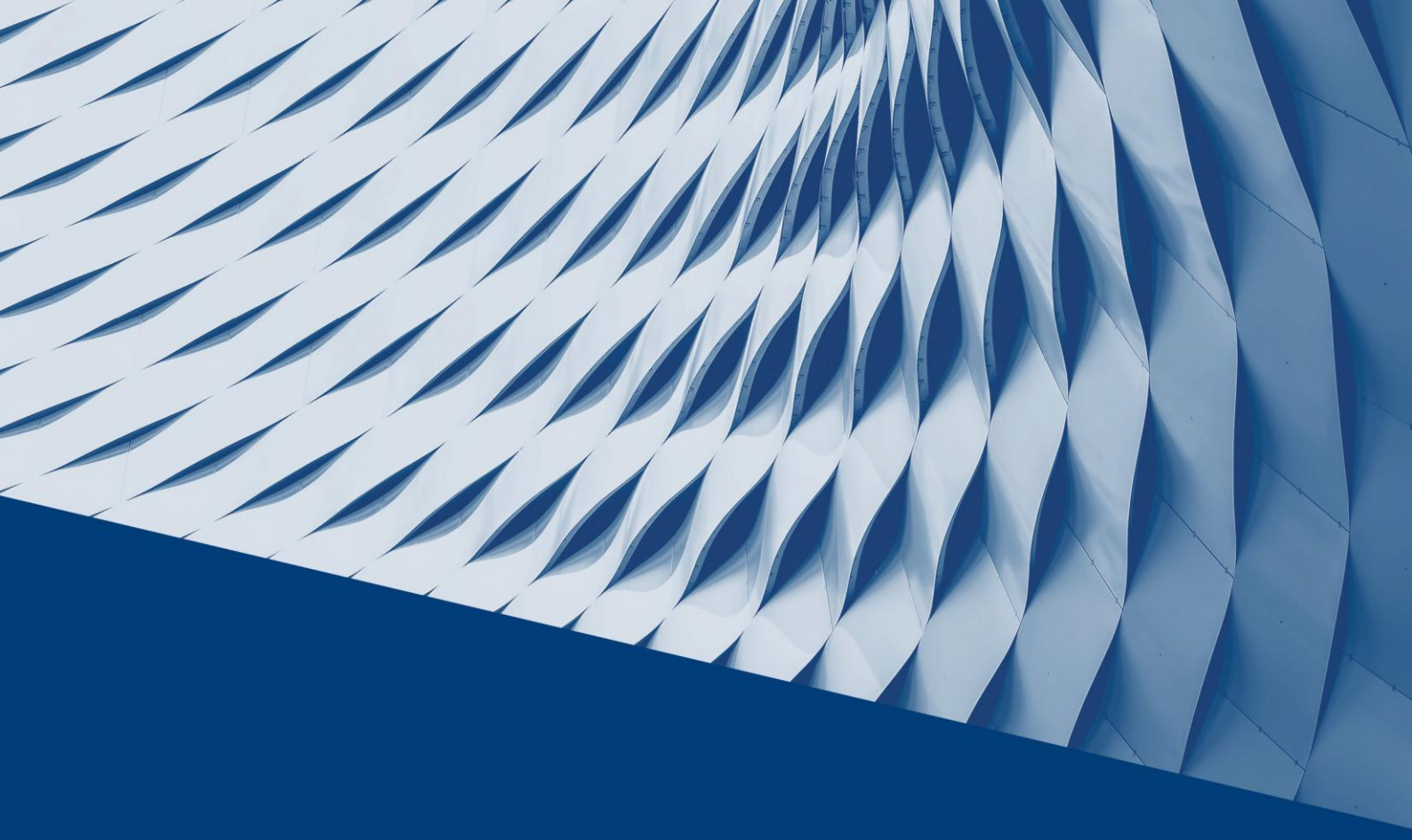

# Superannuation Governance Must Maximise Member Outcomes

Submission by the Australian Council of Trade Unions to Australian Prudential Regulation Authority *Governance Review Consultation Paper* and Draft Prudential Standard *CPS 510 – Governance*

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ACTU
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# Introduction

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. There is no other national confederation representing Australian unions. Together with its affiliate unions, the ACTU represents over 1.7 million trade union members around Australia who work across a broad spectrum of industries and occupations in both the public and private sectors.

The Australian trade union movement led the campaign to establish superannuation to provide workers with dignity in retirement. Through industrial action, bargaining and advocacy at both the Australian Conciliation and Arbitration Commission and the High Court, the union movement won the introduction of superannuation for many workers. The ACTU and affiliates were instrumental to the creation of the Accord which introduced universal and compulsory superannuation through the legislation of the Superannuation Guarantee (SG) by the Keating Labor Government.

In the 30 years since the establishment of universal, fully vested and portable superannuation, the ACTU and affiliates remain dedicated to ensuring that all workers live and retire in dignity and out of poverty. To do so, unions remain active contributors to the superannuation system. Member-representative trustee directors, nominated by the ACTU and affiliates, ensure that members' interests are the priority of superannuation funds and that these funds continually demonstrate industry-leading, best-practice governance, investment performance and administration.

Unions and member-representative trustee directors are committed to the highest standards of organisational, fund and corporate governance. Best practice governance is critical to our work of representing and serving members across their working and retirement lives. To ensure best practice governance, unions and profit-to-member, representative funds engage in continuous governance uplift. Ongoing governance advancement is critical to exemplary member outcomes.

Best practice governance is member-focused, principles-based, material risk-focused, proportionate, objective, equitable and evidence-based. The 2026 Statement of Expectations (SOE) of the Australian Prudential Regulation Authority (APRA) sets out the Government's expectations that APRA will regulate in this way. Contrary to the SOE, and its requirements for best practice regulation, the proposed *CPS 510 - Governance* attempts to introduce prescriptive requirements which extend regulator involvement into fund operational matters and, in doing so, impose regulatory burden without an evidentiary base of improved member outcomes. Extending the regulator's role beyond prudential supervision into the operational management of regulated entities is both poor governance and a significant risk to the regulator.

Superannuation fund governance must be assessed by whether it improves retirement outcomes for members not by the arbitrary number of governance obligations imposed on regulated entities. The superannuation system exists to provide retirement incomes for working people. Governance requirements must, therefore, be directed towards improving member outcomes rather than increasing procedural compliance. The SOE appropriately recognises this by directing APRA to focus on member outcomes, material risks, proportionality and principles-based regulation. These principles should form the framework through which regulation is assessed.

Both CPS 510, and associated guidance, must align with the best practice regulatory principles and member focus outlined in the SOE. APRA cannot satisfy the SOE by removing proposals from CPS 510 while retaining them in guidance or in supervisory expectation. As such, CPS 510 should be redrafted according to the SOE, and all future guidance should be drafted to ensure alignment with the expectations of the regulator.

## Governance Reform Must Improve Retirement Outcomes

The purpose of regulation is not governance reform for its own sake. Superannuation governance requirements rightly exist to safeguard, and improve, member retirement outcomes.

Superannuation funds exist to deliver retirement incomes for working people. Governance arrangements are not an end in themselves but a mechanism through which trustees make sound decisions, appropriately manage risk and act in members' best financial interests. Regulatory interventions which unnecessarily increase governance burden, constrain boards or divert resources away from member services and outcomes without delivering demonstrable benefits, risk undermining the objectives they are intended to achieve and worsening members' retirements.

The SOE directs APRA to focus on member outcomes and calibrate regulatory activity according to the materiality of risks. These expectations are consistent with international regulatory best practice which emphasises the need to focus on outcomes rather than compliance processes and direct regulatory effort towards areas where intervention is most likely to improve outcomes for members.

As such, all Australian superannuation governance reforms should be evaluated against the following questions:

- What evidence demonstrates that the proposal will improve member outcomes?
- What evidence demonstrates that the benefits of the proposal outweigh the additional regulatory, compliance and operational burden it creates?
- How will APRA ensure that resources devoted to compliance with their proposals are not diverted away from activities that more directly improve member outcomes?

These questions are particularly important in superannuation because every dollar directed towards additional compliance processes, consultants, assessments and reporting obligations is a dollar that cannot be directed towards member services, administration improvements, retirement products, investment capability, cybersecurity capability or other initiatives that directly improve member outcomes. Therefore, it must clearly be demonstrated by APRA that all proposed governance expenditure is in members' best financial interests.

Throughout this review, little, or no, evidence has been provided that many of the prescriptive proposals will improve governance effectiveness and member outcomes, in particular:

- Mandatory director tenure limits
- Measurable and verifiable proficiency scales
- APRA-directed reassessments
- Restrictions on committee voting arrangements
- Board composition and independence requirements

Regulatory obligations should only be changed where the need for intervention can be clearly demonstrated and evidence provided demonstrating that the intervention has, and is reasonably expected to continue to, improve member outcomes.

## Align CPS 510 with the SOE

The SOE requires APRA to calibrate regulatory effort to the materiality of risks, maintain flexibility and tailoring, minimise unnecessary regulatory burden, apply best practice principles-based regulation and prioritise member outcomes.

The proposed CPS 510 does not meet these expectations as it seeks to transition the currently principles-based standards into prescriptive obligations without a focus on material risk and member outcomes.

The proposals introduce detailed requirements relating to board skills matrices, measurable proficiency scales, director performance assessments, board renewal plans, committee structures and tenure limits without providing evidence of the correlation with improved member outcomes. As such, the proposed CPS 510 requires substantial re-drafting to give effect to the regulator's SOE and best practice regulation.

## Best Practice Regulation is Principles-Based, Evidence-Based and Proportionate

The ACTU's 2025 submission to APRA's *Governance Review* outlined the components of internationally regarded best-practice regulation. It is widely acknowledged that regulation achieves the best outcomes when it is:

- Principles-based rather than prescriptive
- Purpose-built for the regulated industry
- Evidence-based
- Member-focused
- User-centred
- Outcome-oriented
- Objective
- Transparent
- Equitable
- Proportionate
- Distributive
- Limited to the extent required to achieve good governance while preventing regulatory overreach and burden

The importance of principles-based regulation is particularly acute in superannuation where funds differ significantly in size, complexity, membership profile, governance arrangements, risk profile, investment strategy and operating model. Due to these differences, the governance framework which is most effective within one fund may not achieve the best outcomes for members in another. As such, prudential standards should establish governance outcomes and expectations while allowing boards the flexibility to determine how those outcomes are best achieved in their circumstances.

The current standards broadly reflect these principles; however, the proposed CPS 510 departs from these by prescribing structures and processes instead of focusing on member outcomes and empowering boards to respond to the unique risks they face.

## Good Governance Requires Strong Boards, Not Regulatory Substitution

Unions remain concerned that several of APRA's proposals risk replacing board judgement with regulatory judgement. Boards are accountable for governance, strategy, risk oversight, expenditure decisions and member outcomes. APRA has rightly made it clear that boards possess ultimate responsibility however, the proposals in draft CPS 510 involve the regulator in the operational matters of boards including composition, renewal, assessment processes and internal structures, and therefore, have the impact of diluting board responsibility and accountability, and acting as a disincentive to serve on boards.

Further, the regulator being involved in the operational running of funds, rather than their regulation, creates significant risk for the regulator. If APRA determines who remains on boards, whether directors remain fit and proper, how skills should be assessed and how governance structures should operate, accountability shifts from boards to APRA and the regulator begins to assume the responsibility for governance outcomes.

Strong, member-first governance cultures are produced through board accountability, collective responsibility and effective leadership, not increasingly prescriptive, box-ticking regulatory obligations. Regulation, and member outcomes, are best when boards are empowered to take full accountability and are guided to best practice governance through principles-based and evidence-based regulation which prioritises member outcomes and material risks.

# Skills and Capability

## Boards Require Diverse Skills and Experience

Unions strongly support boards maintaining collective skills and capability frameworks and acknowledge the critical role these play in good governance and member outcomes. Skills matrices and assessments maximise member outcomes when they account for the diverse range of skills and experience that boards require to effectively represent and serve members including formal and informal education, training and experience.

The proposed CPS 510 fails to understand, and reflect, the diversity of skills and experience required to maximise member outcomes in requiring skills matrices to be measurable and verifiable. The effect of such a requirement is that boards will feel obliged to compose themselves solely of directors with formal education and training, such as accounting and compliance, which are easy to measure and verify. While these are unquestionably critical, boards must equally ensure that their directors have the skills and experiences required to represent and deliver for members. Many important governance capabilities, including judgement, leadership, strategic challenge, stakeholder understanding, workplace knowledge, industrial knowledge and member understanding, are not easily reduced to measurable and verifiable proficiency scales, yet are critical governance capabilities to maximise member outcomes.

Further, the proposals fail to acknowledge the established governance benefits obtained through diverse board composition. Those from lower socioeconomic backgrounds, non-English speaking backgrounds and younger people may not have had the same opportunities for formal 'measurable and verifiable' education yet bring great experience and skills to boards which are tasked with representing the interests of members to improve their retirement outcomes.

The ACTU's original submission warned against the regulatory overreach of prescribing skills or qualifications. While APRA states that it is not prescribing skills, clause 48 is a clear attempt to shape the skills and qualifications of boards by privileging the skills and experience which can be formally measured and verified. This inevitably places greater weight on formal qualifications, certifications and technical training than on other equally critical skills and forms of knowledge and experience.

## The Collective Board

Boards are the proven governance model because the whole is more than the sum of its parts - in that great benefit is obtained through the collective board structure that is not achievable through disconnected individual directors. Therefore, the ACTU's original submission warned against individualising board skills and capabilities. APRA responded that it has accepted this feedback however, in practice, the proposed CPS 510 wording ("the effectiveness of individual directors measured against the directors' performance objectives and the Board skills matrix" [subclause 51]) enables APRA to achieve its original objective through detailed assessment of individual

director capabilities. As such, the proposed CPS 510 will threaten the benefits to members of collective board decision-making.

### Excessive Regulatory Involvement

The draft CPS 510 requires an "annual performance assessment", including "the effectiveness and appropriateness of the governance framework" (clause 51). APRA must clarify that funds will not be required to assess, justify or reconsider their governance model as part of annual board assessments. Boards must remain free to determine the governance models most appropriate to their risks and their members' wants and needs.

## Fit and Proper Obligations

### Pre-Engagement ahead of Appointment

Unions strongly opposed APRA's original proposal for mandatory pre-appointment engagement due to regulatory overreach and excessive prescription and therefore, welcome the decision not to proceed with this requirement. However, as APRA continues to explicitly state that it regards early engagement as desirable and best practice, serious concerns remain that the regulator will attempt to achieve its original objective through guidance and/or supervisory practices. Proposals which have been deemed not to be fit for standards should not be required through guidance or regulatory posture.

### Subjective Requirements

Unions are strongly opposed to subjective regulatory obligations and note that they do not align with best practice regulation or APRA's SOE. As such, unions oppose the inherently subjective introduction of a time and capacity requirement, and reference to character and judgement. Regulatory standards should be objective, transparent and capable of consistent application. Subjective criteria increase uncertainty and the risk of inconsistent supervisory outcomes.

### Reassessment

To align with APRA's SOE and best practice regulation, proposals should be principles-based, avoid regulatory burden and provide regulatory guidance and oversight, not intervene into the operational matters of funds. As such, the ability for the regulator to reassess fit and proper status (clause 90) when the board has determined this to be the case based on obligations set by the regulator, must be removed. This creates an avenue for ongoing regulatory involvement in board composition decisions and introduces significant regulatory discretion into matters that should remain the responsibility of boards. Transferring board responsibility and accountability to the regulator will not improve governance and member outcomes.

## Perceived Conflicts

As noted, regulation leads to the best governance and member outcomes when it is objective, equitable and transparent. As such, unions welcome the removal of the consideration of perceived conflicts within prudential standards. However, as noted above, transferring obligations from standards to guidance enables the regulator to continue to require their implementation. Therefore, wording must be carefully drafted to ensure this is a suggested consideration for boards and not a formalised obligation which entities are required to engage with the regulator on.

# Independence Requirements

Unions oppose APRA's proposal to introduce additional independence requirements through adoption of the ASX Corporate Governance Principles definition of independence and corresponding composition requirements for APRA-regulated subsidiaries.

The SOE requires APRA to regulate in a proportionate and principles-based manner and focus regulatory effort on matters that materially affect member outcomes. APRA has not established that existing independence arrangements are creating prudential deficiencies or that expanded independence requirements will improve governance or member outcomes. Instead, the proposed independence requirements are another example of moving beyond principles-based regulation towards prescription of governance structures and board composition.

In the absence of a prudential rationale, an evidentiary basis and demonstrated member outcome benefit, APRA should not proceed with measures that constrain board discretion and increase regulatory burden. Boards remain best placed to determine how best practice governance principles are operationalised having regard to their circumstances, unique risks and member needs and wants.

# Board Performance Reviews

## Regulatory Overreach and Prescription

Unions continue to support triennial independent board performance reviews and continue to caution against inappropriate regulatory involvement in the operational matters of boards and funds which hamper boards' ability to prioritise member outcomes.

APRA states that it has responded to consultation feedback and removed the requirement for reviews to be submitted to the regulator. However, the proposed CPS 510 wording continues to require as such through establishing the obligation that "the regulated entity must be able to demonstrate to APRA progress against accepted recommendations from the report" (clause 56). It will in no way be possible for boards to comply with this requirement without providing in full, or in part, the independent board performance review to APRA against which they are demonstrating their progress. To align CPS 510 with the SOE that regulation is principles-based, the above sentence must be removed.

## Prescribed Qualifications

Unions welcome APRA's removal of prescriptive qualifications for independent board assessors and note that this removal aligns with the APRA SOE.

# Role Clarity and Delegations

Unions support role clarity and delegation frameworks as both assist boards to improve governance and member outcomes through prioritising the provision of oversight and strategic direction. However, the prescriptive nature of many aspects of the proposed CPS 510 are counter to this objective as they unnecessarily burden boards with compliance obligations which are divorced from improved member outcomes. Therefore, if APRA wishes for boards to devote greater attention to strategy, risk and member outcomes, regulatory burden must be reduced rather than expanded.

### Board Delegations

Unions welcome APRA's commitment to not include prescriptive board delegations within guidance and note that this removal aligns with the APRA SOE.

### The Chair

APRA's statement that it will prescribe the chair's role in guidance, rather than standards, does not align with the principles-based approach outlined in the APRA SOE and best practice regulation. Any commentary on the role of the Chair to be included within guidance must be principles-based, evidence-based and member-outcomes focused.

## Committee Voting

Unions continue to express significant concern in response to APRA's proposal to mandate that only full board members can be voting members of APRA-required board committees. This proposal does not align with APRA's SOE as it is unnecessarily prescriptive, lacks an evidentiary base, does not address material risk nor improve member outcomes.

Notably, APRA acknowledges that in proceeding with this proposal it is ignoring the stakeholder feedback it received through its consultation process, admitting that "Most submissions, especially from RSE licensees, opposed the proposal".

Many institutions effectively utilise alternate directors and expert committee participants to uplift their governance and member outcomes. Proceeding despite widespread opposition demonstrates that APRA has no evidentiary basis for this prescriptive proposal. Where industry stakeholders, governance practitioners and regulated entities consistently identify practical concerns, APRA should clearly demonstrate the prudential rationale, alignment with the SOE and evidentiary basis for proceeding. Failing this, the proposal should be withdrawn.

## Director Tenure

Unions remain strongly opposed to mandatory director tenure limits as no evidence has been provided that this level of extreme regulatory prescription improves governance and member outcomes. Notably, this degree of prescription is not aligned with best practice regulatory principles or APRA's SOE which require that regulation is principles-based.

It is not disputed that board renewal is critical and should be encouraged. At present, boards undertake succession planning, governance reviews and renewal activities, and should be encouraged to continue to do so. However, no evidence has been provided that a tenure limit is required for board renewal and improves member outcomes.

Concerningly, APRA is proceeding with this proposal despite stakeholder opposition. Of those that submitted to APRA's public consultation, 18 submissions opposed mandatory tenure limits, four supported a 12-year limit, seven supported limits at or around ten years, five supported renewal in practice only and 11 were silent. Those opposed included the Australian Banking Association, Australian Institute of Company Directors, Customer Owned Banking Association, Insurance Council of Australia, ASFA, Governance Institute and King & Wood Mallesons. Further, mandatory tenure limits are inconsistent with leading international governance frameworks including the OECD Principles of Corporate Governance, UK Corporate Governance Code, European Banking Authority framework, United States Federal Reserve, United States Office of the Comptroller of the Currency framework and the ASX Corporate Governance Principles.

Further, it should be noted that response through submissions to APRA's specific tenure proposals does not equate to endorsement of a prescriptive tenure cap where submissions note their opposition while responding to the specific proposals.

Effective boards require a balance of experience, institutional knowledge and renewal. Board renewal policies, succession planning and governance reviews are suitable mechanisms to ensure effective governance without arbitrary prescriptive tenure limits.

# Conclusion

## Principles-Based Regulation Focused on Maximising Retirement Outcomes

Consistent with best practice regulation, APRA's SOE requires APRA to focus on material risks, improve member outcomes, minimise unnecessary regulatory burden and regulate according to proportionate and principles-based approaches. Unions strongly support regulation of the superannuation sector according to these principles. Regulation of this nature supports better decisions, stronger accountability, better risk management and improved member retirement outcomes. As such, all regulatory proposals, including the proposed CPS 510, must be assessed against the SOE, best practice regulatory principles and the fundamental question of whether the proposal has evidentiary basis to suggest it has, or will, improve members' retirement outcomes.

Unions continue to have significant concerns with the proposals within the APRA *Governance Review* and the draft CPS 510 as they do not align with the SOE in that they are excessively prescriptive, unnecessarily burdensome and fail to prioritise areas of greatest material risk and the improvement of member outcomes. Unions remain particularly concerned about the proposals within the draft CPS 510 relating to skills and capability assessments and measurements, fitness and propriety assessments, conflicts management, independence requirements, board performance reviews, role clarity and delegations, committee voting and director tenure.

To ensure that the best possible governance and member outcomes are achieved, APRA should substantially re-draft CPS 510 to ensure alignment with the APRA SOE and best practice regulatory principles.

## Union Recommendations

1. Withdraw, and substantially re-draft, draft CPS 510 and all associated prudential guidance to align with the APRA Statement of Expectations
2. Ensure all future prudential guidance is consistent with the SOE and does not operate as a mechanism to implement proposals that have been removed from prudential standards
3. Ensure regulatory effort is focused on material risks and the improvement of member outcomes
4. Restore a genuinely principles-based, evidence-based and proportionate approach to governance regulation
5. Demonstrate the evidence base and member-outcomes rationale for each proposed regulatory intervention
6. Remove clause 48 relating to measurable and verifiable proficiency scales
7. Ensure board skills and capability requirements recognise the broad range of formal and informal skills, experience and attributes required for effective governance
8. Clarify that annual governance assessments do not require funds to assess, justify or reconsider their governance model
9. Ensure board skills and capability assessments remain focused on collective board capability rather than the individualisation of director skills and accountability
10. Remove clause 90 permitting APRA-directed fitness and propriety reassessments
11. Remove the subjective time and capacity, and character and judgement criteria from the fit and proper framework

12. Do not implement through guidance any appointment engagement expectations that were rejected for inclusion within prudential standards
13. Do not retain perceived-conflict expectations in guidance where they would operate as informal supervisory requirements
14. Do not proceed with additional prescriptive independence requirements unless APRA demonstrates a material need, an evidentiary basis and improved member outcomes
15. Remove clauses 29 to 34 relating to board composition and independence requirements
16. Remove clauses 52 and 56 and any other provisions enabling APRA involvement in operational governance matters arising from board assessments and reviews
17. Ensure board performance reviews remain governance tools for boards and are not used to facilitate ongoing regulatory oversight of board activities
18. Reduce regulatory burden on boards to enable greater focus on strategy, risk oversight and member outcomes
19. Do not prescribe the role of the Chair through prudential guidance in a manner inconsistent with principles-based regulation
20. Withdraw the proposal restricting committee voting rights to full board members
21. Remove mandatory director tenure limits and related APRA discretion provisions
22. Preserve board discretion to determine board renewal, succession planning and director tenure arrangements appropriate to their risks and member needs
23. Ensure all future governance regulation is focused on improving member outcomes

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