MALLESONS

TO **General Manager**
Policy Frameworks
Policy Advice Division
APRA

By email: policydevelopment@apra.gov.au

1 SEPTEMBER 2026

Dear Sir / Madam,

Proposed changes to governance: Submission by Mallesons

The views expressed in this submission are the views of Mallesons and do not reflect the views of our clients.

This submission contains the following sections:

- Responses on the 8 proposals
- General feedback on Draft CPS 510
- Feedback on the 6 questions in the June 2026 consultation process.

1 Responses on the 8 proposals

Mallesons welcomes the revisions to APRA's 8 original proposals following earlier consultation and is generally supportive of the outcomes.

We have the following observations:

Proposal 1: Skills matrix: Our only comment is that in relation to fit and proper assessments, boards should have a view of the skills that directors should have *collectively*, not individually.

We assume that this is what was intended but the statement should be clarified to ensure that the decision not to require individual directors to have their own mix of skills is clearly reflected.

APRA might also consider whether to permit regulated entities to address required board skills by means other than a skills matrix, along the lines currently proposed by ASX.

Proposal 4: Independence: The removal of the requirement that directors sit on only one group board is welcome and in our view facilitates good governance.

However, the adoption of independence criteria from the 4th edition of the ASX Corporate Governance Principles and Recommendations should be updated to reflect the outcome of the current consultation process on revisions to the Principles and Recommendations, which include proposed changes to the independence criteria. Also, APRA has taken a list of independence criteria from ASX and applied them as mandatory criteria, disregarding the context that ASX presents the criteria in an "if not, why not" regime. Some flexibility in application (other than the term limit) would be appropriate.

Proposal 5: Board performance reviews: The outcome is welcome, subject to one issue. The proposal is for external independent performance reviews every 3 years. The requirement for "independence" should not prevent external reviews by an external legal, accounting or governance adviser that also provides independent professional services to the regulated entity. Those advisers will bring the benefit of an understanding of the entity's business and governance challenges to the review, and their professional obligations should ensure that they are sufficiently independent. (A quick survey of entities who have experienced external reviews from advisers who have no prior knowledge of the entity's business would be likely to support this view.)

2 General feedback on Draft CPS 510

Use of the term "Effective": There are many references to "effective" throughout the draft. We are concerned that this concept could be read as being outcomes focused in that it requires producing the desired effect. Compliance with a test based on outcomes can only be measured in hindsight, which would create ongoing compliance and operational risks for regulated entities. We recommend that it be replaced with a term that does not require hindsight assessment. Suggest terms APRA uses elsewhere in the draft such as robust, sound or appropriate.

Paragraph 8(b): Definition of "responsible person": Recommend reverting to the current definition of responsible person and not leverage FAR terms. This policy should not make an end run around the FAR. Additionally, the definition includes Accountable Persons ("**AP**") of significant related entities, but a regulated entity has no ability to take steps if they are not fit and proper. For example, where the AP is the parent entity's CEO and will have no visibility on appointments into positions that result in them becoming APs. Further, the definition includes persons nominated by APRA, which is problematic where it creates uncertainty as entities may be unable to know for sure the group of responsible persons.

Paragraph 8(d): Definition of an "Interest": the drafting is too broad as it includes any benefit to any third party, which makes it difficult to be operationalised for a conflict management regime. The definition extends to interests of any employee or associate, with the effect of applying conflict management rules in CPS 510 to all employees of a corporate group. If the regulated entity is a subsidiary, they will be unable to comply with CPS 510 in relation to employees elsewhere in the group.

Paragraph 8(g): Definition of "duties to beneficiaries" and meaning of "beneficiaries": footnote should be updated as the wording "within the RSE licensee's business operations" is not clear. Recommend replace with simpler language like "an RSE that it is trustee of".

Paragraph 8(h): Definition of "interests of beneficiaries": the drafting is too broad and should not cover "any interests" but instead a beneficiary's interests in relation to the fund.

Paragraph 13: Support APRA's intention of demonstrating the breadth of matters than can be delegated. However recommend reviewing the list as some of the items of the list are behavioural and so are appropriate to include on a list of matters that can or can't be delegated eg challenging senior managers. However, we support the inclusion of construction challenge of management in a discussion on board behaviours.

Paragraph 13(g): Replace the reference to "senior managers" with "responsible persons", for consistency and also to focus on governance rather than management capability. (This change should be made throughout this standard.)

Paragraph 14: delete to remove duplication with FAR rules for dealing with regulators.

Paragraph 15: delete reference to who can receive a delegation, as it incorrectly limits delegations to board committees and senior managers of the entity. APRA should not be able to limit who within an organisation can receive a delegation. Further, appointing an agent is a form of delegation which is not

contemplated in the draft. Clarity should be given that CPS 510 does not apply to delegations in this form, whilst CPS 230 does.

Paragraph 17(b): it is unclear what is meant by a "risk-based" delegation. Recommend that this term be explained or expanded upon for clarity.

Paragraphs 18 and 19: Delete. These paragraphs concern management, not governance. Further, the definition of senior manager is vague, does not reduce risk, and it is unclear whether paragraph 18 is a definition provision or purports to impose obligations. Additionally, paragraph 18 and 19 both set out matters that senior managers are responsible for but there is significant overlap and inconsistencies. Query whether senior managers who do not have the responsibilities set out in paragraphs 18 and 19 would be considered in breach, and query what happens if the persons responsible for carrying out the entity's relevant activities are a related party service provider. Also, it is outside APRA's prudential standard making power to impose obligations on senior managers.

Paragraph 21: rephrase for clarity, as it is unclear what APRA is requiring. Is APRA requiring reasoning to be set out in proposal papers and that proper records of divisions be maintained. Further, reference to risk appetite is duplicative, where it will be set out in a risk appetite statement. Query what is "relevant decision-making", as not all decisions need to be documented and recorded.

Paragraph 27: include an automatic mechanism to allow time to fill a casual and unplanned board vacancy without breaching CPS 510. For example, a 90 day timeframe due to a director's death. Having to apply to APRA for an exemption will be too late as the regulated entity would have already breached CPS 510 at the time of application. It must then record the breach on its breach register and determine whether it needs to report the breach to APRA and / or ASIC. However, there is nothing the APRA-regulated entity could have done to prevent the breach. The regime in paragraph 26 is designed to enable compliance with the Superannuation Industry (Supervision) Act 1993 (Cth), but there is no basis for treating superannuation trustees complying with basic equal representation rules differently to other superannuation trustees and regulated entities. Further, what is the period that a regulated entity must apply within, how long will APRA give, how long will APRA take to grant an exemption and will the exemption apply retrospectively from the date of breach?

Paragraph 32: as noted above, the adoption of independence criteria from the 4th edition of the ASX Corporate Governance Principles and Recommendations should be updated to reflect the outcome of the current consultation process on revisions to the Principles and Recommendations, which include proposed changes to the independence criteria. Also, APRA has taken a list of independence criteria from ASX and applied them as mandatory criteria, disregarding the context in which ASX presents the criteria in an "if not, why not" regime. Some flexibility in application (other than the term limit) would be appropriate.

Paragraph 35: meaning of the term "authority to fulfill a board obligation under APRA's prudential standards": does that mean that paragraph 35 does not apply to a board committee with delegated authority that is not prescribed by the APRA Prudential Standards? Or to an advisory board committee? Further, paragraph (e) covers engagement and advice of third party experts being independent of the board, which is inconsistent with the concept of the board delegating to a committee and should be deleted. Additionally, not all board committees would have a role in challenging senior managers. Query whether these obligations are imposed on the board committees or the regulated entity?

Paragraphs 41, 45 and 46: Board committees: Clarify that board committees do not make decisions but make recommendations to the Board for decision by the Board.

Paragraph 48: while we agree that documenting the assessment criteria are important, this does not need to be included in the skills matrix. Recommend removing the reference to the skills matrix and simply require to be set out in a board-approved document.

Section “Board, committee and director performance”: Conflates the assessment of regulated entity requirements (such as governance framework) with board and individual director requirements, creating confusion and compliance challenges.

Paragraph 51(b): while consideration of board skills matrix is important, it should not form part of the board performance assessments.

Paragraph 51(c): Board reviews, effectiveness of individual directors: We suggest that this be limited to consideration of the Chair’s views of individual directors, rather than the views of other directors and management. However, the effectiveness of the Chair and the committee chairs in those roles should include the views of all of the directors and responsible persons. (We are concerned that internal reviews in particular should not be a tool to ostracise individual directors anonymously. There is a clear legal process that prohibits the board or management from removing directors of public companies, reserving that decision to shareholders.). Further, the board should be measured against the skills matrix, and not individual directors.

Paragraph 51(d): For cost efficiency reasons, governance framework reviews should be considered as part of the risk reviews under SPS 220 and not on a standalone basis. Instead, directors should be assessed on how they comply with the governance framework.

Paragraph 53: Independent external board reviews: Support independent reviews rather than reviews conducted by (say) a board member or management. However, the requirement for “independence” should not prevent external reviews by an external legal, accounting or governance adviser that also provides independent professional services to the regulated entity.

Paragraph 54(a): appropriateness of board delegations should be excluded from board performance assessments, as they impact the appropriateness of the governance framework and should be considered in that context.

Paragraph 72(b): query what is meant by the words “in the context of an ADI, general insurer or life company”. Does it mean that the head company is an ADI, general insurer or life company, or that the entity is head of a group that contains an ADI, general insurer or life company?

Paragraph 74(g): board minutes should refer to the conflict and how it was managed, but conflict details are better to be dealt with in board papers rather than board minutes. Query how this is satisfied with standing director conflict declarations.

Paragraph 74(h): record keeping can be costly and so the need for conflict management records should be based on a costs benefits analysis, for example, by including a materiality threshold in this obligation.

Paragraph 74(j): consistent with comments above, for cost efficiency reasons, conflict management framework reviews should be considered as part of the risk reviews under SPS 220 and not on a standalone basis. Instead, directors should be assessed on how they comply with the conflicts management framework.

Paragraph 76(b): drafting of definition of relevant interest is complex and hard to understand. Redraft for clarity. Given that the drafting is so broad, it is hard to determine what a relevant interest is.

Paragraph 81: delete second sentence as a fit and proper assessment is different to a director performance assessment. Board skills matrix should influence the competencies required under the fit and proper requirements but should not be part of the assessment process.

Paragraph 82: delete as while it is in SPS 520, it is duplicative of what is now required by FAR.

Paragraph 85 and 86: failing a fit and proper assessment has significant consequence for the individual concerned. Accordingly, the reasons for failure should relate to the individual's acts and omissions:

(a) Paragraph 85(b): assessing how a person has managed conflicts is relevant when assessing fitness and propriety, but it is not appropriate to deem the person not to be fit and proper because of the potential for a conflict in the future; and

(b) Paragraph 86(a): while the board skills matrix is relevant to selection of board appointees, it is not appropriate to determine that a person is not a fit and proper director because of a skills matrix.

Paragraphs 86(a) and 86(b): only appear relevant to the first fitness and propriety assessment but the drafting suggests that they are required for all ongoing assessments. This should be clarified.

Paragraphs 88 and 89: Some of the most significant issues with fitness and propriety have occurred when allegations of wrongdoing against a director have been made public, but those allegations do not relate to the regulated entity and they have not yet been tested in court. While it is clear that a fit and proper assessment is expected to be undertaken at that time, a mere allegation should not result in failure. Recommend that APRA include guidance on its expectations of regulated entities in these circumstances beyond assessment, for example, do unproven allegations mean that the person has failed fitness and propriety?

Paragraphs 91 and 92: In similarity to our comments above on the definition of responsible persons. The extension of responsible persons to APs of significant related entities makes compliance with these paragraphs challenging, difficult, and at times impossible.

Section "APRA engagement and non-constraint": Concern that these rules are inconsistent with other whistleblowing regimes. Query what is meant by use of word "allow".

Paragraph 102: Chair acting as CEO: In circumstances where the CEO's employment ceases unexpectedly, 90 days is often too short a period to find a new CEO for a regulated entity. Suggest extension to 180 days.

3 Feedback on the 6 questions in the June 2026 consultation paper

3.1 Proportionality and transition

Do the draft CPS 510 requirements operate proportionately across different entity types, sizes and structures, and are transitional arrangements needed in specific areas to support orderly and timely implementation?

Response: [No submissions]

3.2 Reviews and assessments

Are the reviews and assessments required by the draft standard appropriately scoped, and do the mechanics provide sufficient flexibility to allow reviews to be combined where this supports efficiency and effectiveness?

Response: See our comments above.

3.3 Fit and proper streamlining and FAR alignment

Do the proposed changes appropriately reduce duplication, including the removal of routine reporting and the narrowing of the responsible person cohort? Are there any risks or unintended consequences APRA should consider?

Response: The standard should replace all references to "senior managers" with references to "responsible persons". Recommend against including FAR Accountable Persons as responsible persons.

This standard should focus on governance obligations and responsibilities rather than management responsibilities.

3.4 Areas where further detail in guidance would assist

APRA will release a prudential practice guidance to accompany the final governance standard CPS 510. What further information would assist entities to confidently implement the standard?

Response: Guidance on AI would be useful – see specific response to Question 6 below. See also our comments above on guidance. Guidance on APRA's expectations on minimum board skills requirements and example board behaviours would be welcome.

3.5 Compliance costs and net impact

What are the expected compliance costs and benefits of the proposed changes, including the net impact once reductions from consolidation and streamlining are considered?

Response: We expect that compliance costs will be reduced. Expect better performing boards if board performance is independently assessed, provided "independence" allow for external advisers to conduct those assessments.

3.6 Artificial intelligence governance

Do the draft CPS 510 requirements adequately support the oversight and use of AI and related technologies? Are there areas where additional expectations or guidance would assist?

Response: We believe that it is essential for boards to adopt AI governance policies and procedures for the Board and for the entity generally. For example, we are concerned that directors should not rely on AI to summarise board papers, to suggest questions and challenges for management, to record board meetings, to prepare minutes or to draft board and shareholder resolutions.

We are concerned more generally with:

- the use of open source AI platforms in ways that may disclose the entity's confidential information or waive legal professional privilege;
- reliance on AI to prepare board papers including risk management reports without rigorous "human" verification; and
- reliance on AI to summarise large documents without "human" verification where AI summaries tend to "miss the point".

Yours sincerely

[redacted] | **Partners**
Mallesons

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