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[redacted]
General Manager
Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001

By e-mail: policydevelopment@apra.gov.au

[redacted],

Response to APRA draft CPS 510 – APRA Governance Review

The Council of Australian Life Insurers (**CALI**) supports the overarching objective to strengthen governance practices and enhance confidence in the financial system. We welcome APRA's ongoing engagement on the Governance Review.

We are pleased that APRA has addressed many of the issues raised by the life insurance industry from previous consultations. CALI recognises and supports a regulatory approach that upholds strong prudential outcomes while also enabling flexibility and responsiveness to different businesses and operating models.

CALI sets out a number of remaining issues for consideration in our submission relating to:

1. Addressing the ambiguity of assessing direct independence for "potential conflicts".
2. Removing tenure limits for foreign shareholders appointed non-executive directors.
3. Not ruling out a reset of the tenure limits requirement following mergers
4. Practical considerations, including directors' appointment anniversaries, an approach to orderly transition to the new prudential standard, and the assessment of behavioral attributes for new and prospective directors.

Our submission is attached below. Please do not hesitate to contact [redacted]) at [redacted] if you have any questions.

Kind regards,

[redacted]

About CALI

CALI is the leading voice of life insurance in Australia. We support Australians to make informed choices about their future and help them live in a healthy, confident and secure way over their lifetime.

Our members' products and services give people peace of mind when making important decisions and provide a financial safety net during life's biggest challenges.

We advocate for national policy settings that expand Australians' access to the life insurance protection that suits them when they need it most.

CALI represents all life insurers and reinsurers in Australia. The Australian life insurance industry is today a $26.4 billion industry, employing thousands of Australians and paying billions of dollars of benefits each year.

For more information, visit www.cali.org.au

APRA Governance Review – CALI response to APRA consultation and draft CPS 510

Recommendations

Board Independence

1. APRA proposes under draft CPS 510 (para 31) that independence be assessed with specific regard to "any potential or actual conflicts arising from, or associated with, intra-group arrangements." CALI is concerned about the broad and ambiguous nature of the term "potential" when used to describe conflicts. We seek APRA guidance for a risk based and proportionate approach to this to avoid assessing, identifying and recording potential conflicts that are remote, hypothetical and immaterial.

Tenure limits

Foreign shareholder appointed directors

2. CALI supports the proposed 12-year tenure limit for independent directors. However, we recommend that directors appointed by foreign shareholders be exempt from this requirement as they do not share the same governance role as independent directors.

Mergers and acquisitions

3. CALI recommends a renewed assessment against APRA's objectives for tenure limits be allowed post-merger and that a fresh reset to the director's tenure limit should not be ruled out. CALI considers that automatically carrying forward pre-merger service towards the 12 year tenure limit after a merger does not necessarily reflect the policy intent of addressing entrenchment and preserving director independence in the context of a newly constituted entity.

Other practical considerations

4. Directors that have reached the twelfth-year during their appointment should remain until the next Annual General Meeting (AGM) to allow a smooth transition for the appointment of their replacement director.
5. Multiple long-serving directors should be able to transition off the Board in a staged manner, with a minimum 12-month period between departures over five years, to support orderly succession and continuity.
6. Clarification regarding the behavioural attributes that are required to be assessed within a skills matrix, including appropriate assessment criteria and proficiency ratings for prospective directors and senior managers who have not yet performed the relevant role within the organisation.

Detailed response

Conflicts management

Recommendation one
CALI is concerned about the broad and ambiguous nature of the term "potential" when used to describe conflicts. We seek APRA guidance on the scope of "potential conflicts" that may be risk based and proportionate to avoid assessing, identifying and recording potential conflicts that are remote, hypothetical and immaterial.

CALI welcomes that APRA is no longer proceeding with requiring at least two independent directors on a board of a regulated entity that are not members of any other board within the entity's group.

Instead, APRA has proposed a new requirement, among others, to consider "potential conflicts" when assessing director independence which appears to reflect the approach adopted in SPS 521 for Registrable Superannuation Entities.

SPS 521 limits the assessment of a conflicts interest to a "relevant duty or interest" that may reasonably be considered to have the potential "significant impact" on the capacity of the RSE licensee on the proposed draft. In contrast, the CPS 510 requires regulated entities to consider "potential conflicts" without applying an equivalent significance threshold. This broader requirement may capture interests that are remote, immaterial or unlikely to affect a director's independence.

This distinction is particularly important for life insurers, which may operate within complex, foreign-owned corporate groups and have a broad range of intra-group relationships and interests. Paragraph 32 of draft CPS 510 provides examples of circumstances in which a director would not be independent. While these examples are helpful, they do not clarify how regulated entities should assess other possible conflicts.

While the examples are useful in highlighting where possible conflicts could reside, the concept of a "potential conflict" is new in the life insurance context. Without a significance threshold, the requirement may capture a wide range of remote or immaterial intra-group interests, particularly for life insurers operating within complex corporate groups.

It is also unclear how far life insurers must look beyond the examples in paragraph 32. The term "potential conflict" is ambiguous and could extend beyond actual or reasonably foreseeable conflicts to remote or hypothetical circumstances. APRA should clarify the scope of the term and introduce a significance threshold so that life insurers can focus on matters that could reasonably affect a director's independence.

Tenure limits

Foreign shareholders appointed directors

Recommendation two
CALI supports the proposed 12-year tenure limit for independent directors. However, we recommend that directors appointed by foreign shareholders be exempt from this requirement.

Foreign ownership is a significant feature of the Australian life insurance industry, with most life insurers operating as subsidiaries of global insurance groups. Foreign shareholders have legitimate interests that their appointed directors are expected to represent. We note that most overseas jurisdictions have not set hard limits for non-executive directors, and many have indicated that director independence may be affected after 10 years on a board.[1]

Paragraph 59 of draft CPS 510 provides a non-executive director of a locally incorporated regulated entity must not serve as a director of that entity, "or its successor for more than 12 years in total." APRA considers that well managed turnover of directors facilitates stability, continuity and expertise while excessive tenure may create entrenchment risk and erode a director's capacity to exercise impartial judgement and to challenge management effectively.

CALI strongly supports the proposed tenure limit of 12 years for independent directors, as extended tenure may affect their capacity to exercise impartial judgement and provide effective challenge.

However, foreign shareholders appointed directors perform a different governance role. They are primarily appointed to represent the interest of a foreign parent and contribute relevant group knowledge and expertise. They are not intended to be independent and therefore do not present the same governance concerns about erosion of independence through extended tenure.

Applying the same tenure limit to these directors could unnecessarily restrict a foreign shareholder's ability to appoint appropriately experienced representatives and reduce valuable continuity and group expertise on Australian life insurer boards. We therefore recommend that the 12-year tenure limit apply to independent directors, but not to directors appointed by foreign shareholders.

Mergers and acquisitions

Recommendation three
CALI recommends a renewed assessment against APRA's objectives for tenure limits to be allowed post-merger and that a fresh reset to the director's tenure limit should not be ruled out. CALI considers that automatically carrying forward pre-merger service towards the 12-year tenure limit after a merger does not necessarily reflect the policy intent of addressing

[1] Page 29, APRA Governance Review, Discussion Paper, March 2025.

entrenchment and preserving director independence in the context of a newly constituted entity.

Paragraph 59 of draft CPS 510 also deals with mergers and provides that the 12-year tenure limit applies to both the non-executive director of that entity or its "successor" entity which includes the acquiring entity in a merger or other similar corporate restructure. CALI considers that a director's service on a predecessor entity should not automatically count toward the 12-year tenure limit where a merger results in a materially different entity.

The impact of a merger should be assessed on its merit. Many insurance mergers result in material changes to product portfolios, distribution channels, management team, business and risk profiles. In these circumstances, automatically requiring a director pre-merger service to count towards the tenure limit may not align with APRA's policy objective of addressing entrenchment and preserving independent judgement. For example:

- Where a merger results in a new management team, the relationships that give rise to entrenchment concerns may no longer exist, allowing the director to exercise impartial judgement and effective challenge.
- A director may bring new ideas and a fresh perspective to a materially different business despite having served on a predecessor entity for an extended period.
- A director may be well placed to provide a fresh and independent assessment of the culture, governance, strategy direction and risk appetite of the merged entity.

Other practical considerations

Recommendation four

Directors that have reached the twelfth-year during their appointment should remain until the next Annual General Meeting (AGM) to allow a smooth transition for the appointment of their replacement director.

The draft CPS 510 does not address the anniversary date of a director's appointment and the potential misalignment of this date with the dates for Annual General Meetings or AGM's where directors may be appointed.

Recommendation five

Multiple long-serving directors should be able to transition off the Board in a staged manner, with a minimum 12-month period between departures over five years, to support orderly succession and continuity.

We are concerned that boards with multiple long-serving directors may be required to replace several directors within a short period. Requiring multiple exits of longstanding and experienced directors could be unnecessarily disruptive to an otherwise well-functioning board,

resulting in significant loss of corporate knowledge, continuity and governance expertise. A staged transition approach would allow boards to manage succession in an orderly manner while maintaining oversight and stability.

Recommendation six
Clarification regarding the behavioural attributes that are required to be assessed within a skills matrix, including appropriate assessment criteria and proficiency ratings for prospective directors and senior managers who have not yet performed the relevant role within the organisation.

APRA has proposed under draft CPS 510 (paragraph 47) that, "A locally incorporated regulated entity must document in a skills matrix the skills, experience and behavioural attributes required for the Board and its committees to perform effectively". CALI supports this objective and the use of skill matrix as a tool as it is intended to support boards "to oversee strategy, risk and performance in an increasingly complex operating environment".
However, the term "behavioural attributes" is not defined in draft CPS510. While behavioural attributes assessed during board performance reviews and codes of conducts, these assessments are typically retrospective and based on observed conduct and performance.

It is less clear how regulated entities are expected to assess, measure and verify behavioural attributes for prospective directors and senior managers who have not yet served in the relevant role. Some guidance would be beneficial on the evidentiary standard and proficiency ratings APRA expects entities to apply when assessing, measuring and verifying behavioural attributes of these directors and managers.