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Dear Sirs

Submission to APRA: Governance Review Discussion Paper

Response to Proposal 4 - Independence Requirements

This submission provides feedback on Proposal 4 of APRA's Governance Review Discussion Paper, specifically addressing the requirement that "at least two independent directors (including the chair) are not members of any other board within the entity's group."

We respectfully submit that this specific aspect of Proposal 4 should not proceed in its current form for the reasons outlined below. Our submission draws upon our practical experience implementing an intra-group conflicts management framework that effectively addresses the very concerns APRA seeks to mitigate through structural board composition requirements.

Understanding APRA's Drivers for Proposal 4 and Why Process-Based Solutions Are More Effective

We recognise that APRA's Proposal 4 stems from legitimate concerns about intra-group conflicts of interest potentially compromising the independent judgment of directors and the interests of regulated entities. As stated in the Discussion Paper, APRA has "observed instances of poor conflict management where entities do not fully consider potential or actual intra-group conflicts" and has "seen instances where directors considered to be independent under the current prudential standard have shown a lack of independent judgment by failing to prioritise the best interests of an APRA-regulated entity over other group entities."

While we acknowledge these concerns, we believe Proposal 4's structural solution:

- *May not address the underlying issue:* Merely having directors who don't sit on other group boards doesn't guarantee their ability to identify, understand, and navigate complex intra-group dynamics and conflicts. Without proper processes, even "independent" directors may lack the information or framework to evaluate potential conflicts effectively.
- *Creates a false sense of security:* Structural independence without robust conflict management processes may create the appearance of independence without the substance, potentially leading to worse outcomes if entities assume that board composition alone resolves all conflict concerns.

- *Fails to account for legitimate alignment of interests:* The proposal treats all group structures and relationships as inherently problematic, rather than recognising that in many cases (particularly mutuals and customer-owned entities), the interests of group entities are substantively aligned.
- *Overlooks targeted alternatives:* Process-based approaches like an Intra-Group Conflicts Management Framework directly address the specific problems APRA has identified by ensuring all conflicts are systematically identified, documented, assessed, and managed according to clear protocols.

By contrast, our recommended approach targets APRA's specific concerns by establishing a rigorous system for managing the exact scenarios that have led to the problems APRA has observed.

Key Concerns with Proposal 4

1. Alignment of Interests Within Group Structures

Under the Corporations Act, directors have a level of discretion in determining what constitutes the best interests of a company. The proposed requirement fails to recognise that in many group structures, particularly mutual organisations, the interests of the group and its regulated subsidiaries are fundamentally aligned rather than in conflict. Our Policy framework is built on the "best interests principle" whereby in an organisation like RACT it is not appropriate or aligned to our culture for decisions to be actively taken to the betterment of one entity over another.

Indeed sections 232 and 233 of the Corporations Act advise that the Courts can intervene if a company is acting prejudicially against the interests of its shareholders, or a shareholder.

As a further reference point the AICD, in their Directors 'best interests' duty in practice, practice statement, endorses the position under Australian law that directors:

- have considerable discretion in determining what is in the best interests of a company; and
- are permitted to consider a range of stakeholders beyond shareholders in deciding what is in the best long-term interests of those shareholders.

RACT policies explicitly acknowledge that there is likely to be a strong alignment between the interests of the Group and its subsidiary companies. This alignment comes not only from the parent being the sole shareholder but also because our operating model seeks to serve the same customers with aligned objectives. As such, the satisfaction of regulatory requirements of RACT regulated entities is considered to be in the best interests of the RACT Group, and the strengthening of the RACT Group as a key strategic partner, service provider and brand owner, is considered to be in the best interests of each RACT entity.

2. Existing Legal Frameworks Combined with Robust Conflict Management Processes Adequately Address Director Duties

Section 181 of the Corporations Act already requires directors to act in the best interests of the company they are representing. Additionally, section 187 expressly provides for directors of wholly-owned subsidiaries to act in the best interests of the parent company when authorised by the constitution. This legal framework creates a robust foundation for proper governance.

Rather than mandating structural separation, we have implemented a framework that ensures directors can effectively fulfill their duties to each entity. Our framework includes:

- Transparent identification of conflicts
- Documented decision-making
- Comprehensive conflicts register
- Safeguards in meeting procedures
- Chair separation (different chair on the parent from the chair on the subsidiaries)
- Risk assessment of impacts (to allow directors to evaluate materiality of conflicts)
- Entity-specific in-camera sessions
- Expert involvement (where conflicted decisions are being taken)
- Detailed escalation procedures (when directors cannot reach agreement on conflicted matters)

Examples of the processes in place and conflicted decisions made are provided as appendix A. This approach allows us to comply with both the letter and spirit of existing legal and regulatory requirements while maintaining an efficient governance structure that serves the interests of all stakeholders.

3. Disproportionate Impact on Mutual Organisations

As a mutual organisation, our governance structure reflects our member-owned nature and commitment to mutual principles. Our policy explicitly states that in an organisation like RACT it is not appropriate or aligned to our culture for decisions to be actively taken to the betterment of one entity over another.

Proposal 4 would disproportionately impact mutuals and similar organisations where:

- The interests of members are paramount across all group entities
- Board members are selected for their commitment to mutual principles
- Our operating model and governance structure intentionally encourages shared directorships across legal entities that manufacture and distribute products under the RACT brand to ensure coordinated and holistic governance

Our policy codifies the principle that directors should take into account the best interests of each RACT entity and the RACT consolidated group as a whole individually, separately and equally. Our directors can only make decisions when they are satisfied that:

- The decision is in the best interests of the RACT Group and each of its wholly-owned subsidiary companies
- Directors have identified and understand any conflicts between entities within the RACT consolidated group
- Directors have received an appropriate level of information to enable an understanding of the impact of the decision

This principle-based approach ensures proper governance without requiring the structural separation proposed by APRA.

4. Practical Compliance Challenges

Implementing Proposal 4 would create significant practical challenges:

- In specialised industries where qualified directors with relevant experience are limited
- Increased costs associated with expanding boards to accommodate directors who serve on only one group entity
- Potential to undermine rather than enhance group oversight by fragmenting knowledge across different boards
- Creation of information asymmetries between parent and subsidiary boards

Alternative Approach: Focus on Conflict Management Processes Rather Than Structure

We propose that APRA adopt a principles-based approach that focuses on robust conflict management processes rather than prescriptive structural requirements. Our framework provides a proven model that demonstrates how entities can effectively:

- Implement detailed conflict management frameworks tailored to their organisational structure
- Proactively identify potential, perceived, and actual conflicts through systematic review processes
- Document and demonstrate how potential conflicts are identified, assessed, and managed
- Ensure directors are adequately informed of their duties to each entity with appropriate risk assessments and information
- Institute meaningful safeguards including separated chair roles, in-camera sessions, expert involvement, and structured escalation processes
- Maintain efficient governance structures that reflect the reality of their group operations while ensuring all entities' interests are properly considered
- Conduct regular reviews and assurance through internal audit functions

Our approach represents a modern governance framework that addresses APRA's legitimate concerns while preserving the benefits of coordinated group governance.

Recommendation

We recommend that APRA:

1. Reconsider Proposal 4's requirement that "at least two independent directors (including the chair) are not members of any other board within the entity's group"
2. Instead, consider requiring entities to demonstrate effective intra-group conflict management frameworks, with documented:
    - Identification processes for potential, perceived, and actual conflicts
    - Decision-making protocols that ensure adequate information about impacts on all entities
    - Safeguards in meeting procedures, including specialised in-camera sessions

- Clear escalation procedures when conflicts cannot be readily resolved
- Regular assurance mechanisms through audit and board review

3. Recognise the legitimate alignment of interests that exists in many group structures, particularly mutual organisations where our policy principle that decisions are not taken to the betterment of one entity over another is embedded in organisational culture
4. Consider adopting a risk-based approach where enhanced independence requirements might apply only to entities where APRA has identified specific governance concerns or where a comprehensive conflicts management framework has not been established
5. Acknowledge that separation of chair roles between parent and regulated subsidiary (as we have implemented) may provide sufficient structural safeguard without requiring complete board separation

Conclusion

While we support APRA's objective to strengthen governance in regulated entities, we believe that Proposal 4 in its current form may create unintended consequences without necessarily achieving better governance outcomes. Our experience implementing an intra-group conflicts management framework demonstrates that the concerns APRA aims to address through structural board requirements can be effectively managed through robust processes, safeguards, and controls.

We have systematically identified potential conflicts scenarios relevant to our business, established clear processes for identifying and managing conflicts, and created appropriate escalation mechanisms when conflicts cannot be readily resolved. This approach maintains the benefits of coordinated group governance while ensuring that each entity's interests are properly protected.

We welcome the opportunity to discuss our submission further, and to work with APRA toward governance standards that achieve prudential objectives while recognising the diversity of organisational structures in the financial services sector.

Yours sincerely

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Chief Executive Officer