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General Manager
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Dear Policy and Frameworks team

Proposed changes to CPS 510 Governance

Thank you for the opportunity to provide a submission on APRA's consultation on proposed changes to *CPS 510 Governance* (**Draft CPS 510**).

The Australian Institute of Company Directors Limited (**AICD**)'s 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 54,000 includes directors and governance leaders of not-for-profits (**NFPs**), large and small businesses and the public sector.

The AICD has been actively engaged in reform of APRA's governance and fit and proper requirements, making a submission on APRA's initial Discussion Paper in June 2025. In that submission, we were supportive of APRA modernising governance obligations, but raised concerns that some of the proposals were unduly prescriptive, and risked creating significant new regulatory burden and complexity.

This submission has been informed by engagement with our members who sit on the boards of APRA-regulated entities, along with industry bodies, legal experts and management teams at financial institutions.

1. Executive Summary

The AICD recognises the critical role of banks, insurers and superannuation trustees in the functioning of the Australian economy and the welfare of every Australian. Sound governance is at the heart of a prudent entity that meets its regulatory requirements and community expectations. This central role compels an elevated regulatory focus on strong governance practices at prudentially regulated entities.

We welcome the refinement to a number of the proposals, announced in October 2025, that the AICD expressed concern about in our June 2025 submission. Our view is that Draft CPS 510 reflects a more balanced approach to updating and modernising the governance and fit and proper requirements.

However, our view is that some of the proposed requirements remain unnecessarily prescriptive, do not have a strong policy case and risk increasing the regulatory burden on APRA-regulated entities without a commensurate governance benefit. There are also instances where further clarification, either through the accompanying Prudential Practice Guide (**PPG**) or within the standard itself, would help boards and entities understand when and how the requirements are intended to apply.

We look forward to engaging with APRA on the development of the PPG. The guidance will be critical in assisting entities and boards to meet the new and revised governance obligations in a manner consistent with APRA's objectives.

Our key observations and recommendations are summarised below, and our detailed responses to the changes in Draft CPS 510 are set out in **Attachment A**.

Independence

- We support APRA's decision to align the Draft CPS 510 definition of independence with the ASX Corporate Governance Principles (**ASX Principles**), given the harmonisation benefits that this creates for APRA-regulated entities which are also listed.
- We encourage APRA to simplify the proposed new requirement relating to directors serving on multiple boards within the same group, including how and when independence is expected to be assessed in practice. We have proposed alternative drafting that sets an annual requirement for assessing independence linked to the entity's conflicts management policy, with further guidance provided in the accompanying PPG.

Board skills and performance

- We support requiring entities to maintain a board skills matrix that focuses on the collective capabilities of the board and its committees, and welcome APRA's decision not to require identification of individual director skills. However, we do not consider the inclusion of 'behavioural attributes' to be appropriate. Such considerations are not in line with the primary purpose of a skills matrix, and will introduce a degree of subjectivity. We also do not support the level of prescription through requiring a skills matrix assessment based on proficiency ratings that can be 'measured and verified'. We have proposed an alternative that is consistent with good governance practice.
- While the AICD supports regular board performance reviews, aspects of the proposed performance assessment framework are overly prescriptive. In particular, APRA's setting of specific matters to be considered in both annual and independent assessments could restrict the ability of boards and entities to determine an approach most suited to their circumstances and governance structures. Our view is that this level of detail is more appropriate to include in the forthcoming PPG.
- While the AICD supports annual director performance assessments, we do not support the setting of annual director performance objectives or key performance indicators. Directors are not senior management, and an effective governance role cannot be neatly quantified in the same way. Instead, we recommend that APRA set out in the PPG areas where it considers it is appropriate to account for individual director performance in the annual and three yearly reviews.

Director tenure

- We strongly support APRA's decision to amend the initially proposed ten-year tenure limit to a 12-year director tenure limit with the potential for a one year extension. This change provides boards with appropriate flexibility to manage succession planning and account for the value of institutional knowledge on boards.
- We recommend that APRA provides further clarification on when an entity will and will not be treated as a 'successor entity' for the purposes of tenure measurement in the PPG. Currently, it is unclear whether or not an entity will be considered a 'successor entity' when there have been significant structural changes including a new board, or where the entity has been involved in multiple mergers.

Transition

- Non-significant financial institutions should be given at least an additional 12 months (until 2029) to meet board composition and tenure requirements in order to appropriately manage director turnover and to account for the challenges they can face in recruiting directors with the appropriate skills and experience.

- APRA should engage closely with entities throughout the introduction of the regime, and take a pragmatic approach to transition arrangements on a case-by-case basis.

2. Next Steps

We hope our submission will be of assistance. If you would like to discuss any aspects further, please contact Elise Plunket, Policy Adviser at eplunket@aicd.com.au or Simon Mitchell, Acting Head of Policy at smitchell@aicd.com.au.

Yours sincerely,

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GM, Education & Policy Leadership

Attachment A – Response to Draft CPS 510

1. APRA's policy approach and framework design

The AICD welcomes APRA's decision to adjust several of the more prescriptive proposals from the March 2025 consultation, and commends APRA for engaging constructively with industry feedback throughout the consultation process. The revised Draft CPS 510 reflects a more balanced approach with a focus on governance outcomes in most areas, while reducing the risk of unnecessary regulatory burden and unintended consequences for regulated entities.

The AICD also supports APRA's decision to consolidate the existing governance, conflicts management and fit and proper requirements across the regulated industries into a single prudential standard. A unified cross-industry framework appropriately reflects the maturity of governance practices across all APRA-regulated sectors and supports greater consistency in prudential supervision. It should also assist entities by simplifying what has become a complex governance framework spread across multiple prudential standards.

More broadly, we welcome APRA's recognition that governance requirements have expanded significantly over time, and there is value in clarifying the respective responsibilities of boards, committees and management. The revised Draft CPS 510 represents a positive step towards a more coherent governance regulatory framework. However, as detailed below, more can be done to reduce the sprawl of board level requirements across the prudential framework.

2. Delegation to committees and management (paragraphs 13 – 17 of Draft CPS 510)

The AICD supports APRA's inclusion of an express delegation framework which sets out what responsibilities can and cannot be delegated by the board. Delineating the delegable and non-delegable duties of the board was an approach that the AICD supported in our June 2025 submission, as well as a strong view that this should be expressed through amendments to specific standards as opposed to being contained in guidance. Currently, boards are burdened by many detailed prudential obligations that are operational in nature and are more appropriately performed by management, subject to comprehensive board oversight. The proposed delegation framework in Draft CPS 510 is an important step forward.

We note that delegation by the board is already addressed in sections 190 and 198D of the Corporations Act 2001 *(Cth)*.[1] This existing framework provides a strong incentive for boards to ensure delegations are appropriate, clearly documented and subject to effective oversight. As such, there is already a well-established legal framework governing the delegation of powers by boards, and directors are aware that delegation does not diminish their ultimate responsibility for the exercise of those powers.

In light of these existing obligations, the AICD considers that there should be sufficient flexibility in supervisory interpretation of paragraph 17 to allow boards to determine how they delegate authority. Our view is that boards are best placed to design delegation arrangements that reflect their particular circumstances, governance structures and operating models.

<u>Amendments to board level prudential requirements</u>

Consistent with the AICD's recent ongoing engagement with APRA, we continue to strongly support rationalising board requirements across the prudential framework. The AICD remains of the view that proliferation of board level obligations across the prudential framework should be addressed through direct

[1] Section 198D states that the board can delegate its powers, subject to its constitution and that the delegation is recorded in the minutes; section 190 states that directors remain responsible for the exercise of a delegated power by a delegate.

amendments to individual prudential standards as they are reviewed over time. We note that the capital and liquidity standards for authorised deposit-taking institutions (**ADIs**) are currently the subject of review.

Reliance on a general delegation framework in Draft CPS 510 alone will not eliminate uncertainty where prudential obligations continue to be expressed as board responsibilities throughout the framework. This uncertainty can cause a cautious, risk focused approach, whereby matters that can appropriately be attended to by management still dominate board packs and agendas.

3. Approach to independence (paragraphs 29 – 32 of Draft CPS 510)

The AICD supports APRA's decision to align the Draft CPS 510 definition of independence at paragraph 30 with the definition of independence in the ASX Principles. This alignment across Australia's governance frameworks should assist listed entities by reducing unnecessary divergence between prudential and broader corporate governance requirements.

<u>Independence for directors on multiple boards in the same group</u>

Paragraph 31 states that where a director is on the board of a parent or other entity within the same group, independence must be assessed 'with specific regard to any potential or actual conflicts arising from, or associated with, intra-group arrangements, such as structural, funding or remuneration relationships.' While we understand the policy intent behind creating additional obligations for directors on multiple boards within the same group, the current drafting creates uncertainty around what exactly is expected of entities and directors seeking to comply with this requirement.

In particular, it is unclear how often independence is expected to be assessed, and how APRA expects boards to balance oversight of group interests with entity-specific prudential obligations. Further, the intended meaning of 'structural, funding or remuneration relationships' is unclear and highly subjective.

As an alternative, we propose that the obligation is simplified and linked to the conflicts management requirements (i.e. paragraphs 74 – 76). A potential drafting approach could be:

> *Where a director also serves on the Board of a parent or other entity within the same group, independence must be assessed at appointment and at least annually with the assessment processes detailed in the entity's conflict management policy.*

Guidance for the specific independence assessment can then be set out in the accompanying PPG.

4. Board skills and performance

<u>Board skills (paragraphs 47 – 49 of Draft CPS 510)</u>

Consistent with our June 2025 submission, we support the proposal for regulated entities to document the collective skills and experience required by the board and its committees in a board skills matrix. We also support APRA's decision not to require disclosure or formal specification of individual director skills. The focus should remain on ensuring the board collectively possesses the capabilities required to govern the entity effectively.

We note that the recently released draft 5th Edition of the ASX Principles proposes to remove the requirement to disclose a board skills matrix. We expect many listed entities will still utilise a board skills matrix as a matter of sound governance practice. However, we highlight that whether and how a listed company utilises a skills matrix will now be at the entity's discretion based on an entity's particular governance approach. APRA, in contrast, is heading in the other direction with greater prescription. Our recommendations below on 'behavioural attributes', and how skills and experience are measured, seek to reduce the level of prescription and promote the skills matrix as a flexible governance tool that assists in board composition and further director training and education.

Behavioural attributes (paragraphs 47 and 49 of Draft CPS 510)

The AICD does not support the requirement to specify 'behavioural attributes' in the skills matrix. 'Behavioural attributes' implies the assessment of personal characteristics such as honesty, empathy and conscientiousness. These attributes are highly subjective to assess, and differ from technical or professional skills and experience.

The AICD's view is that a director's behaviour and personal characteristics are more appropriately considered through director appointment and the fit and proper processes, rather than against a skills matrix. We recommend that paragraph 47 be simplified to:

> *A locally incorporated regulated entity must document in a skills matrix the skills and experience required for the Board and its committees to perform effectively (Board skills matrix), having regard to:*

And that paragraph 49(a) be simplified to:

> *has the skills and experience it needs to effectively perform its role;*

If APRA chooses to retain the reference to 'behavioural attributes' in paragraphs 47 and 49(a), we strongly encourage including an explanation of what is meant by this term, including specific examples of what a 'behavioural attribute' might be, in the PPG.

Assessment criteria (paragraph 48 of Draft CPS 510)

We consider the requirement in paragraph 48 that a matrix 'must include clear assessment criteria and rating scales of proficiency that can be measured and verified' to be unnecessarily prescriptive. While the AICD considers it necessary for entities to maintain robust skills assessments, our view is that this should be simplified to remove any implication that a complex, algorithmically based approach is required. For example, paragraph 48 could be amended to read:

> *The Board skills matrix must include clear assessment criteria with ratings that can be verified.*

The PPG could then provide entities with practical guidance on possible approaches to skills assessments, while preserving their ability to adopt alternative methods where these are better suited to their business.

Board performance (paragraphs 50 – 56 of Draft CPS 510)

The AICD strongly supports periodic board, committee and director performance reviews. However, we are concerned that aspects of the proposed requirements are overly prescriptive. Paragraphs 51 and 54 set out what the annual performance assessment and independent performance assessment (respectively) must evaluate.

The AICD considers that listing the specific matters to be considered in a performance assessment is more appropriately addressed in the PPG than the standard itself. Our strong view is that entities should be afforded a higher level of autonomy in determining how to approach performance assessments than the current Draft CPS 510 allows.

Finally, we note the draft 5th Edition of the ASX Principles no longer includes a prescribed three-year independent review cycle. We remain supportive of this independent review cycle being codified in Draft CPS 510 for significant financial institutions (**SFIs**), however we note again that the ASX Principles' direction does not align with APRA's proposed level of prescription in Draft CPS 510.

Director performance objectives (paragraphs 13(f), 50(c) and 81 of Draft CPS 510)

As part of the annual performance assessments, we note that paragraph 51(c) requires that the effectiveness of individual directors is measured against their performance objectives. The requirement to set director performance objectives is provided for in paragraph 13(f).

No policy rationale or supporting detail has been provided for this proposed requirement in either the March 2025 consultation paper or the June 2026 consultation paper. We do not support the setting of annual director performance objectives or key performance indicators. Directors are not senior management, and an effective governance role cannot be neatly quantified in a set of indicators or a performance scorecard (as is the case with executives) that can be assessed at the end of the year.

We recommend this is removed from the final CPS 510.

Where APRA considers that disclosure of how individual director performance is accounted for in the performance review is appropriate, this should be set out in the PPG.

5. Board renewal and non-executive director tenure (paragraphs 57 – 62 of Draft CPS 510)

The AICD welcomes APRA's decision to move away from the originally proposed ten-year tenure limit for non-executive directors, and supports the revised approach contained in paragraph 59. The new 12-year tenure cap (with the possibility of a one year extension) more appropriately aligns with existing tenure practices, succession planning and the value that long-serving directors can bring to a board through institutional knowledge and experience.

However, how tenure is measured in the context of mergers, acquisitions and successor entities is an area that we consider requires clarification. Paragraph 59 extends tenure calculations to a successor entity, but the practical application of this provision is unclear – for example, does an entity count as a 'successor entity' when there have been significant structural changes including a new board, or where the entity has been involved in multiple mergers (i.e. multiple successor organisations). We encourage APRA to clearly outline, with examples, in what scenarios an entity will and will not be treated as a 'successor entity' in the PPG. We also strongly encourage APRA supervisors to take a facilitative approach to the application of this obligation.

6. Fit and proper (Part C, paragraphs 77 – 94 of Draft CPS 510)

The AICD is broadly supportive of the fit and proper framework contained in Draft CPS 510. In particular, we strongly support the October 2025 announcement that APRA will not proceed with the proposal that SFIs be required to 'engage proactively' with APRA prior to the appointment of all responsible persons. We also strongly support the narrowing of the responsible person scope in order to reduce overlap with the Financial Accountability Regime (**FAR**) and eliminate duplicative reporting requirements. We commend APRA for this proactive reduction in compliance burden.

We appreciate APRA's efforts to consolidate and clarify the requirements applying to responsible persons, and our view is that the fit and proper criteria and assessment requirements set out in paragraphs 78 – 87 largely reflect existing governance practice.

We recommend that paragraph 82 in respect of documenting 'competencies' is deleted in the context of the overlap with documenting responsibilities of the FAR. We appreciate this provision is taken from current prudential standard CPS 520 Fit and Proper, however in the context of FAR implementation across all industries, it does not appear to be necessary.

The AICD notes that there can be practical challenges associated with aspects of the fit and proper criteria and assessment framework for superannuation trustees operating under the equal representation model (or equivalent state legislation that provides for external bodies to nominate directors). We understand that in some circumstances trustee boards may have limited discretion regarding board composition or the appointment of director candidates proposed by nominating bodies. In these cases, trustees will have to deal with two sets of obligations that may be in tension with each other. We encourage APRA to remain mindful of these constraints when supervising implementation of CPS 510.

7. Role of senior managers (paragraphs 18 – 23 of Draft CPS 510)

The AICD considers that setting out the role of senior managers in paragraphs 18 and 19 is unnecessary. The role of managers within regulated entities is established, and their specific responsibilities appropriately vary between entity type and size, with the oversight of the CEO and board.

Consistent with our June 2025 submission, we consider this proposal overlaps with the FAR and would be duplicative of the existing accountable person obligations, including developing an accountability statement for accountable persons of enhanced entities (i.e. generally, SFIs).

Paragraph 20 further requires entities to maintain a policy setting out the Board's expectations regarding management information reporting. Again, our view is that regulated entities already have established arrangements governing these matters, and that this requirement represents over-prescription in an area where there has not been an identified governance issue.

We therefore recommend that APRA consider whether these requirements are necessary, or alternatively consider whether a preferable, less prescriptive approach would be to set expectations for the role of senior managers in the PPG.

8. Commencement and transition

The AICD supports APRA's proposal for Draft CPS 510 to commence on 1 January 2028. Given the breadth of the reforms and the governance, policy and board changes that will be required across entities, a substantial implementation period is appropriate.

Transition period for non-SFIs

Consistent with our June 2025 submission, we emphasise the importance of sufficient transition arrangements, particularly for smaller and less complex entities. While some requirements may be capable of implementation in a relatively short timeframe, others, including those relating to board composition, succession planning and director tenure, will require a longer implementation horizon. This is particularly the case for smaller entities, like community owned ADIs and private health insurers.

We encourage APRA to maintain a flexible approach to transition and implementation, recognising the practical challenges associated with board renewal and governance reform, particularly for non-SFIs.

In respect of board tenure and board composition, we recommend that non-SFIs are provided with an additional 12 months to meet these obligations (i.e. until the start of 2029). A two-year period from finalisation will provide non-SFIs with time to balance the retirement of long-serving directors with the recruitment of new directors in a manner that does not deprive the board of institutional knowledge and undermine sound governance.

We also encourage APRA to engage as much as possible with regulated entities during the transition period, and to take a proportionate and facilitative approach to enforcement of CPS 510 as it is introduced.