

7 October 2022

Mr Gideon Holland
General Manager, Policy
Policy and Advice Division
Australian Prudential Regulation Authority

via: policydevelopment@apra.gov.au

Dear Mr Holland

Remuneration disclosure and reporting requirements – Discussion Paper

Thank you for the opportunity to comment on the Discussion Paper (the **Discussion Paper**) on the proposed remuneration disclosure reporting requirements to be contained in *Prudential Standard CPS 511 Remuneration (CPS 511)* and draft *Reporting Standard CRS 511.0 Remuneration (CRS 511.0)*.

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 49,000 reflects the diversity of Australia's director community, comprised of directors and leaders of not-for-profits, large and small businesses and the government sector.

The AICD participated in the consultation process on the development of CPS 511 in 2019.¹ The AICD supported a stand-alone prudential standard on remuneration, recognising the significant impact that remuneration structures can have on firm culture, conduct and performance, and the need to strengthen the remuneration practices of Australian Prudential Regulation Authority (**APRA**) regulated Entities (**Entities**).

1. Executive Summary

The AICD recognises that the proposed disclosure and reporting obligations are a key component of APRA's multi-year project to enhance the remuneration practices of Entities, including the governance of remuneration. This project is an important component of APRA's response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry findings and recommendations (**Royal Commission**).

The AICD supports well designed and targeted disclosure and reporting requirements that enable both APRA and broader stakeholders to have visibility of the remuneration arrangements of Entities and to compare across Entities. Importantly, requiring an Entity to have greater transparency of its remuneration practices will, on its own, incentivise better targeted remuneration practices due to the greater public scrutiny.

The AICD's overarching view is that the while improvements in remuneration reporting and disclosure obligations across all Entities is welcomed, the proposed requirements run the risk of exacerbating the existing complexity, and limited comparability, of remuneration disclosure practices. In addition, the policy rationale for a number of the elements of the disclosure and reporting regime is not apparent, nor

¹ AICD submission, Prudential Standard CPS 511: Remuneration, October 2019, available [here](#).

how the benefits of collecting, or disclosing, these elements will outweigh the costs on Entities in meeting the requirements.

Our key points are:

1. The proposed disclosure obligations under CPS 511 run the real risk of exacerbating the existing length, complexity and limited comparability of remuneration reports, particularly for listed Significant Financial Institutions (**SFIs**). The AICD recommends APRA reduce this risk through seeking greater alignment with *Corporations Act 2001* (Cth) (**Corporations Act**) disclosure obligations and limiting where possible qualitative disclosure items.
2. CRS 511.00 as currently drafted will impose significant regulatory costs on Entities of all sizes that will likely outweigh any benefit to APRA's supervision activities or stakeholder visibility of remuneration practices. Our key areas of concerns are the granularity and scope of key personnel data to be collected, duplication with disclosure items under CPS 511, and the compressed timeframe for submission.
3. The commencement timeline for both CPS 511 and CRS 511.00 should be extended to at least 18 months - 2 years for all Entities from finalisation, or alternatively commencement of the obligations should be staggered across two years.
4. Guidance will be key to assisting Entities meet the intent of the disclosure obligations under CPS 511 and will promote comparability of disclosures across all Entities.

2. Disclosure – Regulatory complexity

This section responds to question 1 of the key questions in Chapter 4.

The AICD agrees with APRA's view in the Discussion Paper that existing disclosure practices make it difficult to compare remuneration arrangements across Entities, thereby impeding transparency. However, the AICD is concerned that, as currently drafted, the proposed disclosure obligations in CPS 511 will exacerbate the existing complexity, and limited comparability, of remuneration disclosures across all Entities.

Alignment with existing obligations

As detailed in the Discussion Paper at Attachment A, Entities already face a myriad of remuneration disclosure requirements that differ based on the industry of the Entity and whether it is listed. Further, the likely commencement of the Financial Accountability Regime (**FAR**) in the coming 12 months will add further complexity to the requirements that both SFIs and non-SFIs face in structuring remuneration arrangements and seeking to comply with the FAR, CPS 511, *Corporations Act 2001* (Cth) (**Corporations Act**) and *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) obligations, including disclosure requirements.

The AICD welcomes that the proposed disclosure obligations will replace the requirements on ADIs regarding remuneration disclosure under *Prudential Standard APS 330 Public Disclosure*. However, we are concerned that for listed SFIs subject to the Corporations Act requirements, the proposals will only exacerbate the length, complexity and limited comparability of remuneration reports.

The Discussion Paper implies that for a listed SFI the amendments to existing disclosures proposed under CPS 511 are minimal (e.g. Table 7, page 23 of the Discussion Paper) and can be readily incorporated. Feedback from stakeholders indicates that the additional disclosure items, or enhanced disclosures,

under CPS 511 will not be easily incorporated into existing disclosures and will, at the least, materially increase the length of remuneration reports for listed SFIs. Further, some stakeholders have shared the view that there is a real risk that a listed SFI may have to generate two remuneration reports, one as a component of annual reporting under the Corporations Act, and a second report to meet the obligations under CPS 511. This is due to the complexity and length of the disclosure obligations under CPS 511, divergence from Corporations Act obligations, and separately Entities not having the time to incorporate these disclosures in the annual reporting cycle.

The AICD encourages APRA to work further with industry to assess where there are opportunities to allow for greater alignment. By way of example, the proposed disclosure of remuneration plan information for specific roles under Table 1 Item 15 departs materially from what is required under Section 300A of the Corporations Act for Key Management Personnel. An option could be to utilise section 300A as the foundation or baseline for disclosure by listed and non-listed SFIs with additional items specified in CPS 511, including the expanded population of all specified roles. At a minimum, we would expect greater detail in guidance on where a disclosure under the Corporations Act obligations will suffice for meeting specific CPS 511 requirements.

As discussed further below, we also consider limiting the level of qualitative disclosures would also assist in reducing the length and limited comparability of remuneration under CPS 511.

AICD members familiar with financial reporting have also raised the concern that there may be misalignment between the proposed disclosure obligations and the calculations and definitions utilised for Corporations Act disclosures prescribed under relevant accounting standards. This potentially adds further complexity in relying on Corporations Act obligations to meet CPS 511, and vice versa. This issue is also a key consideration for any external assurance and audit expectations for the disclosures. We encourage APRA to ensure that there is no misalignment through engaging further with industry, the Australian Securities and Investments Commission and the Australian Accounting Standards Board. We would expect this issue to be clarified in guidance on the disclosure obligations.

Qualitative disclosure obligations

The proposed disclosure obligations have significant qualitative elements, particularly Table 1 for SFIs and paragraphs 94-96 for non-SFIs. The AICD appreciates that the proposed requirements provide flexibility for how an Entity will meet the disclosures, including format, location and incorporation with existing disclosures. However, our view is that the extent of the qualitative disclosures and the discretion afforded to Entities will undermine APRA's intent to have high quality comparable disclosures across the APRA regulated industries.

The AICD considers that the desired state is where a stakeholder could compare how the variable remuneration arrangements are designed and governed at a listed ADI SFI and RSE licensee SFI, by way of example. We are not satisfied this will be possible based on the proposed drafting and taking account of the Corporations Act disclosure obligations on the ADI and the SIS Act obligations on the RSE licensee.

The AICD encourages APRA to explore whether there are opportunities to consolidate a number of the qualitative disclosures in Table 1 for SFIs. For instance:

- Item 4 on Board discretion could be readily incorporated into item 5 as they both focus on the role of the Board in overseeing remuneration outcomes and seeking input from committees;

- Items 9 and 12 both focus on how performance is reflected in remuneration outcomes and could be consolidated; and
- Item 14 on deferral arrangements could be incorporated under items 7 and 15.

The AICD also considers that the use of the terms 'overview' and 'description' with numerous qualitative items may result in open-ended, imprecise or high-level disclosures that do not improve visibility. An alternative may be to ask the entity to specify or detail 'the factors' or 'criteria' or 'components' that are relevant to the remuneration arrangements, policy or governance practices.

Limiting or consolidating the number of qualitative disclosures and seeking more specific information may assist in reducing the length of disclosures and produce more comparable information.

3. Reporting – regulatory burden

AICD members, Entities and industry stakeholders have raised with the AICD concerns about the significant regulatory burden of the proposed reporting requirements under CRS 511.00. A consistent message is that in many instances the policy rationale for requiring the reporting of certain data in the light of the cost and complexity of the proposed obligations is not apparent.

The AICD is concerned that CRS 511.00 as currently drafted will unnecessarily impose significant regulatory costs on Entities of all sizes that will outweigh any benefit in terms of APRA's supervision activities or stakeholder visibility of remuneration practices via APRA statistical publications.

Individual data

APRA proposes to collect extensive individual remuneration outcome data for every individual in a specified role under CPS 511 at all Entities. This data will be required to be reported for both SFI and non-SFIs and even where the specified role is not subject to variable remuneration arrangements.

It is not clear from the Discussion Paper how APRA intends to utilise this data or the policy rationale for collecting this data. For example, the AICD considers that requiring the reporting of a performance rating and separately a conduct rating (Table 3) for every individual is excessive and runs the risk of imposing or incentivising a particular performance framework on Entities. For some SFIs, there are hundreds of staff in specified roles and we are sceptical that this level of data is necessary for APRA's supervision activities. Our strong view is that if APRA has concerns about consequence management practices at an entity, including compliance with CPS 511, then this data can be requested as a component of normal supervision activities, rather than requiring it of all Entities on an annual basis.

The AICD strongly encourages APRA to reassess whether the level of granularity in respect of individual data under CRS 511.00 is appropriate and necessary. An option to limit the scope would be to only require it of staff who are also accountable persons under the BEAR and in the future, the FAR.

Duplication

The AICD recommends that APRA seek to harmonise the disclosure and reporting requirements such that an entity only has to disclose or report a particular item or category once. It is unnecessary and onerous to require an entity to both disclose an item or category under CPS 511 and then separately report the same item under CRS 511.00.

By way of example, we have identified the following as areas where there is duplication:

1. Remuneration governance items (Table 1, CRS 511.00), particularly those that require qualitative or 'free text' overlap with items that both an SFI and non-SFI will have to disclose under CPS 511 (Table 1 and paragraph 94). For instance, at Item 11 of Table 1 of CRS 511.00 an SFI will have to report on changes to the remuneration framework which mirrors the disclosure at Table 1, item 3 of CPS 511;
2. Variable remuneration deferrals and vesting across years for specified role categories (Table 4, Items 10-16 of CRS 511.0), where SFIs will have to disclose detailed information on variable remuneration design, including performance and deferral periods (Table 1, Item 14 CPS 511.0); and
3. Adjustment outcomes, split by in-period, malus and clawback, (Table 4, CRS 511.0), where SFIs are already disclosing their processes and tools for adjusting variable remuneration, including criteria and triggers (Table 1, CPS 511).

Where APRA forms the view that duplication is necessary, we recommend that APRA aligns the drafting to reduce the complexity for Entities in interpreting the respective obligations. For example, CRS 511.0 would require reporting on the *consultation process* between the Board Remuneration Committee, Board Risk Committee and Chief Risk Officer (Table 1, Item 5). However, CPS 511 requires a disclosure of a *description of the input provided* to the Board by the Board Risk Committee and Chief Risk Officer (Table 1, Item 5). It is not apparent why the drafting would diverge in this instance.

The AICD considers that if an entity is already meeting the disclosure obligations under CPS 511 then this data can be utilised for APRA supervision activities and APRA should seek to reduce the burden on Entities through removing any unnecessary duplication.

Timeframe for submission

The AICD considers that four months to report under CRS 511.00 is too short and is not consistent with existing remuneration governance and decision-making practices.

We have received feedback from both AICD members and Entities that four months is unworkable, particularly in respect of existing governance timelines around remuneration outcomes for employees in specified roles. As APRA is aware, at many SFIs there is a large pool of employees in specified roles and it is often a very intensive and involved process to determine variable remuneration outcomes for these employees. This process includes accounting for performance and conduct outcomes and separately board oversight (where appropriate). The determination of remuneration outcomes can often extend to December (for Entities with a 30 June financial year).

To meet the proposed reporting deadline under CRS 511.00, an entity would in effect have to finalise and communicate its remuneration outcomes for all employees in specified roles within three months of the end of the financial year to provide sufficient time to prepare the data for reporting. To meet this timeframe would be resource intensive and require significant changes to existing processes and systems.

The AICD recommends APRA assess whether six months is a more appropriate timeframe. This timeframe would not only be consistent with existing industry practice but also avoid Entities incurring unnecessary costs to meet the deadline. Our view is that six months, rather than four, would have no material impact on the currency of the data from an APRA supervision or statistical publication perspective.

4. Commencement

The AICD recommends APRA extend the commencement timeline for both CPS 511 and CRS 511.00 to at least 18 months - 2 years for all Entities from finalisation, or alternatively stagger the commencement of the obligations across two years.

The proposed commencement of 1 January 2024 for SFIs with a 31 December year end will be at most 12 months from finalisation, assuming the standards are finalised by the end of 2022. This will provide limited time for Entities to undertake the necessary amendments to internal process and systems to meet the obligations, particularly in the context of other significant regulatory changes.

As noted above, Entities are currently implementing CPS 511 and we expect this will be an ongoing process of refinement and improvement through 2023. Separately, the FAR will likely commence in 2023 with significant internal governance and reporting changes required, particularly for insurance and superannuation Entities. The AICD considers that providing all SFIs until at least July 2024 for commencement of the proposed obligations would, at a minimum, reflect the scope of regulatory change and avoid an unnecessarily rushed and resource intensive implementation process.

An alternative to the standards commencing at the same time would be a phased implementation where CRS 511.0 commences from July 2024 and the disclosure requirements from July 2025. This approach would allow Entities to test and implement the processes and timeframes needed to collect the necessary data and report it to APRA prior to having to meeting the disclosure obligations. In effect the reporting collection in the first year would act as a trial or test of an entity's remuneration data practices prior to making disclosures under CPS 511 and meeting the increased stakeholder expectations that are associated with disclosure.

Providing Entities with adequate time to implement the obligations, including seeking feedback from APRA, will assist in ensuring that there are genuine improvements in the robustness and transparency of remuneration arrangements from the commencement date.

5. Guidance

The AICD notes that *Prudential Practice Guide CPG 511 Remuneration (CPG 511)* was published in October 2021 to reflect the then final CPS 511.

The proposed amendments to CPS 511 contemplated in this consultation are extensive and we consider warrant further changes to CPG 511. A lack of guidance risks further limiting the comparability of disclosures across SFIs and non-SFIs, particularly where an entity has significant discretion in respect of qualitative disclosures. Areas where the AICD considers additional guidance is warranted include:

- best practice expectations for interpreting the qualitative disclosure obligations for both SFIs and non-SFIs under Table 1 and paragraphs 94-96 and of CPS 511;
- in what circumstances a listed SFI could rely on Corporations Act disclosures to meet CPS 511 obligations; and
- expectations for audit/external assurance, including any potential misalignment between CPS 511 definitions and relevant accounting standards.

Practical guidance will assist Entities meet the intent of the disclosure obligations under CPS 511 and promote comparability of disclosures across all Entities.

4. Next Steps

We hope our submission will be of assistance. If you would like to discuss any aspects further, please contact Simon Mitchell, Senior Policy Adviser (smitchell@aicd.com.au).

Yours sincerely,

A handwritten signature in grey ink, appearing to read 'C. Gergis', is positioned above the typed name.

Christian Gergis GAICD

Head of Policy, Governance and Policy Leadership