Law Council
OF AUSTRALIA

18 September 2026

Australian Prudential Regulation Authority (APRA)
Level 12, 1 Martin Place
SYDNEY NSW 2000

By email: PolicyDevelopment@apra.gov.au

Dear Sir/Madam

Supplementary submission: Proposed changes to governance

Introduction

1. This is a supplementary submission by the Law Council of Australia in response to the public consultation by the Australian Prudential Regulation Authority (**APRA**) on Draft Prudential Standard CPS 510 Governance (**draft CPS 510**).

2. This submission supplements the submission from the Law Council titled *Proposed changes to governance* dated 1 September 2026 (the **Submission**). The Submission reflected input from the Superannuation Committee of the Law Council's Legal Practice Section and the Corporations Committee and Financial Services Committee of the Law Council's Business Law Section (the **Committees**). This supplementary submission also reflects input from the Committees.

3. The Law Council thanks APRA for accepting this late supplementary submission and for its continued engagement with stakeholders on these important governance reforms.

4. This supplementary submission addresses four discrete issues that are supplementary to, and should be read together with, the Submission. It does not repeat arguments already made at length in the Submission.

This Board (CPS 510.13)

5. As delegation is a legal concept, we recommend that APRA use language that aligns with those legal concepts when framing delegation rules in the final version of CPS 510. For example, a board delegates its "powers", and not its "responsibilities".

Senior Managers and Management Information (CPS 510.18–24)

6. The Law Council supports the underlying objective of paragraphs 18 to 24 of draft CPS 510 and, in particular, the requirement in paragraph 22 that senior managers

deal with the Board in a clear, timely and transparent manner, with succinct and relevant information to support decision making. The provision of quality management information is fundamental to sound governance.

7. However, the Law Council is concerned that the proposed paragraph 20 of draft CPS 510—requiring a locally incorporated regulated entity to have a specific *policy* setting out the Board's expectations in relation to the reporting of management information—will produce unintended consequences and increase regulatory burden, for the following reasons:

   (a) the requirement to produce a specific policy document does not allow a regulated entity the flexibility to meet the underlying principle using existing artefacts. Many entities already convey the Board's expectations in relation to management information through a combination of well-established mechanisms, including annual board and committee workplans, delegations, terms of reference and Accountability Statements. The proposal requires the entity to produce a standalone document rather than allowing it to demonstrate compliance through these existing instruments; and

   (b) a standalone policy sitting outside these well-embedded conventions risks becoming a "policy for policy's sake"—that is, a document that requires periodic review and maintenance but has little practical impact on the quality of reporting to the Board. This is inconsistent with the objective of principles-based regulation.

8. The Law Council recommends that the proposed policy requirement in paragraph 20 be replaced with a requirement for a locally incorporated regulated entity to *convey to management the Board's expectations in relation to the reporting of management information* (or words to that effect). This would focus the obligation on the substance of what is to be achieved, rather than on the production of a specific document, and would afford entities the flexibility to use whatever combination of existing governance artefacts best suits their particular circumstances.

9. In the alternative, if APRA considers it necessary to retain the specific policy requirement, the Law Council submits that it should be made clear that the policy need not repeat existing documentation (such as annual board and committee plans and terms of reference), which can instead be cross-referenced. This would be consistent with the approach already reflected in SPG 510.4 in relation to governance frameworks, which contemplates that a governance framework may comprise a suite of documents that cross-reference one another rather than a single standalone instrument.

Board Capability, Performance and Renewal (CPS 510.47–56)

10. The Submission raised concerns about the proposed provisions regarding behavioural *attributes* in paragraphs 47 and 51 of draft CPS 510. In particular, paragraph 47 requires the Board skills matrix to include behavioural attributes, and paragraph 51(c) requires the annual performance assessment to evaluate the effectiveness of individual directors against, among other things, the Board skills

matrix. Concerns about these provisions were raised more widely during industry consultation in 2025 and in response to the current consultation.

11. The Law Council submits that behavioural attributes are of a qualitatively different nature to skills and experience, and are not appropriate for inclusion in a board skills matrix. The reasons for this are as follows:

    (a) A board skills matrix is a *collective* assessment tool. Its purpose is to map the range of skills and experience held across the board as a whole, and to identify gaps at the board level. Not every director is expected to hold every skill listed in the matrix—the matrix recognises that different directors bring different capabilities, and that the board's collective composition should cover the necessary range.

    (b) By contrast, certain behavioural attributes—such as those described in SPS 520.19(a), namely competence, character, diligence, experience, honesty, integrity and judgement—are expected of *all* directors individually. They are not collective capabilities to be mapped across the board; they are baseline personal qualities that every director must possess. Placing them in the skills matrix conflates two fundamentally different concepts.

12. The Law Council submits that behavioural attributes are more appropriately addressed through initial and ongoing fit and proper assessments under SPS 520, which are specifically designed to assess the personal qualities of individual responsible persons, rather than through the skills matrix and performance assessment provisions in paragraphs 47 and 51 of draft CPS 510.

Conflicts Management (CPS 510.74–76)

13. Under the current framework, SPS 521 provides for a triennial operationally independent review of the conflicts management framework (SPS 521.20–22) and a separate annual review (SPS 521.23). Importantly, the annual review under SPS 521.23 is not required to be operationally independent.

14. The Law Council is concerned that paragraph 74(j) of draft CPS 510 will require an *operationally independent annual review* of the conflicts management policy. While the Law Council understands from industry liaison that this provision is intended to relate only to a review of the conflicts management *policy* (rather than the entire conflicts management framework), in practice a meaningful review of the appropriateness and effectiveness of a conflicts management policy will necessarily require the reviewer to assess the framework within which the policy operates, including the systems, processes and controls that give effect to it.

15. This has material regulatory burden implications:

    (a) An operationally independent review is typically conducted by an external provider or by Internal Audit. Risk Management, which commonly owns the conflicts management framework, would likely not qualify as "operationally independent" under the proposal.

    (b) External reviews of a conflicts management framework cost approximately $30,000 to $60,000, depending on the complexity of the entity's operations.

Conducting such a review annually rather than triennially represents a material increase in compliance costs, which will ultimately be borne by RSE licensees and, in the case of superannuation entities, by members.

(c) Where Internal Audit conducts the review, this diverts assurance capacity from other important prudential matters, with an associated opportunity cost that should not be underestimated.

16. The Law Council submits that the proposed change from the current triennial/annual review structure to an annual operationally independent review will result in material additional costs for little discernible benefit, particularly where a regulated entity maintains a well-functioning conflicts management framework that is already subject to triennial independent review.

17. The Law Council recommends either:

(a) retaining the current triennial/annual review structure under SPS 521, whereby the operationally independent review occurs on a triennial basis, and the annual review may be conducted using internal resources; or

(b) if an annual review requirement is to be introduced, permitting the annual review to be conducted using internal resources that need not meet the stricter definition of "operationally independent", subject to guidance from APRA as to the expected scope and rigour of such a review.

Fit and Proper Criteria (CPS 510.84(a))

18. The Law Council notes that paragraph 84(a) of draft CPS 510 introduces the term "skill" in place of "competence", and adds the new criterion of "care", such that the fit and proper criteria now require a regulated entity to be satisfied that a person possesses "the skill, character, care, diligence, honesty, integrity and judgement to perform properly the duties of the responsible person position".

19. The Law Council acknowledges that this change is understood to be intended to align the fit and proper criteria with the Financial Accountability Regime (**FAR**).

20. However, the Law Council submits that, under the *Financial Accountability Regime Act 2023* (FAR Act), "care" operates as an *obligation*—specifically, an accountability obligation requiring accountable persons to act with a degree of care and diligence—rather than as an *assessable criterion* capable of evaluation in the context of a fit and proper determination. There is an important distinction between requiring a person to *exercise* care in the performance of their duties (which is the nature of the FAR obligation) and assessing whether a person *possesses* care as a personal attribute (which is what paragraph 84(a) would require).

21. The Law Council requests that APRA clarify the intended meaning and method of assessment for "care" as a fit and proper criterion. In particular, the Law Council notes the concern that a person's exercise of "care" is context-specific and temporal—it relates to conduct in specific circumstances rather than being an inherent personal quality capable of assessment in the abstract. Unlike attributes such as honesty, integrity and judgement—which are enduring personal qualities that can be assessed by reference to a person's character and track record—"care"

is more naturally understood as describing the manner in which a person discharges particular responsibilities. Without further guidance, regulated entities may face significant uncertainty as to how "care" is to be assessed in the context of an initial or ongoing fit and proper determination.

Yours sincerely

