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Via email: PolicyDevelopment@apra.gov.au

RE: Governance Review Consultation Paper (Consultation Paper)

Who we are

Governance Institute of Australia (the Institute) is the only fully independent professional association dedicated to the advancement of governance and risk practice in Australia. Our internationally recognised qualifications equip a diverse professional network of business leaders to make good decisions for the benefit of Australia's economy and society. With a history dating over 100 years, Governance Institute is Australia's leading and trusted voice of governance. Our fully accredited education and training is tailored to meet the needs of governance professionals across public listed, unlisted, and private companies, as well as the public sector and not-for-profit organisations.

The Institute is committed to independent, evidence-based advocacy that is focused on strengthening the governance capability of Australian organisations. We believe that good governance is the foundation of organisational resilience, productivity, and public trust.

The Institute endorses the remarks in the Consultation Paper about the importance of effective governance as 'a fundamental driver of sustainable performance and resilience, underpinning community confidence and system safety'. On behalf of our members, we also thank APRA for its engaged approach to consultation.

We acknowledge the scale of the task APRA has undertaken in combining the various industry standards into one overarching Standard. We support the direction as we consider it will lead to better governance outcomes however; we have highlighted issues where we consider there is room for improvement, clarification or further guidance.

We have not commented on all questions in the Consultation Paper. This Submission is divided into two parts: Part One summarises our key comments. Part Two provides further detail about these comments and more detailed feedback on various aspects of the proposals.

PART ONE

1. Summary of key comments

- This consultation is closing at the same time as ASX is consulting on a fifth edition of the Corporate Governance Principles and Recommendations (Principles and Recommendations). We consider this is important context for the finalisation of APRA's proposals. There are several important areas where the Principles and Recommendations and the draft Prudential Standard CPS 510 Governance (Draft Standard) approach the same issues differently. These issues include: director independence,

board skills matrices, director tenure and the introduction of more prescriptive proposals in relation to board performance assessment and the provision of information to boards. The Consultation Paper (page 23) observes that 'APRA proposes to adopt the Principles and Recommendation definition when revising the definition of independence'. We appreciate APRA acknowledging this issue and its intention to align. While we acknowledge that ASX and APRA have different remits, we consider where possible, it would be beneficial for ASX and APRA to be consistent.

- We note the shift to a more prescriptive, operational-level set of '*minimum governance requirements*' and away from the '*minimum foundations of good governance*' in the Draft Standard. We welcome greater clarity in areas such as matters that can and cannot be delegated. However, the addition of detailed mandatory behavioural expectations and new artefacts may potentially lead to increased regulatory burden, a blurring of the role of directors and management and a risk of hindsight review of board practices and information flows. We consider relocating more operational or process-oriented requirements into guidance supported by illustrative examples would preserve flexibility without weakening governance outcomes.
- While we welcome the streamlining in relation to fit and proper and the Financial Accountability Regime (FAR), we have provided some feedback in Part B regarding aspects of the Draft Standard which interact with FAR in a way that is potentially duplicative or ambiguous. For example, it is not clear how the new definition of 'Responsible Persons' coupled with the retention of the separate definition of 'senior managers' and accompanying responsibilities listed in CPS 510 are intended to interact with FAR.
- We welcome the clarification in relation to boards' ability to delegate and have made some comments addressing potential conflict with existing Prudential Standards in the current drafting of Paragraph 13. More detail is set out below.
- We support the statements in the Consultation Paper about the provision of good quality, timely and useful information to boards, however, we consider that the proposed requirement in Paragraph 20, for example, specifying what the policy 'must' include is too prescriptive. As an alternative we support a requirement to 'demonstrate how the Board's expectations in relation to the reporting of management information are conveyed to management' preserving flexibility for regulated entities while focusing on the need for quality and timely information to be provided to boards.
- We consider that the proposals in relation to the responsibilities of Board Audit Committees (BAC) and Board Risk Committees (BRC) conflate the responsibilities of these committees. For example, as currently drafted both Committees have responsibility for the risk management framework and there is overlap with the non-delegable board responsibilities. We consider that the difference in these Committees' roles and functions is important and accurately described in the current CPS 510. We recommend the reinstatement of the current CPS 510 wording or clarification that provides greater flexibility to boards to determine the responsibilities of their committees
- APRA's proposals in relation to the board skills matrix differ substantially from the current consultation draft of the Principles and Recommendations which has moved the Board skills matrix from its Recommendations to its Explanatory Materials. We also consider that a skills matrix should only be used for skills and experience, not behavioural criteria, however described. Behavioural attributes should be part of the initial, and ongoing, fit and proper analysis.
- We note the reframing of assessment of Board and Board committee performance. We consider that the requirement in the existing standard for a procedure for the assessment of performance rather than assessing performance objectives for individual directors is more appropriate, with objectives relating to the Board and Board committees, to which individual directors collectively contribute.
- We consider that the application of the conflicts of interest proposals in the context of groups should focus on whether arrangements give rise to an actual or potential conflict between duties or interests that could reasonably affect decision-making or depositors' interests. We consider that actual or potential conflicts can be addressed through appropriate conflict-management mechanisms.

PART TWO – DETAILED FEEDBACK

A - Board governance for locally incorporated regulated entities

2. Delegation of authority

While the clarification in relation to the board's ability to delegate to management and Board committees in paragraphs 13 – 17 of the draft Prudential Standard CPS 510 (Draft Standard) is welcome, we consider that:

- Sub-paragraph 13(d) provides that an RSE licensee may not delegate oversight of the 'investment governance framework'. Some RSE licensees' boards may currently delegate investment governance to a board investment committee. Sub-paragraph 13(d) would imply that this cannot occur.
- Sub-paragraph 13(f) refers to setting and monitoring the 'Board, Board committee and director performance objectives'. Boards operate as a collective and Boards, Board committees and individual directors do not have set performance objectives in the same way that employees have performance objectives. Rather, Boards and Board Committees have objectives to which each director must contribute. We recommend deletion of this sub-paragraph particularly given the detail around board and committee performance included later in the Draft Standard. See further below – 7.
- Sub-paragraph 13(g) refers to ensuring that 'directors and senior managers' of the institution collectively have the skills needed' for effective and prudent operation of the entity. This sub-paragraph appears to blur the distinction between the board and management. A board is typically closely involved in appointing and thereafter monitoring the performance of the CEO. Depending on the size and complexity of an entity a board will typically be less involved in the skill set of the senior management team it being one of the key responsibilities of the CEO to ensure that they are surrounded by appropriately skilled senior managers. We recommend deleting the reference to 'senior managers'.
- We consider it would be preferable to include the reference to 'constructive challenge' of senior managers in paragraph 13(h) as a general expectation of Boards in the opening sentence of Paragraph 13 rather than listing it in the non-delegable prudential responsibilities. 'Constructive challenge' is better described as a general approach to directors' exercise of their prudential responsibilities.
- It would also be helpful to clarify in the Standard that a delegate, including a committee, may sub-delegate where this is contemplated in specific scenarios under the Board approved delegations' framework and that the seniority of the sub-delegate is not restricted to 'senior managers', as defined, or, if it is restricted, then to 'senior management'. This should include delegation to a management committee consisting of Senior Managers and non-Senior Manager. In our members' experience it is usual for a delegation to permit sub-delegation, given the Board retains ultimate responsibility for oversight of the delegations' framework and the actions of its delegates and sub-delegates. See further below in relation to 'senior manager'. Paragraph 17 of the Draft Standard may be better framed as guidance for boards to consider when determining appropriate delegation arrangements with the level of formality and evidence calibrated to the nature, materiality and risk of the delegation.

a. Senior managers

- SPS 510.9 refers to a Board's ability to delegate to 'management'. The Draft Standard introduces the term 'senior manager' in the context of the various industries. We consider that the use of this

term may inadvertently narrow the potential pool of delegates and the term 'management' is preferable, or if restricted, then 'senior management'.

- In the superannuation context, the proposed RSE licensee definition in CPS001 for 'senior manager' is the same as the current definition in SPS 520.17. This covers a specific subgroup of those who would be regarded in a commercial business model as senior management. It is usual to for delegations to be made beyond that subgroup, including to other members of senior management in an entity who do not meet the definition of 'senior manager' for an RSE licensee and also to subject matter experts. In addition, for those RSE licensees with an Office of Trustee or Member Office, there would be few if any, individuals to whom delegations could be made under the proposal, as most would not be 'senior managers'. We also have members where their Officer of the Trustee is an Accountable Person under FAR and question how APRA's proposal is intended to align with FAR.
- We also consider that the proposal is more restrictive and does not align with the Corporations Act provision that enables directors to delegate powers to a committee of directors, a director, an employee and any other person (section 198D Corporations Act). There is also a conflict with a common provision in trust deeds which permit directors of an RSE licensee to delegate to 'any person'.
- Regardless of whether the delegate is a 'senior manager', the Board remains responsible for oversight of delegates (proposed Paragraph 16 of the Draft Standard) and delegations exercised by delegates (section 190(1) of the Corporations Act), unless section 190(2) of the Corporations Act applies.
- We also consider the proposed definition is likely to create an administrative burden in separating delegates who have delegations relating to prudential matters and delegates who have delegations that do not relate to prudential matters and would not be restricted by the proposed definition of 'senior manager'.[1]

b. Responsible persons

We consider that the introduction of a new definition of 'responsible person' in Paragraph 8(b) creates another definition in this area with the potential to duplicate or create unnecessary complexity in light of FAR. For example, the interaction of FAR responsibilities of accountable persons, included in the definition of 'responsible persons' in Paragraph 8(b), and the responsibilities of 'senior managers' in the Draft Standard is unclear. Should the definitions and references remain in the Draft Standard, we consider that it is necessary to clarify the intended effect of Paragraphs 18, 19 and 22, including:

- the interaction between the new definition of 'responsible person' and 'senior manager';
- whether they are intended to create new compliance obligations for senior managers and how that interacts with accountability obligations under FAR; and
- the intent of Paragraph 22 having regard to the existing regulation of senior executives (accountable persons) under FAR.

Further, for regulated entities with substantial international operations we consider Paragraph 23 should contemplate circumstances where it is appropriate for a senior manager with responsibilities relating to businesses in Australia and overseas to reside overseas.

3. Senior managers and management information

Management information

[1] Note Section 190(2) of the Corporations Act sets out the exception where a director is not liable for the actions or exercise of power by a delegate.

As noted above. we support the statements in the Consultation Paper about the provision of good quality, timely and useful information to boards but are concerned that the current drafting of Paragraph 20 is too prescriptive. We have the following comments:

- The Draft Standard requires a regulated entity to produce a specific document, rather than allowing that entity to meet the principle of the regulation using existing artefacts that meet that principle. For example, the combination of a workplan, delegations and Accountability Statements (all of which are approved by the Board), are an effective means of ensuring that the Board's expectations drive the appropriate quality of management information reporting. A new separate policy that sits outside these well-embedded conventions and processes potentially results in a 'policy for a policy's sake' that must be kept up to date, but which may have an immaterial impact on the quality of information reported.
- There are related new requirements additional to this policy, including requiring '*succinct and relevant*' information to be provided to the Board (Paragraph 22) and annual and independent triennial assessments of the quality of management information and board interactions. This cascading of the requirement through other obligations seems unnecessarily prescriptive and potentially leads to divergent outcomes, increasing the compliance burden and a hindsight review of board information and interactions.
- In practice companies look to different artefacts in setting board paper expectations and frequency/type of regular committee reporting, which the current draft does not contemplate. The existing Prudential Standards and guidance also require Boards to receive significant amounts of detailed information. ICAAP and stress-testing materials, for example, can be extensive, reflecting the Board's obligation to engage with, finalise and challenge the underlying assumptions and methodologies. These requirements do not readily support 'succinct' reporting.
- An alternative would be a requirement to 'demonstrate how the Board's expectations in relation to the reporting of management information are conveyed to management'. This would allow a more appropriate focus on what the provision is seeking to achieve, rather than focusing attention on an artefact that will have little impact in practice.
- Paragraph 21 refers to a requirement to have processes in place to ensure the specified items are 'considered and recorded in all relevant decision-making'. As currently drafted it is unclear what is intended by these words and to whom the obligations apply. We assume it is directed at ensuring Boards take the listed matters into account when making decisions. We consider it would be preferable to restate this as 'A locally incorporated entity must have processes in place to ensure management information, strategy, risk appetite, conflicts and the best financial interests of beneficiaries (for RSE licensees) are taken into account in all Board decision making'.

4. Board composition and independence

A cause of friction for ASX listed APRA regulated entities has been the inconsistency between the Prudential Standard formulation of an independent director and the 'definition' of independence in the Principles and Recommendations. The Consultation Paper refers to APRA's intention to resolve this issue by aligning its governance Standard with the Principles and Recommendations. The current consultation draft of the Principles and Recommendations has moved away from a prescriptive method of assessing independence to a less prescriptive discussion of one or more factors that the Board may consider would raise questions about a director's independence, which, in conjunction with the wording of Recommendation 2.4 indicates that the Board retains ultimate discretion provided it justifies why it has reached its conclusion on independence.[2] Paragraph 32 of the Draft Standard lists a series of factors which preclude a director from being considered independent. As noted above, while we acknowledge that ASX and APRA have a different remit, where possible, it would be beneficial for ASX and APRA to be consistent. .APRA's stated policy intention is to 'strengthen independence on regulated entity boards'

[2] ASX Corporate Governance Principles and Recommendations - Annexure A: 5th Edition Consultation Draft, page 9, https://www.asx.com.au/about/regulation/consultations-and-submissions

in the banking and insurance sectors.[3] The Draft Standard includes requirements for a majority of independent directors and an independent Chair on regulated entity Boards (Paragraph 29). We consider any tension between APRA's, and ASX's proposals could be resolved by providing guidance on independence criteria in practice. The Guidance could discuss the factors outlined in Paragraph 32 and provide context and examples.

Paragraph 60 provides for an extension beyond the proposed 12 year maximum tenure for directors (Paragraph 59) in 'exceptional circumstances'. We assume the intention is that an extension will not impact a director's independence but consider this should be clarified in Guidance.

b. Specific situations

- **Superannuation entities**

Paragraphs 29 to 34 relating to Board composition and independence are expressed not to apply to RSE licensees (Paragraph 4(c)). We assume there is no intention to regulate independence beyond the existing requirements in the Superannuation Industry Supervision Act definition of 'independent director' which is only used in the context of equal representation arrangements for employer-sponsored funds (Part 9 and section 108).

- **Independence in Group scenarios**

The effect of Paragraph 31 is to remove the presumption that a director who serves as an independent director in a group is also independent on the Group board. We consider that the change could create additional complexity and lead to a compliance burden in intragroup scenarios and that APRA can address concerns with intra group conflicts on a case-by-case basis using its existing powers as it has done in recent years. This may also be an area where guidance would be beneficial.

5. Board committees – drafting comments

We consider the opening of Paragraph 35 could be simply stated as 'All Board committees must'. The phrase 'For any Board committee with delegated authority to fulfill a board obligation under APRA's prudential standards, it must' is unnecessary and confusing.

Paragraph 35(e) refers to the engagement of third party experts to obtain advice being 'independent of the Board'. These committees are typically comprised of directors who are likely to be 'independent' of the board. We consider it should instead refer to advice being 'independent of management'. The most frequent situations in which a Board wants external advice is either to obtain access to expertise on a specialist technical matter that cannot be obtained from within the entity or on which it wishes to form a view based on advice that does not come from management.

Board Audit Committee and Board Risk Committee

Risk management framework

Paragraphs 41 and 67(a) of the Draft Standard provide that the Board Audit Committee (BAC) must provide objective non-executive oversight of the entity's risk management frameworks, amongst other matters. Paragraphs 45 and 67(b) then provide that the Board Risk Committee (BRC) must provide objective non-executive oversight of the implementation and operation of the entity's risk management

[3] Governance Review Discussion Paper, Australian Prudential Regulation Authority, 13 March 2025 at page 21, accessed 15 August 2026.

framework (and internal control systems). Therefore, as currently drafted both Committees have responsibility for the risk management framework. The draft seems not to have incorporated the differences between the role and functions of a BAC and a BRC. Further, the BAC's responsibility as currently drafted conflicts with the Board's non-delegable responsibility in Paragraph 13(c) to 'oversee [the]…risk management framework'. We consider this requires clarification or amendment.

The current CPS 510 provides that the BAC provides an 'objective non-executive review of the effectiveness of the group's financial reporting and group risk management framework' -Paragraph 51. The BRC provides an 'objective non-executive oversight of the implementation and operation of the group risk management framework'- Paragraph 79. The difference in these Committees roles and functions is important and is accurately described in the current CPS 510. The BRC has the oversight role for the risk management framework – that is, its existence and effective operation (Paragraph 45 Draft Standard). The BAC's role as an audit committee covers audit activities, including in relation to the risk management framework - this is more limited and a different role. We consider this should be very clear in the final Standard and the roles of these committees not conflated as they are in the Draft Standard and recommend the reinstatement of the current CPS 510 wording.

We note a Board may constitute committees other than a BAC and BRC with responsibilities for aspects of the entity's risk management framework, for example, separate committees responsible for sustainability, compliance, technology or other key risks as the board sees fit. We would welcome clarification that these other types of committee arrangements remain appropriate.

We also query how Paragraph 41(c) relating to the Head of Internal Audit is intended to operate in a group context if multiple entities are required to oversee the appointment and removal of the Head of Internal Audit. This would add additional administrative burden and unnecessary duplication for companies. We consider this is a matter where additional guidance is required.

We also question whether the BRC must be responsible for risk culture (Paragraph 45(d)). For example, in some entities risk culture is the responsibility of the BAC and in others it is the responsibility of the Board Remuneration Committee. It may be preferable to remove Paragraph 45(d) and relocate it to the general responsibilities of Board Committees, that is monitoring and advising the Board on risk culture which would leave it open to an entity to nominate a suitable committee to be responsible for risk culture.

Financial resilience; APRA reporting requirements

Paragraph 41 introduces an overarching BAC responsibility to oversee the entity's 'financial resilience'. As with our comments above, as currently drafted this BAC responsibility conflicts with the Board's non-delegable responsibility in Paragraph 13(e) for 'financial resilience'. We note financial resilience covers a broad range of prudential obligations, for example, stress-testing, capital and liquidity management, credit, market operational risks, recovery and resolution, and that oversight of the management of such financial risks is typically a responsibility of the BRC. We consider this is also a matter requiring clarification or amendment.

In addition, we note Paragraph 41(b)(i) refers to the BAC responsibility for oversight of 'all APRA reporting requirements'. This is broader than the current BAC responsibility in CPS 510 which is limited to 'APRA statutory reporting requirements' and better aligns to 'corporate reporting', a core BAC responsibility. We would welcome clarification of the proposed expansion of BAC responsibilities to all APRA reporting requirements.

Drafting comments

We suggest Paragraph 41(a) be redrafted to read: 'assist the Board by providing objective non-executive oversight of the regulated entity's financial resilience, financial reporting and the components of the risk management framework underpinning these matters'.

We also recommend consequential amendments to Paragraph 67(a).

6. Board skill and capability

As noted above the requirement for a skills matrix is an area where APRA's proposals diverge substantially from the current consultation draft of the Principles and Recommendations which has moved the Board skills matrix from its Recommendations to its Explanatory Materials.[4] In our Submission on APRA's initial proposals we observed that a skills matrix should only be used for skills and experience, not behavioural criteria, however described. Behavioural attributes should be part of the initial, and ongoing, fit and proper analysis, required for appointment. They are of a different nature to skills. They are personal traits or behavioural qualities that each director would be expected to have on appointment, whereas skills are acquired competencies.

A skills matrix is a tool not the outcome. It enables assessment of the collective skills of the board, without the expectation that all directors have all the skills needed at the same level, but that these skills can be demonstrated for the board as a whole, and if not, identifying where additional skills are required. However, all directors would be expected to have certain attributes. SPS520.19(a) provides that for the purposes of the SIS Act and for the purposes of determining whether a person is fit and proper to hold a responsible person position, the criteria are whether it would be prudent for an RSE licensee to conclude that the person possesses the 'competence, character, diligence, experience, honesty, integrity and judgement' to perform properly the duties of the responsible person position'. We consider that all directors should possess these attributes on appointment and for the duration of their tenure. They are more appropriately dealt with as part of initial and ongoing fit and proper assessments. They should not be part of a skills matrix.

In the context of a skills matrix, the assessment is whether the board collectively holds the skills needed and not all skills will be held by all directors or at the same level, for example, a directors' skill could be assessed as 'emerging, practiced, proficient', whereas attributes are expected of all directors - see SPS520.19(a).

We consider that Paragraphs 47 - 49 are overly prescriptive. By contrast with the existing substantive requirement for board and senior management capability, which leaves the means of achieving and/or evidencing the standard largely to the board, meeting the proposed new requirement requires a matrix, verifiable criteria and rating scales, annual testing, fit and proper linkages, renewal planning and evidence of gap remediation. Given the skills matrix also applies in other new contexts, for example, the fit and proper requirements assessment of individual directors against the skill matrix there is a risk of director capability being re-tested, leading to focus more on individual capability than effective contribution and board performance as a whole. An alternative could be to move the more prescriptive elements of the new paragraphs into guidance, more in line with relevant Australian and international corporate governance practice. For example, we note the alternate approach in the Principles and Recommendations to disclose the process for how the board assesses the collective skills, knowledge and experience of its directors and the outcome of this process with guidance that discusses the role of a skills matrix in that assessment.

7. Board, committee and director performance

[4] ASX Corporate Governance Principles and Recommendations - Annexure A: 5th Edition Consultation Draft, page 11, https://www.asx.com.au/about/regulation/consultations-and-submissions

Paragraph 51(a) refers to evaluation of Board and Board committee performance against their objectives. The setting and monitoring of director performance objectives is referenced in Paragraph 13(f).

Paragraph 51(c) refers to the assessment of individual directors being measured. As noted above individual directors do not have performance objectives in the same way as employees. The existing standards CPS510.44 and SPS510.21 require a procedure for an annual assessment of individual director performance and do not reference objectives, although it is acknowledged individual objectives are referenced in SPG510.45 with some general examples. We consider that the requirement in the existing standard for a procedure for the assessment of performance rather than assessing performance objectives for individual directors is more appropriate, with objectives relating to the Board and Board committees, to which individual directors collectively contribute.

In addition, Paragraph 51(c) refers to measuring director's effectiveness against the Board skills matrix. Is this intended to be the current annual process whereby Boards determine their overall capability by assessing the skills of each director under each category? Otherwise, it could be interpreted that a person needs to be assessed on whether they are adequately meeting each skill, which would seem be unusual outcome given that on any Board not all directors would be expected to hold all skills at the same levels.

Paragraph 51(d) includes an annual effectiveness and appropriateness review of the governance framework. We consider this imposes a higher level of operational prescription and is potentially unclear in its scope and methodology. For example, contrast the definition of 'governance framework' in Paragraph 11 with the list of actions and artefacts in Appendix B to the accompanying consultation paper, which includes the CPS 220 risk management declaration. This potentially increases regulatory burden and also potentially duplicates other governance effectiveness assessments, such as CPS 220. Further, as noted above, it introduces a rules-based approach on matters that are inherently subjective such as the 'appropriateness' of a board skills matrix, 'level and quality' of engagement and constructive challenge. We consider that it would be preferable to adopt a more flexible approach by moving some of the more operational provisions to illustrative guidance or clarifying the indicative nature of factors to be considered in an assessment to reduce prescription while achieving the objective of driving continuous board improvement.

Paragraph 53 introduces a requirement to engage 'an external independent expert' among whose tasks would include assessing the quality of management information [clause 54(e)]. Has APRA considered the practicalities of being able to find an assessor who is skilled in both board review and the necessary knowledge relevant to individual businesses to make a determination about the quality of the information being provided? We would welcome clarification of whether APRA expects this to be a broader opinion rather than specific. We also suspect a review of this nature will see board review costs increasing significantly given the additional work that would be required by an assessor to review enough material to feel comfortable providing such an opinion. Paragraph 53 also refers to the board performance assessor as being external and independent'. The Principles and Recommendations refers to reviews conducted by a 'external facilitator'. We consider the requirement should be for an assessor to be an 'external facilitator'.

Paragraph 55 refers to the performance assessment as being informed by 'contemporary governance practice'. We consider that this phrase is too subjective. There will always be a range of views about what constitutes contemporary governance practice and even more views about what represents contemporary 'good' governance practice. On this basis we consider the phrase should be removed from the Draft Standard.

Drafting comments

Paragraph 56 refers to the consideration of 'actions' arising out of the independent assessment and further refers to 'accepted recommendations'. It would be more consistent to refer to 'recommendations' rather than 'actions'.

8. Board renewal and non-executive director tenure

We welcome both the ability to extend a director's tenure beyond 12 years and the clarification that this is a matter for the board to decide. However, we consider that APRA should provide guidance and examples about what might constitute exceptional circumstances.

Paragraph 58 requires a Board renewal plan that includes anticipated director retirements and individual director succession plans having regard to the Board skills matrix. Director succession is normally considered on a collective basis. We question the practicalities and the value of requiring a succession plan for each individual director. In addition, there is also an implication that an individual succession plan may be a de-facto separate skills matrix. We consider that Paragraph 58 should be removed and Board succession planning should be an area which is addressed in Board Renewal Policy.

Drafting comments

We suggest that Paragraph 57(a) include a cross-reference to Paragraph 60 (ability to extend tenure in exceptional circumstances)).

9. Group governance

The clarification at the beginning of the Draft Standard (Paragraphs 2 – 5) of the provisions that apply to the different categories of entities is helpful. In the case of the use of a group Board Remuneration Committee, Paragraph 72 makes it clear that the provision applies to RSE licensees, which we understand is how the current provision is administered by APRA and applied by RSE licensees. We also note that membership of the group Board Remuneration Committee for ADIs, general insurers and life companies is prescribed (by reference to Head of a Group that is the regulated entity). The composition for an RSE licensee has not been prescribed (for example, by reference to a parent that is an unregulated entity). Is it APRA's intention that there is no similar restriction for membership in the case of an RSE licensee, as there is no equivalent to a regulated Head of a Group? We welcome clarification on this issue.

Paragraph 67 introduces a requirement for the Head of a Group to 'also' have 'group' Board Committees (sub-paragraphs a – c). We assume Paragraph 67 can be satisfied by the Head of the Group's Board committees performing the functions described for the Group, rather than the establishment of separate 'group' Board committees. Paragraph 73, as currently drafted, is ambiguous and could lead to increased compliance burden for corporate groups. For example, where there is a material groupwide policy, a regulated subsidiary should be able to use the policy if it is appropriate. This could also be clarified for corporate groups. We consider these matters should be clarified to avoid uncertainty for corporate groups.

B – CONFLICTS MANAGEMENT

10. Conflicts management

We support effective conflict management, including the timely identification, assessment and management of conflicts, and their avoidance or disclosure where appropriate.

Draft paragraph 74(a) requires entities to identify and assess conflicts arising from structural, funding or remuneration arrangements, including intra-group arrangements. Given the breadth of these concepts, it would be helpful for APRA to clarify their intended scope. In particular, the guidance should not suggest that every such arrangement necessarily creates a conflict requiring mitigation. The assessment should instead focus on whether an arrangement gives rise to an actual or potential conflict between duties or interests that could reasonably affect decision-making or depositors' interests. As noted above, actual or potential conflicts can be addressed through appropriate conflict-management mechanisms. We also seek clarification on the reference to 'depositors' in the definition of 'conflict', including how it interacts with directors' overriding duties. Guidance on APRA's expectations, supported by examples, particularly in relation to paragraph 74(c) would also be helpful.

The footnote to proposed Paragraph 74(f) (internal register of potential and actual conflicts) provides that RSE licensees can meet this requirement by complying with the requirement to keep an external register under Paragraph 76 of the Draft Standard and 'also to include associated controls to monitor and manage the actual or potential conflicts'. One issue of concern to our members is that this may require public disclosure of controls. We understand that APRA has clarified in meetings with industry that its intention is to allow RSE licensees to meet the internal register requirement through streamlined processes where appropriate, including by using the external register required under Paragraph 76. On this basis we suggest modification or clarification of the proposal.

For superannuation entities the following provisions currently apply relating to reviews of conflicts management:

- SPS521.20-22 requires an operationally independent review of the conflicts management framework every three years and prescribes the content
- SPS521.23 requires an annual review of the conflicts management framework

The proposed Paragraph 75(j) requires an operationally independent annual review of the conflicts management policy. We understand that APRA has clarified in meetings with industry that APRA intends this would be a review of the policy, not the entire conflicts management framework. However, in practice, a review of the conflicts management policy would involve reviewing the entirety of the framework, given that the content of a well-constructed conflicts policy will cover the range of activities that together form the 'framework'. This will require the reviewer to seek evidence that, for example, mandatory annual training has been completed. Board paper templates also typically require appropriate consideration of conflicts and an internal register is maintained through a review of a sample of records to determine that the policy is adequate and operating effectively.

An 'operationally independent' review is generally conducted by an external provider or by Internal Audit – an external review of a conflicts framework can cost anywhere between $30,000-$60,000, depending on the complexity of the RSE licensee's business operations. Where the review is conducted by Internal Audit, this reduces their ability to provide assurance oversight over other important prudential matters. While it may be appropriate for Risk Management to undertake such a review, it is common practice for the conflicts management framework to be owned by Risk Management, which would appear to mean under the proposal for an independent review, this pathway would not be an option.

This proposed change therefore is likely to result in the additional costs to be borne by the RSE licensees and ultimately beneficiaries – for little discernible benefit. We therefore suggest either:

- Retaining the current triennial/annual review structure, or
- The annual review be able to be undertaken by the RSE licensee using internal resources that do not have to meet the stricter definition of 'operationally independent', subject to any guidance provided by APRA.

Drafting comments

Proposed Sub-Paragraph 76(b)(vi) of the Draft Standard refers to "as defined in paragraphs (c) and 8(d) of this Prudential Standard" – the reference to (c) should be to 8(c) not 76(c) as there is no paragraph (c) in clause 76.

C – Fit and proper

11. Fit and proper

As noted above we consider that the attributes that make a person 'fit and proper' are base line attributes and behaviours that all directors must possess at a minimum to be considered suitable. They are different to skills which are typically acquired because of education, experience or exposure to a particular industry. We consider that 'skill' should be removed from Paragraph 84(a) and relocated to Paragraph 84(b). The fact that an individual is skilled in an industry is a separate question to whether they are going make use of this skill diligently, honestly and with integrity, exercising their judgement to perform the duties of a responsible person.

We consider the following matters require further clarification or guidance:

- **'Care'.** Paragraph 84(a) introduces 'care' alongside existing fit and proper criteria such as character, diligence, honesty, integrity and judgement. We question whether 'care' is appropriately assessed at the point of appointment or annual validation. The existing baseline attributes and behaviours are matters that can reasonably be evaluated through references, background checks and attestations. 'Care', however, reflects how a person exercises their responsibilities over time, which is better observed through ongoing evaluation and performance review processes.
- **Reasonable inquiries** - Paragraph 87 requires entities to demonstrate they have undertaken a 'rigorous process' that 'includes reasonable inquiries'. This framing implies that reasonable inquiries alone may not be sufficient, without clarifying what further steps are expected. The Standard should clarify that a rigorous process should be calibrated to factor in considerations such as the nature of the role, and the circumstances in which the information arises, for example, an initial appointment as opposed to an annual revalidation of fitness and propriety).
- **Reassessment threshold** - Under the current Prudential Standard 520, reassessment is triggered when an entity 'becomes aware' of information suggesting a responsible person may no longer meet fitness and propriety criteria. Paragraph 89 introduces a lower threshold, requiring reassessment where an entity has 'reasonable grounds to believe' relevant matters have arisen. When accompanied by more detailed trigger events in the draft standard, this could oblige entities to initiate formal reassessments processes in response to preliminary or unsubstantiated information. APRA should consider whether the existing 'becomes aware' threshold, supported by appropriate guidance on what constitutes awareness, would better balance regulatory objectives with practical implementation.

12. Artificial intelligence

The Consultation Paper seeks feedback on whether the Draft Standard adequately supports the oversight and use of AI and related technologies. We consider that CPS 510 and CPG 510 should remain technology-neutral, without imposing separate AI-specific governance requirements. Current and proposed expectations relating to board capability, management information, risk governance, and the oversight of operational, model, data and technology risks provide an adequate framework for governing AI. Any further guidance should therefore be principles-based and avoid prescriptive technology-specific obligations that may quickly become outdated or overlap with other regulatory requirements, particularly given the current rapid development of AI.

Please direct any queries regarding this letter to me o [redacted]

