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[redacted]

General Manager
Policy Development
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By email: PolicyDevelopment@apra.gov.au

Dear General Manager

Governance Review Discussion Paper

St Luke's Medical and Hospital Benefits Association (St Lukes) welcomes the opportunity to provide feedback on the Australian Prudential Regulation Authority (APRA) Governance Review Discussion Paper.

We also refer to the Members Health Fund Alliance (MHFA) submission which we support.

St Lukes acknowledges APRA's recognition that well-governed entities are more resilient in times of stress, more agile in times of change and demonstrate more sophisticated risk judgement, and the position that the proposed changes aim to remedy areas of poor practice across some segments of APRA regulated entities. St Lukes appreciates that APRA has taken a proportional approach to the proposals to recognise that, while minimum standards are required, governance practices should reflect the size, complexity and business model of the individual entity.

Our concerns and our submissions in relation to them are detailed in the Attachment.

Yours sincerely

[redacted]

Chief Risk Officer

Attachment

Proposal 2 - Fitness and propriety

"APRA proposes to strengthen baseline expectations for fitness and propriety by:

- *Being more specific about what fit and proper means, and the need to verify conclusions. APRA proposes to incorporate existing guidance and additional matters into the standard for consideration."*

St Lukes agrees that robust fitness and propriety assessments is necessary and additional guidance on fitness and proprietary is welcome. While some of the proposed expanded criteria may be relevant, St Lukes considers that way in which these criteria are incorporated into the recruitment process should be determined by the individual entity, with consideration whether fitness and propriety is impacted being a decision of the Board.

Proposal 3 - Conflicts management

"To address the issue of differing conflict management requirements across sectors, APRA proposes to create a single cross-industry set of requirements. This would include requirements that currently apply only to registerable superannuation entities licensees (e.g. Having a conflicts management policy, and the public disclosure of registers of duties and interests). It is proposed that all regulated entities would be subject to these requirements."

St Lukes does not support the making public of duties and interests of responsible persons. Having an interest in another entity does not necessarily mean a person is conflicted in their duties, nor does it mean that conflicts are not being appropriately managed. As such, public disclosure of interests does nothing to strengthen the management of conflicts but does infringe upon the privacy of a Director, simply due to them having an interest in something outside of the organization which they are a Director. It may also have unintended consequences in Directors making decisions about whether an interest represents a conflict or not prior to declaring it, whereas this determination is currently a function of the Board and should remain so.
"APRA also proposes to strengthen the requirements that are currently in SPS 521 by incorporating some material that is currently in the guidance into obligations, which would apply to all regulated industries. This includes the guidance that, as well as actual conflicts, potential or perceived conflicts and conflicts that affect the reputation of the business should be effectively managed."

St Lukes agrees that conflicts of interest for identification, monitoring and management be extended from actual conflicts of interest to also include potential or perceived conflicts of interest that affect the reputation of the business. However, St Lukes believes that flexibility needs to be applied in the consideration of how best to manage conflicts of interest particularly within the constraints of small markets and communities.

Proposal 4 - Independence (banks and insurers only)

"A proposed revised definition of independence

a non-executive director who is not an employee of the entity, or the group to which it belongs, and who is free from any business or personal relationship that interferes, or could reasonably be perceived to interfere, with their exercise of objective judgement or acting in the interests of the regulated entity."

St Lukes raises concerns within the context of the mutual not-for-profit sector. The proposed definition of independence could imply any connection with an entity, including being a customer or a donor. For mutual not for profit regulated entities this could diminish the values alignment if directors can't be encouraged to be a customer of their organisation. Further, this restriction would also likely reduce the pool of independent directors from small communities such as Tasmania.

"APRA proposes to mandate that on each regulated entity board, at least two of the independent directors (including the chair) must not be directors on any other board within the relevant group."

St Lukes does not support the proposed mandated position. Being able to control a wholly owned subsidiary entity's activities is an important consideration in ensuring the entity works for the purpose it was set up for rather than in the pursuit of profit of its own accord. Requiring at least two directors that are not on any other Board within the group means that the size of the Board of a small subsidiary entity (historically 3 for St Lukes' subsidiaries), would need to be increased to achieve such control. This would then increase the governance costs of the organization, unnecessarily in most instances, and many wholly owned subsidiary entities set up for specific purposes related to the parent entity's activities run on small margins to begin with. An amendment may be to apply this requirement to non-wholly owned entities within the group.

Proposal 6 - Role clarity

"APRA proposes to amend its prudential standards to include a clear articulation of the primary roles of the board, the chair and senior management. While APRA appreciates that most APRA-regulated boards understand their responsibilities, the purpose of the proposal is to be clear on APRAs expectations, and to facilitate better delegation to board committees and management."

St Lukes views the clarification of APRA's core expectations of the board, the chair and senior management positively, but doesn't support the mandating of these expectations. Directors have liability and a fiduciary duty under the Corporations Act to carry out the requirements of their role, and as a Board should determine how that is best achieved through delegations to Board committees and management. Mandating the roles of the Board, Chair and senior management means that if a Board has an alternate view and takes alternative action according to that view (which could be entirely appropriate for the circumstances), it may then need to justify the deviation from APRA's view. St Lukes feels this would undermine the accountability the Board has for its own decision making in this regard and could lead to outcomes that are less than optimal for the circumstance, or unnecessary time and effort required in justifying to APRA why it has taken particular action in its delegation decision making.

Proposal 7 - Board committees

"While having separate risk and audit committees is better practice, APRA recognises that this may create additional cost and complexity for smaller entities (non-SFIs). APRA therefore proposes to remove the current requirement for all bank and insurers to separate these committees."

St Lukes does not support removal of the requirement for non-significant financial institutions to have separate risk and audit committees. While some minor duplication may be removed, the workload and skill set of a combined committee would require the same input and skill set as the current separate committees. Furthermore, one of the reasons originally provided by APRA for the necessity of separate committees was to ensure that appropriate time was devoted to matters of risk management as well as to financial matters. St Lukes considers this to be a valid reason and would prefer this continue as a prudential requirement, recognizing that sufficient time is necessary to be devoted to each.

Proposal 8 - Director tenure and board renewal

"APRA proposes to introduce a 10-year lifetime tenure limit on a regulated entity board for non-executive directors, with the possibility of an extension at APRA's discretion."

St Lukes considers that lifetime tenure of 10 years limit for non-executive directors should be provided as guidance only rather than being mandated. There are many valid instances where it may be appropriate that a Director's tenure be extended beyond 10 years. The Corporations Act does not require that tenure be limited to 10 years and St Lukes feels it is inappropriate for APRA to attempt to legislate beyond the requirements of that Act for the entities it regulates. Boards should remain accountable for their own decisions in relation to the tenure of their Directors and the current guidance provides APRA with an ability to request a 'please explain your reasons' approach. St Lukes does not support APRA undermining the accountability of the Board's decision making in this respect by imposing a tenure limit and taking on accountability for extending this at APRA's own discretion.

"With respect to board renewal, APRA proposes to extend the current prudential requirements to explicitly require:

- *Consideration of the full cycle from nomination and appointments through to succession planning*
- *Details on director nomination, appointment process, length of term and maximum number of terms*
- *How results of board and director performance assessments will feed into succession planning and renewal."*

St Lukes doesn't support the explicit definition of how a board approaches its renewal and what it should consider in doing so. However, St Lukes would appreciate APRA's expectations being provided as guidance only.