awarded prospectively for eligible Westpac employees.



\* Reflects Westpac's understanding of the proposed deferral requirements for a senior manager or highly-paid material risk taker role.

- Westpac does not support an approach where every impacted employee other than the Chief Executive Officer would be required to have the same portion of their total variable remuneration deferred for the same period. This is inconsistent with international approaches, for example, a tiered approach to deferral in the UK is applied so that employees of increasing seniority within entities are subject to deferral periods of 3, 5 and 7 years respectively<sup>11</sup>. The overall proposal, in particular for the defined category of senior managers, would capture some employees with lower variable remuneration and subject them to the same deferral standard as employees with substantially more remuneration at risk. Mandating lower levels of variable remuneration to extensive deferral is likely to result in a demotivating

<sup>9</sup> Refer Opinion of the European Banking Authority on the application of Directive 2013/36/EU (Capital Requirements Directive) regarding the principles on remuneration policies of credit institutions and investment firms and the use of allowances (EBA/Op/2014/10), dated 15 October 2014.

<sup>10</sup> There is an alternate interpretation of the pro-rata vesting after 4 years, for example 15% x 4 tranches for the CEO and 13.33% x 3 tranches for other employees with the first tranche vesting immediately after completion of 4 years.

<sup>11</sup> For example, Prudential Regulation Authority's Remuneration Rule 15.17.



effect on impacted employees by disproportionately delaying their income relative to their level of responsibility.

- The proposed \$50,000 threshold would require deferral of as little as a \$20,000 portion, which we consider to be impractical, particularly when deferred for a 6 year period. We suggest that the applicability threshold be increased to \$150,000, which would require deferral of portions of remuneration no less than \$60,000. We note the de-minimis threshold under the BEAR applies to the amount of variable remuneration to be deferred rather than the total variable remuneration amount, and an increase in the threshold under APRA's proposal would be more aligned to this.
- The deferral proposal seems to be driven by concerns over the effectiveness and practicality of clawback. When reviewing this proposal against alternatives we recommend, we believe our alternatives provide an adequate 'at risk' period of combined deferral and clawback for variable remuneration, delivered in a simpler, fairer and progressive way for impacted entities and roles.

### **Substantive issue 3: Proposed scope and criteria for the application of clawback of variable remuneration**

#### *Paragraph 56*

*A significant financial institution must subject the variable remuneration of a senior manager or a highly-paid material risk-taker to clawback. Variable remuneration must only be awarded if an amount corresponding to it can be recovered from the person if recovery is justified on the basis of the criteria specified in paragraph 58.*

#### *Paragraph 57*

*For the purposes of paragraph 56, variable remuneration must be subject to clawback for:*

- (a) at least two years from the date of payment or vesting; and*
- (b) in circumstances involving a person under investigation, for at least four years from the date of payment or vesting.*

#### *Paragraph 58*

*Subject to conditions set in the remuneration policy, a significant financial institution must set specific criteria for the application of clawback, including:*

- (a) responsibility for material financial losses;*
- (b) material misstatement of financial statements or other criteria on which the variable remuneration determination was based;*
- (c) breach of compliance obligations including in relation to misconduct risk; and*
- (d) failure of accountability or fitness and propriety.*

#### *Paragraph 59*

*A significant financial institution must take reasonable steps to recover an appropriate amount corresponding to some or all paid or vested variable remuneration subject to clawback, in circumstances where any of the criteria specified in paragraph 58 is satisfied, whether or not the employment or engagement of the individual has ceased.*

### **Summary of Westpac's overall position**

We recommend that APRA refine the proposed scope and circumstances in which clawback may apply, by:

- removing the mandatory obligation for an SFI to take reasonable steps to apply clawback (acknowledging that clawback should be a discretionary tool utilised in appropriate circumstances as determined by the board of the SFI); and additionally by
- requiring an SFI to delay the vesting of deferred variable remuneration where an employee is under investigation for conduct which may potentially meet the clawback application criteria, to enable malus or other adjustment tools be applied where appropriate;
- extending the application of clawback to apply to all employees in the SFI; and
- removing the specific criteria relating to breach of compliance obligations and failure of accountability.

Westpac has recently implemented a clawback arrangement for deferred variable remuneration awarded in respect of performance periods commencing on or after 1 October 2019 (to the extent legally permissible and practicable). The clawback tool we have designed reflects our interpretation of Recommendation 5.3 of the Hayne Royal Commission, including by being discretionary in its application, i.e. it may be used in appropriate circumstances. The following table sets out this and other features of Westpac's clawback arrangement alongside APRA's proposed approach. We recommend that APRA consider the features of this type of approach as a preferred alternative, having particular regard to both employee scope and application.

Feature	Westpac's current approach	Draft CPS 511
Scope of variable remuneration	All deferred variable remuneration <sup>12</sup> .	All paid or vested variable remuneration, including cash awards.
Employee scope	All employees.	Senior managers and highly-paid material risk takers.
Clawback period	7 years from the date of award.	2 years from the date of payment or vesting, and a further 2 years where a person is under investigation.
Application	<p>Criteria:</p> <ul style="list-style-type: none"> <li>(i) Where required by law;</li> <li>(ii) Fraud;</li> <li>(iii) Bribery;</li> <li>(iv) Conduct causing severe reputational damage; and</li> <li>(v) Any other deliberate, reckless or unlawful conduct that may have a serious adverse impact on Westpac, its customers or its people or conduct which the board considers at its discretion would have justified dismissal for serious misconduct.</li> </ul> <p>Board discretion to apply clawback if above criteria are satisfied having regard to Westpac's remuneration adjustment framework. Clawback will only apply to grounds (ii) to (v) where the conduct has resulted in termination of employment or the Board considers would have justified termination.</p>	<p>Criteria:</p> <ul style="list-style-type: none"> <li>(i) Responsibility for material financial losses;</li> <li>(ii) Material misstatement of financial statements or other criteria on which the variable remuneration determination was based;</li> <li>(iii) Breach of compliance obligations including in relation to misconduct risk; and</li> <li>(iv) Failure of accountability or fitness and propriety.</li> </ul> <p>SFI must take "reasonable steps" to recover if above criteria are satisfied</p>

Westpac recommends amendments to the clawback arrangements proposed by APRA, for the reasons set out below.

- Consistent with the principles-based design of other variable remuneration adjustment tools, Westpac suggests that entities should be required to implement provisions to facilitate clawback and apply it at the discretion of an entity's board, as an alternative to being required to take reasonable steps to enforce clawback in any circumstance where clawback criteria are met. This approach reinforces that clawback should be used only where other variable remuneration adjustment tools are not available or have been exhausted. It further acknowledges that in some circumstances there may be legitimate reasons in the best interests of the entity (and its stakeholders) to not enforce clawback through a litigation mechanism (which may be the only viable means of enforcement), for example, where there is legal uncertainty as to the prospects of the claim or where the legal proceedings may be protracted and result in costs being incurred in excess of the amount to be recovered.
- The introduction of a clawback tool should be supported by a requirement for an SFI to delay the vesting of deferred variable remuneration where an employee is under investigation for conduct for which clawback may be applied. Investigating matters of serious and gross misconduct in large, complex entities (such as SFIs) typically takes a considerable amount of time. Delaying the vesting of an

<sup>12</sup> For example, deferred STVR, LTVR, retention awards and buy-out awards.

employee's deferred variable remuneration during this period (which is similar to investigation of an accountable person's conduct under the BEAR<sup>13</sup>) enables the application of malus to awards which would have otherwise vested prior to the investigation concluding. In this way, even where clawback criteria are met, entities may be able to adjust unvested remuneration to achieve an appropriate outcome rather than attempt to recoup vested remuneration through a costly, protracted and uncertain litigation process.

- As an alternative, APRA-regulated entities could be required to introduce clawback as a discretionary adjustment tool for all employees. The application to all employees is consistent with the application of the malus requirements under APRA's proposal and would support a consistent approach to remuneration-based consequence management.
- In Westpac's view, the proposed clawback criteria (in particular item (c) "breach of compliance obligations" and item (d) "failure of accountability") are too broad and extend beyond the criteria adopted in other jurisdictions<sup>14</sup> as well as the criteria contemplated by the Royal Commission<sup>15</sup> and the Prudential Inquiry into the Commonwealth Bank of Australia<sup>16</sup>. The circumstances in which it would be appropriate to apply clawback should be limited to the most serious instances of misconduct justifying dismissal, and clawback should be applied only where the use of other variable remuneration adjustment tools under a broader set of criteria has been exhausted or is not available. Further, limiting clawback to these circumstances should provide a more defensible basis to establish the clawback is a reasonable requirement and overcome potential obstacles to clawback presented by existing Australian employment legislation<sup>17</sup>.

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<sup>13</sup> Refer BEAR legislation, section 37EC (2) of the *Banking Act 1959 (Cth)*.

<sup>14</sup> Refer Article 94(1)(n) of Directive 2013/36/EU, European Banking Guidelines on Sound Remuneration Policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and Article 450 of Regulation (EU) No 575/2013.

<sup>15</sup> Refer Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report, pages 356 and 357.

<sup>16</sup> Refer Prudential Inquiry into the Commonwealth Bank of Australia Final Report, Recommendation 24, pages 78 to 79.

<sup>17</sup> Refer *Fair Work Act 2009 (Cth)*, sections 325 and 326, which effectively prohibit and void a requirement for an employee to make a payment to their employer where this is unreasonable.