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APRA Governance Review - Consultation Paper

Thank you for the opportunity to provide feedback to APRA's Governance Review Consultation Paper.

We welcome APRA's review of governance practices and note that many of the proposals outlined in the Consultation Paper are reflected in existing governance frameworks, structures and practices across the ART Group (ART). ART is committed to complying with any future changes to prudential standards or regulatory guidance.

As a core principle, ART supports a balanced regulatory approach that combines clear expectations and accountability with sufficient flexibility for entities to apply sound judgment and implement arrangements appropriate to their size, complexity and operating environment. In our view, effective regulation is best achieved through a combination of targeted prescription and principles-based guidance, enabling strong governance, prudent risk management, and positive member outcomes.

ART appreciates the opportunity to contribute to this review and would be pleased to provide any further information regarding the matters raised in this submission. [redacted], is the primary contact for this submission and can be contacted at [redacted]

Yours sincerely,

[redacted]

[redacted]
Chair, Australian Retirement Trust

Australian Retirement Trust responses

ART thanks APRA for considering feedback from the previous consultation and for the open and constructive ongoing engagement on the new draft Prudential Standard CPS 510 Governance. As outlined throughout this submission, ART strongly supports continued uplift in governance practices across APRA-regulated entities. Our feedback on draft CPS 510 is limited to targeted comments, requests for clarification, and areas where further guidance in Prudential Practice Guide CPG 510 would assist entities to achieve effective and consistent implementation.

Part A – Board governance for locally incorporated regulated entities

Delegation of authority

We strongly support APRA's proposal to make the delegation framework more explicit, enabling boards to delegate with greater confidence and focus on forward-looking strategy, risk, oversight and challenge. We particularly welcome confirmation that Board responsibilities imposed under prudential standards may be delegated, except for those responsibilities expressly identified as non-delegable in paragraph 13 of draft CPS 510.

ART interprets paragraph 15 of draft CPS 510 as an overarching delegation power for Board responsibilities imposed under all prudential standards, subject only to the non-delegable responsibilities listed in paragraph 13. Where another prudential standard imposes a Board responsibility but does not expressly permit delegation, ART considers that responsibility should still be capable of delegation under paragraph 15, provided it is not reserved to the Board under paragraph 13. ART would appreciate APRA's confirmation that this interpretation is correct – this clarification could be provided in the CPG 510. This would support a consistent and practical approach to delegations across the prudential framework, including where prudential standards were drafted before paragraph 15 was proposed.

The proposed paragraph 15 drafting appears to narrow the category of permitted management delegates from 'management' under the current standard to 'senior managers' under the draft standard. ART would welcome clarification that appropriate sub-delegation by senior managers is permitted, subject to suitable oversight, documentation and periodic review.

Board Skills and Capability

ART supports APRA's proposal to require entities to take a structured approach to identifying, assessing and addressing Board skills and capability needs. This is an important element of strengthening governance and ensuring Boards are equipped to oversee strategy, risk and performance in an increasingly complex operating environment. It also supports effective succession planning, Director development and Board renewal, and helps Boards identify and address emerging capability needs in a timely and considered way.

However, ART has some concerns regarding the proposed drafting regarding behavioural attributes. ART notes that behavioural attributes are inherently qualitative and may be difficult to rate and rank, which may limit consistent and meaningful comparisons in an externally disclosed Board Skills Matrix. ART therefore suggests that APRA focus the skills matrix requirements on skills and experience, while allowing Boards to determine how best to identify and foster appropriate behavioural attributes through Board performance reviews, and appointment, renewal and succession planning processes.

ART would welcome APRA reconsidering how behavioural attributes are framed in CPS 510. If APRA retains the current drafting, further guidance on how APRA expects behavioural attributes to be assessed and, where relevant, disclosed would be desirable. It would also be helpful for APRA to clarify whether, for example, entities may retain a technical skills and experience table in their Board Skills Matrix, supported by disclosure describing the behavioural attributes sought by the Board and how those attributes are demonstrated collectively.

Director Tenure

ART supports APRA's proposed 12-year default tenure limit for non-executive directors, noting that this is consistent with ART's current practice. ART also welcomes the proposal to allow short-term extensions where these would assist boards to manage exceptional circumstances. ART would welcome further guidance in CPG 510 on the circumstances in which APRA considers a short-term extension may be appropriate, including examples such as:

- where an experienced, tenured director is chairing a significant board committee, such as audit or risk, during oversight of a regulatory action or inquiry;
- delays in new appointments of successor candidates; and
- unexpected director or CEO departures, or the need to maintain stability and continuity during a transition period.

Group Governance

ART seeks clarification on the intended application of paragraphs 63–71 of draft CPS 510 to locally incorporated life companies that are wholly owned by RSE licensees. As drafted, those paragraphs appear to apply to life companies, although they expressly do not apply to RSE licensees. However, the definition of "Head of a group" in draft CPS 001 appears to be limited to ADIs and general insurers, which may create uncertainty as to how the group governance requirements are intended to operate for life companies that are wholly owned by RSE licensees.

ART recommends that APRA clarify whether paragraphs 63–71 are intended to apply in this context and, if so, how APRA expects the group governance obligations to operate where the relevant ownership structure involves an RSE licensee. ART notes it may not be appropriate to require a consolidated group governance model, in light of the potential for conflicts of interest and the distinct fiduciary and statutory obligations applicable to RSE licensees.

Committees

ART supports APRA's proposed requirements for Board Committees. ART already maintains separate Board Risk and Audit Committees, supporting clear allocation of responsibilities and focused oversight of risk management, financial reporting, audit and assurance matters.

CPS 220 requires the Board Audit Committee to review the results of the annual risk management framework review (under paragraph 44), and the Board Risk Committee to review the results of the triennial risk management framework review (under paragraph 45). However, draft CPS 510 appears to include review of the results of annual and triennial risk management framework reviews within the remit of both the Board Risk Committee (under paragraph 45(g)) and the Board Audit Committee (under paragraph 41(h)). ART considers that requiring both the Board Risk Committee and Board Audit Committee to review the annual and triennial risk management framework review results may duplicate oversight, blur accountability and increase committee workload without a corresponding governance benefit. Clear responsibility for both reviews should therefore rest with one committee. The Board Audit Committee may be best placed to undertake this role, given its audit and assurance remit and existing

responsibility under CPS 220 for reviewing annual review results. ART suggests amending draft CPS 510 accordingly and removing the equivalent requirement from the Board Risk Committee's remit.

Part B – Conflicts Management

ART broadly supports Part B and APRA's objective of establishing consistent conflicts management requirements across APRA-regulated entities. Strong conflicts management practices are critical to supporting independent judgement and decision-making in the best interests of members.
ART notes that paragraph 74(j) would require the appropriateness and effectiveness of a conflicts management policy to be reviewed at least annually by operationally independent, appropriately trained and competent persons. ART would welcome confirmation in guidance that APRA considers an internal audit function to be operationally independent for this purpose, such that internal audit could perform these reviews.

While ART supports appropriate independent review and assurance over its conflicts management arrangements, mandatory annual independent reviews of the policy may not be proportionate in all circumstances. The proposed requirement is likely to create an additional compliance and resourcing burden for regulated entities, particularly where the review is expected to be conducted by operationally independent reviewers and encompass an assessment of the effectiveness of the conflicts management policy and its implementation. ART considers that the incremental benefit of annual independent reviews may not justify the associated increase in cost and assurance effort.

To support a proportionate approach while promoting effective conflicts management, ART suggests APRA consider requiring an operationally independent review on a triennial basis, supplemented by an annual policy review (not required to be conducted by operationally independent persons), consistent with the current approach under SPS 521. More frequent independent reviews could still be undertaken where there has been a material change to an entity's risk profile or organisational structure.

Part C – Fit and Proper

ART supports APRA's proposed fit and proper reforms, which strike an appropriate balance between maintaining strong governance standards and reducing unnecessary complexity and reporting duplication. ART particularly welcomes the proposal to remove routine fit and proper form lodgements, which should reduce administrative burden where relevant information is already provided to APRA through FAR reporting.

Given that fit and proper requirements are directed to Responsible Persons, ART queries whether the reference to "employees" in paragraph 94(a) is necessary or may create uncertainty about the intended application of the Fit and Proper Policy. ART suggests APRA consider removing the reference to "employees" from paragraph 94(a) or clarifying in guidance that the obligation applies only to employees who are Responsible Persons or who have responsibilities in administering the Fit and Proper Policy.