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Australian Prudential Regulation Authority (APRA)
By email: PolicyDevelopment@apra.gov.au

Governance Review

Executive summary

The Super Members Council (SMC) thanks APRA for the opportunity to make a submission to this consultation reflecting our strong commitment to good governance principles in superannuation.

In line with the council's purpose to advocate for the interests of 12 million everyday Australians with their retirement savings in profit-to-member super, this submission incorporates member-centred feedback from across the profit-to-member super sector. SMC's policy positions are evidence-based and member focused - and reflect our strong commitment to sound governance.

The submission addresses:

– each of APRA's proposals separately, acknowledging any overlaps and interaction between proposals.
– whether each proposal achieves its goal for governance practices in APRA-regulated entities.
– the anticipated impact of the proposed changes (costs and benefits) on super fund members.
– opportunities to simplify or optimise proposals in line with evidence-based good governance.
– transitional considerations on key proposals.

A summary of SMC's recommendations is at **Attachment A.**

SMC policy positions reference examples from international pension and banking schemes.

International frameworks vary widely, and the unique features of Australia's superannuation system may make direct comparisons difficult. Comparisons with international models are in **Attachment B**.

SMC advocates for a principles-based approach to corporate governance, emphasising flexibility and tailored practices that align with the unique circumstances of each regulated-entity. This approach supports effective oversight, risk management, and accountability, ensuring governance remains meaningful and responsive to the challenges faced by superannuation funds.

We look forward to continuing to engage with APRA to ensure any proposed changes enhance governance practices and support the long-term success of Australia's superannuation system.

About the Super Members Council

We are a strong voice advocating for the interests of 12 million Australians who have over $1.6 trillion in retirement savings managed by profit-to-member superannuation funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure superannuation policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

Introduction

Australia's super system is a global leader in retirement savings, consistently ranking among the top pension systems internationally. Trust and integrity are central to this system. Australia's current regulatory measures play a crucial role in promoting good governance practices across the financial services sector. As a strong voice advocating for 12 million Australians with retirement savings in profit-to-member super, SMC strongly supports sound governance that enhances consumer trust and members' retirements.

Australia's profit-to-member model drives superannuation success

Despite Australia's relatively small population (ranked 55th globally), it has the fourth-largest pool of pension assets, currently valued at over $4 trillion. Australia's super system is the fastest growing in the world, with assets under management projected to become the second largest globally by the early 2030s, surpassing the UK and Canada, and trailing only the US.[1]

Australia is unique among OECD countries in that government spending on the Age Pension is projected to fall over time, from 2.5% to 2.0% of GDP by 2060, compared to the OECD average of 9.3%. Australian super funds have delivered consistently high long-term returns, outperforming their international peers and supporting a robust domestic capital market.

Australia's super system stands out for its scale, inclusiveness, and strong investment performance. Its success has led to other countries studying or seeking to replicate its model. Australia's profit-to-member super funds are a cornerstone of the system's success. Funds with equal representation boards safeguard and steward 71% of member benefits and 73% of member accounts, up from 44% 20 years ago. The stronger growth in member benefits for equal representation funds over the past 20 years primarily reflects stronger net contributions (37%), stronger net investment income (34%) and net transfers share. This can largely be attributed to growth and reflects the significant superior investment returns performance of the profit-to-member sector.[2]

Profit-to-member super funds with equal representation boards have consistently and significantly out-performed retail funds with nonequal representation boards. In the 4 years since testing of MySuper products began, funds with equal representation boards have generated $26 billion of extra value (above a benchmark portfolio) for their members, compared to funds with nonequal representation boards who have lost $300 million of value relative to the benchmark portfolio. For a representative member with a $50,000 balance, this translates to an extra $1,589 for a member of fund with an equal-representation board over the past 4 years, compared to a loss of $155 for a member of a fund with a non-equal-representation board. Along with this long-term trend of higher performance on investment returns, the shared strong member-centred purpose of the profit-to-member super sector drives good governance by putting members' interests front and centre.

- **Members' interests come first:** Profit-to-member funds are structured to return all profits to members, rather than shareholders or external owners. This ensures their focus is on maximising retirement savings and member outcomes, not extracting profits for third parties. The governance model is designed with a single purpose: to serve fund members by safeguarding and growing their retirement savings. Fundamental to achieving this is sound governance.
- **Strong governance and accountability:** The equal representation model — where both employer and employee nominees sit on fund boards — ensures decisions are made in the best interests of members.
- **Advocacy for member-focused reforms:** Profit-to-member super funds have championed reforms to make the super system easier to navigate and more transparent for everyday Australians. This includes measures such as performance testing, which keeps returns high and fees low; as well as simpler, more accessible retirement planning tools and advice for Australians.
  This advocacy work includes making an evidence-based case for:
  - greater equity in super by abolishing the 30-hour threshold for workers under the age of 18.
  - lifting the Low-Income Superannuation Tax Offset payment to boost retirement balances for low-income workers – a majority of whom are women.
  - uplifting service standards in superannuation for all members including First Nations peoples.
  - advocating for urgent reforms to close a legal loophole that allows family violence abusers to inherit their victim's super.

Australia's profit-to-member funds are driving good governance through structural accountability to their members, member-focused policies, and regulatory compliance.

Effective governance is not only about the composition of the board. It includes the decision-making processes and oversight mechanisms that guide trustees in their responsibilities to beneficiaries. Sound governance must prioritise the best interests of members.

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[1] Super Members Council (SMC), Australians' super savings on track to become second largest globally by the early 2030s, February 2025

[2] SMC research 2025

This focus on member-centred decision-making fosters trust and confidence in the super system. Funds with strong governance structures and cultures are better positioned to navigate risk in the changing super landscape. This means risk management being embedded in governance structures, with boards taking clear responsibility and ensuring systems, processes, and reporting lines are robust and effective This is key to meeting both short-term and long-term obligations to members. Boards with strong governance cultures also regularly identify areas for continuous improvement, implement regulator feedback, and further strengthen systems and oversights.

A principles-based approach represents best practice governance

A principles-based approach to corporate governance is widely regarded as the best method for achieving effective governance. This is supported by entities such as the Australian Institute of Company Directors (AICD) and the ASX Corporate Governance Council. Governance practices should be flexible, tailored to the specific circumstances of each organisation, considering factors such as complexity, risk profile, regulatory environment, and organisational structure.[3]

A principles-based approach provides a sensible and practical framework that assists entities in developing governance structures that are fit for purpose. This flexibility is essential for effective oversight, risk management, and accountability. The AICD's guiding principles reinforce that there is no universal formula for good governance, and that effective governance must be responsive to the unique challenges and risks facing each organisation. An outcome-oriented approach ensures governance is robust and effective, rather than a 'tick-a-box' exercise.[4] SMC supports changes in the prudential standards that are not overly prescriptive and continue to empower entities to find the most efficient and effective ways to meet regulatory responsibilities as they relentlessly focus on delivering for their members.

[3] Australian Institute of Company Directors, Guiding principles on good governance, 2017

[4] McNulty, T., Zattoni, A., & Douglas, T. (2013). "Developing Corporate Governance Research through Qualitative Methods: A Review of Previous Studies." *Corporate Governance: An International Review*, 21(2), 183-198. https://doi.org/10.1111/corg.12006

1. Skills and capabilities

APRA proposes to require regulated entities to:

a. identify and document the skills and capabilities necessary for the board overall, and for each individual director.

b. evaluate existing skills and capabilities of boards and individual directors.

c. take active steps to address gaps through professional development, succession planning and appointments.

APRA has specified that this proposal will remedy the following problem statements:

1. entities adopting a vague or a narrow view of necessary skills and capabilities, including a failure to specify expected experience, qualifications or behavioural capabilities – and failing to consider how these can be measured.
2. failure to specify minimum skills and capabilities that individual directors need to fulfil their role.
3. not verifying skills or capabilities, often relying heavily on self-assessments.
4. failure to take steps to address gaps and weaknesses through professional development and succession planning.

SMC agrees that skills matrices, reviewed and refreshed cyclically, enable good governance by ensuring:

– **Strategic skill alignment:** collectively mapping directors' expertise against the organisation's strategic goals and industry requirements helps ensure boards can address current and future challenges.

– **Gap identification and succession planning:** by identifying any skill omissions in the collective, boards can proactively recruit directors with needed competencies considering overall board capabilities.

– **Diversity and decision-making quality:** a well-structured matrix can promote diverse perspectives by identifying complementary skills, reducing risks of groupthink, and enhancing oversight of complex financial products and risks.

– **Stakeholder transparency:** disclosing the matrix provides members visibility into the board's capability to manage financial risks and deliver sustainable returns.[5]

One challenge with APRA's proposal is that it is unclear how it would enhance the strong governance practices already established in the prudential standards without undermining the concept of collective board decision-making and strategic flexibility. While a useful governance tool, skills matrices alone cannot guarantee effective governance.[6] The problem statements described in the review paper appear to be cases of weak governance practices under the existing prudential framework rather than an indication that the framework itself is not working. Poor governance practices under today's prudential standards should face the regulatory sanctions and financial penalties available under APRA's existing enforcement strategy.

Board members of super funds must - and do - have a solid foundation of skills relevant to the sector. This includes understanding superannuation and trust law, fiduciary obligations, and the regulatory environment. While not every board member needs to be an expert in all matters, the board collectively must cover key areas. To ensure the full breadth of skills and expertise needed on its board, a super fund with strong governance processes will perform a skills assessment to identify the skills and experience of board members' collective skills and experience. Board assessments are generally performed annually with independent review undertaken every third year at a minimum. This process is typically outlined in super funds' governance policies which are available on fund websites in most instances.

Identifying the skills and capabilities necessary for each individual director

In engagements with other key stakeholder groups across the breadth of the prudentially regulated sectors, SMC has observed different interpretations of this proposal.

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[5] Australian Institute of Company Directors (AICD): Board Skills Matrix

[6] Effective Governance, Why a skills matrix is not enough for a modern board, 2025

Some consider that it skews the emphasis away from collective board skills and decision-making. A less strict reading is that the proposal aims to ensure rigour around the process of succession planning and upskilling. Knowing the skills of each director makes sense to inform what skills the board holds collectively. What may be excessive, however, is requiring an entity to prescribe skills and qualifications at the individual director level. Such an approach could result in unintended consequences that undermine good governance. A board operates as a collective decision-making body where all directors share responsibility for the board's decisions. Skills matrices should strike a balance between mapping what an organisation needs strategically to operate, while being flexible to challenge existing structures and invite new talent.

An overly rigid cataloguing of skills (both existing and desired) in individual board directors may lead to an overemphasis on technical skills while neglecting behavioural competencies. Potentially high-performing directors could be overlooked because they may not possess a specific desired skill that fills a predetermined gap. This could lead to missed opportunities for diverse perspectives and practical experiences on a board. The financial services sector in the UK has seen an increase in 'demand for empathy, agile and other behaviours' while the need for technical skills has 'stayed flat'.[7]

Mandating specific skills matrices or committee structures could limit diversity in skills and expertise by encouraging an overly rigid templated approach. A matrix that isolates technical skills to specific directors risks over-reliance on individuals, undermining collective board responsibility. This risk is heightened for those technical competencies that are bespoke (such as cybersecurity). It is also open for a board to source external expertise when specific skillsets are required at any given time.

SMC also seeks clarity as to how disclosure requirements would apply to this proposal. For instance, does APRA envisage that such additional granularity in skills matrices would be publicly available.

Board diversity and the profit-to-member sector

Equal representation boards inherently promote diversity. They challenge groupthink by ensuring that different perspectives, experience and expertise are represented at the decision-making level. This model also structurally mitigates against a risk that boards become homogenised to the detriment of members. The diversity in skills and voices delivered by the equal representation model results in undeniable benefits to members. Employer representatives bring direct knowledge of the challenges and opportunities facing businesses, such as in regional and rural areas, and industry-specific risks. Employee representatives understand the unique challenges faced by workers, such as insecure or precarious employment, lower average wages, and higher rates of non-compliance with Super Guarantee payments in some sectors. Many profit-to-member super funds also appoint one or more independent directors to complement their director mix. The equal representative model – with its inherent transparency and balance in composition - helps to build trust among fund members and stakeholders. Representative boards are more likely to foster a culture of honesty and robust risk management, as directors bring real-world experience and a sense of member-centred duty to their roles, rather than simply fulfilling regulatory requirements.[8]

Performance test outcomes: Equal representation boards have consistently outperformed non-equal representation boards in fund performance. This suggests that diverse boards, which include a balance of employer and employee representatives, have typically been more effective in governance and decision-making to deliver such outperformance. Figure 1a shows the distribution of performance test outcomes for June 2024. The APRA performance tests compare the after-fee returns of superannuation products over the past 10-years to a representative benchmark portfolio. A test value above 0 means the superannuation product has performed better than the representative benchmark portfolio, while a test value below 0 means the fund has performed worse than the benchmark.

In the 4 years since testing of MySuper products commenced, funds with equal representation boards have generated $26 billion of extra value (above a benchmark portfolio) for their members, compared to funds with non-equal representation boards who have lost $300 million of value relative to the benchmark portfolio. For a representative member with a $50,000 balance, this translates to an extra $1,589 for a member of fund with an equal representation board over the past 4 years, compared to a loss of $155 for a member of a fund with a non-equal representation board.

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[7] Financial Services Skills Commission (FSSC) UK, Bridging the skills gap in a rapidly evolving sector, 2024, page 12

[8] The McKell Institute: The success of representative governance on superannuation boards, 2014 https://mckellinstitute.org.au/wp-content/uploads/2022/02/McKell_Super_A4_WEB.pdf

Figure 1a: Performance test outcomes (June 2024)

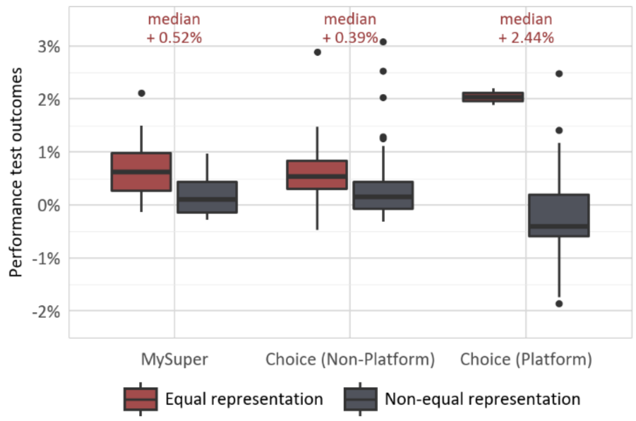
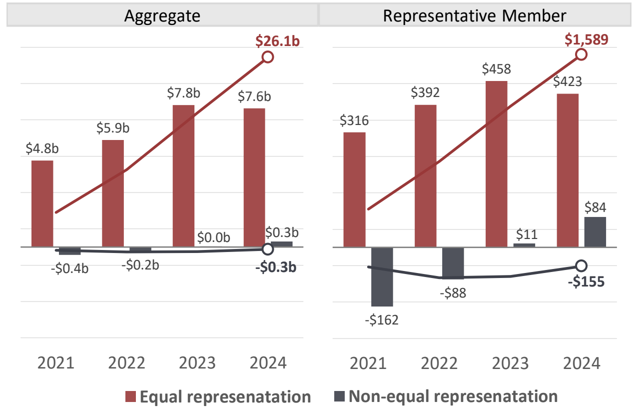


Figure 1b: Value-add (MySuper)

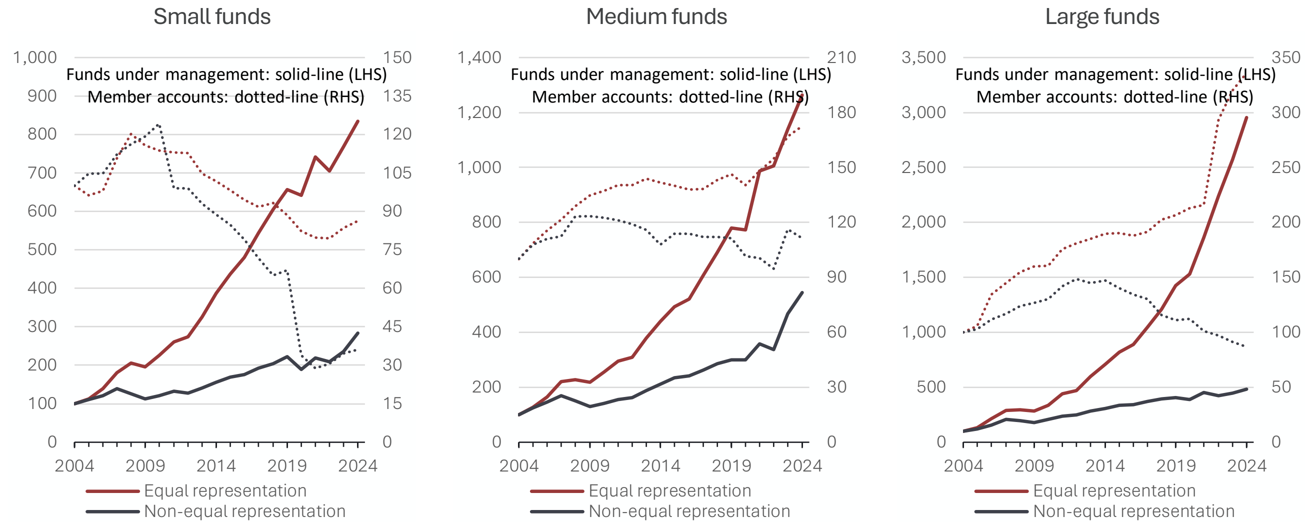


Source: APRA Comprehensive Product Performance Package, June 2024. APRA Quarterly Superannuation Product Statistics, June 2024.

Broader measures of fund health: Equal representation funds generally perform better across key fund health and sustainability metrics, such as net cash flow ratio, adjusted total accounts growth, and net rollover ratios. These metrics show there is a relationship between diverse boards and effective strategic planning resulting in improved operational sustainability and long-term viability.

Fund growth: Equal representation funds have demonstrated significantly stronger growth in both membership and assets under management compared to their non-equal representation counterparts. This growth reflects the superior long-term scalability and member retention of funds with diverse boards. Among small funds, equal representation funds have broadly maintained their membership base (at 90% of 2004 levels), while growing their FUM more than eightfold. In contrast, small non-equal representation funds have lost more than half their members and have achieved only modest asset growth. The divergence becomes even starker at the large fund level: equal rep funds have expanded their membership base by 3.4 times and grown their FUM by nearly 30 times, whereas large non-equal rep funds have seen membership stagnate and FUM grow only fivefold. These trends highlight the superior long-term scalability and member retention of equal representation funds, reinforcing the broader sustainability themes identified in the APRA Heatmaps. Stronger growth in both assets and membership signals a healthier, more viable fund, better positioned to deliver enduring benefits to members.

Figure 2: Member accounts and funds under management



Notes: Funds are grouped annually by FUM: small (0–66th percentile), medium (66–90th percentile), large (90th+ percentile). Cohorts are dynamic and funds may move between categories across years. Only funds that are active at both the start and end of year are included in the analysis.

Source: SMC Analysis, APRA Annual fund-level superannuation statistics (and legacy publications).

Behavioural attributes that the board needs to deliver its organisational strategy and perform its role

SMC agrees the behavioural attributes of a board are key drivers in the success of an organisation. Behavioural attributes should be open to a board to define in line with the organisation's structure, mission and values.

In Australia's profit-to-member super sector, board members are independent of management to ensure unbiased oversight and decision-making. They bring with them a commitment to members' interests and a 'members-first' approach. SMC agrees on the importance of observable behavioural attributes of well-performing directors. Some behaviours are less suited to being documented in a skills matrix but are instead evident through contributions and decision-making of the board member. These include:

- **Curiosity and courage:** directors should ask the right questions and make sense of complex or technical issues raised by specialist advisors, reaching sound judgments on their implications for members.[9]
- **Leadership and communication:** directors should set the tone from the top, encourage open debate, and be the public face of the fund when needed.
- **Emotional intelligence and empathy:** building trust and leading with empathy are vital for board effectiveness and organisational resilience.
- **Strategic thinking:** directors need to demonstrate sound business instincts, strategic vision, and the ability to quickly grasp complex issues.
- **Decision-making, resilience and crisis management:** directors must make informed decisions under pressure, manage crisis effectively, and remain resilient when faced with uncertainty.[10]
- **Adaptability and openness:** directors must be open to new ideas, adaptable, and committed to continuous learning and improvement.[11]

These behavioural attributes also align with the Financial Accountability Regime (FAR). An accountable person must act with honesty, integrity, skill and diligence in carrying out their responsibilities.

SMC's Trustee Director Courses

SMC's view is that good governance can only be achieved with a solid understanding of the broad scope of topics and complex challenges that superannuation funds must navigate. As one of many important contributions to enable aspiring, new, and experienced trustee directors to build and deepen their governance skillsets and constantly refresh their insights, SMC delivers specialist Trustee Director Courses (TDC) in superannuation specific standards and practices. This program includes a strong component of peer learning, providing opportunities for participants to share insights and innovations from other funds and experts. The courses equip trustee directors to contribute effectively to decision-making. For directors who are new to the superannuation sector, the foundational **TDC course** covers the elements of superannuation governance required to fulfill their duties. This includes trustee duties and obligations under the SIS and Corporations Acts as well as the APRA and ASIC regulatory frameworks, the risk framework, superannuation fund operations, investment principles, interpretation of financial statements, and good governance practices including what makes for a strong culture.

For experienced directors, the **Advanced Trustee Director Course** dives deeper into risk governance (including technology/cyber, operational, geopolitical and other emerging risk), strategy (three horizons model, organic and inorganic growth models, and multi-criteria analysis), culture (components, behaviours and practices), and investment governance (structures, frameworks, strategies, ESG practices). Sessions are taught by industry subject matter experts with highly experienced directors as guest speakers, ensuring the content, case studies, and discussion are relevant to the real-world issues that super trustees encounter. The program enables directors to meet the high standards expected by APRA and other regulators, including understanding the risk framework, compliance obligations, and good governance.

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9 Fraser, B., Board Governance of Not-for-Profit Superannuation Funds, February 2017

10 CPA Australia, 5 aspects of business resilience from 5 viewpoints July 2021

11 Australian Institute of Company Directors: Crucial skills and qualities of a director, September 2023

SMC recommends that:

- APRA clarifies the intent of proposal one; and
- APRA adopt a balanced approach to documenting individual director skills within matrices aligned to collective board competency. Rigidly prescribing individual competencies should be avoided to mitigate an overemphasis on individual directors' capabilities.
- APRA does not propose behavioural attributes be documented in skills matrices.

2. Fitness and propriety

APRA proposes to require regulated entities to meet higher minimum requirements to ensure fitness and propriety of their responsible persons. Require Significant Financial Institutions (SFIs), and non-SFIs under heightened supervision, to engage proactively with APRA on potential appointments.

This proposal seeks to heighten APRA's oversight of the suitability of individuals in responsible person roles and proposes five significant changes to the framework:

1. APRA may request an interview with any candidates for responsible person roles, prior to appointment or reappointment (on an exceptions basis).
2. require that significant financial institutions (SFIs), and non-SFIs subject to heightened supervision, keep APRA informed of succession plans and nominations prior to appointment or public announcement.
3. requiring regulated entities to notify APRA when concerns arise that may reasonably impact a person's fitness and propriety, even before a determination has been reached.
4. greater specificity as to what fit and proper means including:
   a) actual, potential and perceived conflicts of interest and duties
   b) criminal and conduct records, for example contraventions arising out of civil, criminal or regulatory matters that may give rise to concerns
   c) character or regulatory references to evaluate performance in other roles, including the financial and reputational performance of previous organisations
   d) the ability to commit sufficient time to their role, including consideration of specific roles on other boards, for example chair or committee chair
   e) reputational risk.
5. the power for APRA to trigger a reassessment of an individual in certain circumstances (specifically changes in personal circumstances posing potential reputational risk).

SMC supports assessments for fitness and propriety to ensure that only individuals with the necessary skills and experience, combined with core behaviours such as honesty and integrity, are appointed to key roles. By rigorously screening those in positions of responsibility, fitness and propriety tests reduce the risk of management, misconduct and decisions that could harm members' interests.

SMC will address each aspect of this proposal individually and in the order of greatest significance.

1. APRA may request an interview with any candidates for responsible person roles, prior to appointment or reappointment (on an exceptions basis)

Decision-making and accountability for board succession, skills coverage and rigour are key duties for all prudentially regulated boards.

We would hold serious concerns about APRA intervening in director appointment processes, with both proposals risking APRA becoming an adjudicator on director fitness.

This could result in two key risks:

- the risk of transferring accountability for appointments from boards to regulators; and
- the denial of procedural fairness for individuals by APRA essentially impeding appointments or reappointments through soft coercion.

Requiring APRA pre-approval for director appointments could create moral hazard, with boards relying on regulator vetting rather than rigorous internal assessments.[12] This language was mirrored by former APRA Chair, Wayne Byres.[13]

If APRA acquires what is essentially a de facto veto power (through soft coercion), boards might defer to APRA's approval, leading to complacency in governance practices. APRA's approval could also be misinterpreted as an endorsement of director competence, even if the regulator's role is limited to risk mitigation. If a board underperforms, superannuants might blame APRA for approving directors, rather than holding the board accountable.

Currently, APRA does not have the unilateral power to remove a director from a board and must seek to disqualify an individual from being a responsible officer by making an application to the Federal Court. APRA's proposal to intervene in the appointment process essentially becomes a de facto veto power. This may result in individuals potentially being removed or blocked from appointment without due process including the right to be heard and a decision by an impartial body. Individuals subject to such significant consequences must receive adequate notice of actions against them and have a meaningful chance to respond. They may also suffer professionally because of perceived regulatory intervention without the benefit of a right of reply.

Finally, from a workability standpoint, it is unclear how APRA envisages this proposal would work in practice and the level of APRA's involvement in an appointment process. For instance, in the event that an entity notified APRA of potential concerns about a potential director appointee's fitness and propriety, it would be imperative for APRA to be clear on:

- what steps APRA would take as a part of the assessment process to be assured such concerns do not impact fitness and propriety.
- the length of time to complete this process.

For all of these reasons, we urge caution on this proposal and those related to it.

SMC recommends that:

a proposal to grant a new power for APRA to be able to request an interview with candidates for responsible person roles, prior to appointment or reappointment not be adopted. Substantial consequences for an individual, the sector and the rule of law would outweigh any perceived improvements to the prudential framework.

2. Require that SFIs, and non-SFIs subject to heightened supervision, keep APRA informed of succession plans and nominations prior to appointment or public announcement

APRA currently has the power to engage in conversations with boards on appointments and succession planning through its supervisory processes.

SMC considers that it may be better practice for this topic to be incorporated into supervisory engagement rather than imposing a positive obligation on entities through the prudential framework to keep APRA informed via a formal process.

[12] Australian Institute of Company Directors, Capability Review of APRA calls for organisational and cultural change, September 2019

[13] Australian Financial Review, Huge Bureaucratic machine: APRA rejects veto power over directors, July 2019

APRA’s increased involvement in succession planning may also have unintended consequences such as those identified below:

- **Limit flexibility:** Early disclosure to APRA may limit flexibility in succession planning, as boards may need to adjust plans in response to regulatory feedback, potentially slowing down or complicating transitions.
- **Confidentiality:** Requiring notification before public announcement or appointment could create challenges in maintaining confidentiality, particularly in sensitive transitions or competitive situations.
- **Delays and disruption:** APRA's ability to require reassessments or raise concerns about candidates could delay appointments, disrupt planned transitions, and create uncertainty during critical leadership changes.
- **Deterring talent:** Heightened regulatory oversight and intervention by APRA may discourage talented individuals from joining or remaining with regulated entities, especially if they perceive the process as overly burdensome or intrusive.
- **Increased compliance burden:** The need to engage more rigorously with APRA and potentially respond to requests for additional information or interviews adds administrative and governance workload for boards and management. This means boards and management must devote more time and resources to succession planning. Smaller entities will feel this burden more acutely with fewer resources to absorb additional compliance tasks. The need to reassess board composition, and succession planning processes can disrupt normal operations, especially for organisations that need to make significant changes to align with new standards.
- **Overlap with FAR requirements:** Accountable entities under FAR have a duty to engage with APRA and ASIC in an open, constructive and cooperative manner. This includes notifying both regulators of the appointment or changes to accountable persons, and any notifiable events.

  Finally, it is unclear how this proposal would improve on the existing powers.

SMC recommends:

retaining existing supervisory oversights rather than adopting a formal prudential requirement that SFIs, and non-SFIs subject to heightened supervision, keep APRA informed of succession plans and nominations prior to appointment or public announcement.

SMC invites further engagement on this issue to understand how what is proposed balances good governance against potential over-reach.

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3. **Requiring regulated entities to notify APRA when concerns arise that may reasonably impact a person’s fitness and propriety, even before a determination has been reached;**

All director candidates should undergo the full assessment process to ensure they meet strict fit and proper criteria. Premature discussion on the appointment process could result in:

- the unnecessary notification to APRA of someone who ultimately fails the fit and proper test.
- the perceptions of bias, or pre-determined outcomes, which can erode trust in the governance process and deter qualified candidates from participating.
- a breach of confidentiality, potentially harming candidates’ reputations.

Notifying APRA when concerns arise may be appropriate, but SMC considers it is best done on completion of a thorough fit and proper assessment.

SMC recommends that:

a proposal to require regulated entities to notify APRA prior to a determination having been reached if they have concerns about a person's fitness and propriety be amended to ensure that notification is only required once a full assessment for fit and proper is complete.

4. Greater specificity as to what fit and proper means

a) Actual, potential and perceived conflicts of interest and duties

As this element of proposal 2 intersects with proposal 3, SMC's response to conflicts is addressed in Section 3 of this submission: Conflict management (page12).

b) Criminal and conduct records, for example contraventions arising out of civil, criminal or regulatory matters that may give rise to concerns

SMC considers that this proposal reflects good governance practice if there is the capacity for discernment and perspective-taking. Criminal, civil and regulatory history can be an indicator of fitness and should be considered in context such as:

- the nature of the offence (relevance and seriousness),
- whether the actions undermined public safety or professional standards,
- when the event occurred, and
- repeat offending.[14]

Civil, criminal and regulatory history are relevant to an individual's fitness and appear in international frameworks, such as the Danish[15] and Dutch[16] pension systems and the European Central Bank (ECB) guide to fit and proper.[17] These three examples consider civil, criminal and regulatory matters when assessing the reputation of an individual. The Danish FSA (DFSA) limit declarations of criminal convictions or indictments to the previous 10 years.[18]

Interactions with FAR: While the FAR regime does not explicitly require consideration of an accountable person's criminal history as a condition for their appointment or ongoing suitability, accountable persons have a duty to act with honesty and integrity. Under FAR, accountable persons must also take reasonable steps to prevent issues that could harm the prudential standing or reputation of the entity, and to prevent material breaches of relevant laws.

SMC recommends that:

Criminal history and other compliance checks are an important step in assessing fitness and propriety. Given the complexity and sensitivity of these matters, assessments should be on a case-by-case basis rather than with a blanket approach. The final decision should be up to the entity.

14 European Central Bank (ECB), Guide to fit and proper assessments, 2021

15 Danish FSA, English translation, Guidelines on fitness and propriety, page 13,

16 Dutch DNB, Integrity screening form available at: https://www.dnb.nl/media/jryak2om/propriety-assessment-form.pdf

17 ECB, Guide to fit and proper, page 14

18 DFSA, English translation: 'Guidance on suitability and integrity for board members, executives and key persons in financial institutions,' 2024, page 14

c) Character or regulatory references to evaluate performance in other roles, including the financial and reputational performance of previous organisations

SMC agrees that character references may be an appropriate step in vetting a person as fit and proper for a role. SMC seeks clarity as to what APRA means by 'regulatory references' as separate from regulatory compliance which is covered earlier in its proposals.

As with all APRA's measures, no single element should be singularly conclusive as to fit and proper. Rather, all matters should be considered together and assessed on scale.

> *The presence of a result, or 'negative' finding, during a routine background check may not always result in an immediate failure of the fit and proper test but rather should initiate a deeper analysis of the facts and surrounding context (before a determination is made).To determine the concept of character when there is a 'negative' finding in place, it is important to consider: Is there additional information available and does it reflect a person that can be entrusted with money and charged with the responsibility to make an informed decision for the members? Does the information available impact an individual's ability to properly perform the duties of their position?* [19]

The financial and reputational performance of previous organisations may be relevant to consider as a part of the fit and proper test. This should always be applied in context and weighed against other factors. The historic performance of another organisation may not be the result of one individual's actions or behaviours. Boards operate as a collective decision-makers. Should systemic underperformance or ongoing reputational issues follow one individual, it may be prudent to apply a reasonable person test and consider objectively whether past performance is a reliable indicator of future performance.

SMC recommends that:

- character references may be an appropriate step in assessing fitness and propriety noting character should be assessed on scale and on a case-by-case basis.
- assessing financial and reputational performance of previous organisations may be relevant to consider as a part of the fit and proper test but should always be applied in context and weighed against other factors.

d) The ability to commit sufficient time to their role, including consideration of specific roles on other boards, for example chair or committee chair

Directors should commit sufficient time to fulfill their duties diligently and it is reasonable to expect a board be able to estimate relevant time commitments and for directors to agree they have the capacity to commit such time. But assessing an individual's capacity to fulfill a directorship based purely on other roles they hold could lead to subjective assessments on capacity and capability, which mean talented directors are discounted from consideration even when they can and do commit to the time required.

The fit and proper test for the Dutch and Danish pension schemes include a requirement for a director to positively confirm they have sufficient time to complete the role (see Attachment B for a full breakdown of these requirements). This is a thoughtful approach that invites a positive affirmation rather than making assumptions about a potential director's other roles and time commitments.

SMC agrees that a board should be able to estimate the time commitment it takes to serve as a director. A director should also positively confirm they can achieve that time commitment. However, assumptions should not be made about a potential director's capacity to fulfill a directorship based on other roles for many important reasons.

[19] Cbus, Deloitte Independent Review, 27 November 2024, page 22

- Relying on personal circumstances introduces arbitrary judgments about what constitutes sufficient time. Other commitments, particularly those outside the sector, may be misinterpreted or unfairly weighted, leading to inconsistent or discriminatory assessments.
- Focusing on personal circumstances often leads to simplistic metrics (e.g., number of board seats) rather than qualitative factors like expertise or engagement.
- Directors may have non-linear work patterns that are not captured by superficial assessments. For instance, a director might allocate weekends or flexible hours to board duties, which could be overlooked if evaluations focus on traditional metrics.
- There is also the potential for this provision to be misused to preclude a person from a board based on unrelated roles and responsibilities.

SMC recommends that

the inclusion of sufficient time in the fit and proper test be limited to:

- the board estimating the time commitment required of a director; and
- a proposed director agreeing to commit sufficient time to meet that requirement.

e) Reputational risk

APRA proposes to include in its fitness and propriety test a new reference to 'reputational risk'. This term is not defined but is used twice in this proposal, firstly as a baseline expectation, and secondly as a reason to trigger a reassessment of an individual. No international pension framework for fit and proper assesses reputational 'risk' **of a person** making APRA's proposal unique (see Attachment B for how international schemes assess reputation).

Reputational risk in governance is associated with stakeholder trust in the entity.[20] Trust in leadership is one element among many that can adversely impact the reputation of an organisation.[21] Reputational risk involves the possibility of loss or decline in the reputation of an organisation in a way that adversely affects public perception, resulting in direct or indirect loss in the value of a company.[22]

While reputational risk management is crucial, SMC has concerns that inserting the additional term 'reputational risk' in the context of fitness and propriety would be regulatory overreach. APRA's proposal would require the board to assess the risk of appointing a director in the context of future potential loss to the whole organisation. SMC seeks clarity from APRA as to what objective standard could be used with confidence to measure this loss. In terms of a reappointment, a reputational risk management framework assists organisations to 'identify, assess, monitor and report, and control potential events or situations that may have an adverse impact on an organisation's reputation.'[23] The FAR regime also requires accountable persons to take reasonable steps to prevent matters that could adversely affect the prudential standing or reputation of the entity, or result in material contraventions of relevant laws.[24]

Risk frameworks and FAR are best placed to assess reputational resilience of an organisation, including in the context of individual adverse behaviours. By providing structured risk analysis, broader reputational risk management frameworks support more informed, data-driven decisions at both strategic and operational levels.

[20] Airmic, Defining and managing reputation risk guide 2015

[21] See multiple risk management frameworks such as the Airmic Reputational Risk Management Framework, and the OECD Reputational Risk Management Maturity Model as examples.

[22] Swanepoel et al, 2017, Assessing Reputation Risk: A four-point matrix, Journal of Economic and Financial Sciences | JEF | June 2017, 10(2), pp. 313-337

[23] Deloitte, Building trust: Reputation risk management in the banking industry, April 2024

[24] Financial Accountability Regime Act 2023, section 21

In terms of fitness and propriety, there are other measures within the prudential standard, such as background checks on a person's criminal, civil and regulatory compliance history, that are better evaluation tools for assessing the possible impact to an organisation's reputation. This approach would also be consistent with other regulatory international frameworks.

SMC recommends that:

'reputational risk' is a potentially subjective measure that should not be embedded in the regulatory fitness and proprietary test but instead be managed diligently through broader risk management frameworks and under the FAR regime.

5. **The power for APRA to trigger a reassessment of an individual in certain circumstances (specifically changes in personal circumstances posing potential reputational risk)**

SMC appreciates there will be instances where a reassessment of an individual should occur based on fitness and propriety. However, for the reasons specified above, SMC considers that reputational risk' should not form part of the formal regulatory 'fit and proper' test for individuals. A better approach is to emphasize strong governance culture, practice and accountability for the avoidance, management and mitigation of reputational risk as part of an entity's overall risk management strategy.

3. Conflicts management

APRA proposes to extend current RSE licensee conflict management requirements to banks and insurers, so they are also required to:

a. proactively identify actual and potential conflicts of interest and duty

b. avoid or prudently manage conflicts

c. take remedial action when conflicts are not disclosed or managed properly.

APRA will also require regulated entities to consider perceived conflicts, in addition to actual and potential conflicts.

The current prudential standard SPS 521 requires a super fund to identify and monitor potential and actual conflicts, having in place processes to avoid, mitigate or manage those conflicts. An actual or potential conflict is one that may prevent an RSE licensee from performing its duties by placing it in a position where it may deliberately or inadvertently prefer the interests of another person to those of the members.

APRA proposes to strengthen the requirements currently in SPS 521 by including 'perceived conflicts' and 'conflicts that affect the reputation of the business into the prudential standard. SMC seeks clarity on these terms and their practical applications. The word 'perceived' is a highly subjective term and open to interpretation. Subjective terms:

– potentially create uncertainty about compliance requirements
– may result in inconsistency in application across the sector
– are difficult to audit; and
– may become interpretive exercises.

For example, what constitutes a perceived conflict may vary between individuals or organisations, leading to inconsistent enforcement. There is no reference to perceived conflicts in international pension schemes.

The ECB Guide to Fit and Proper assessments references perceived conflicts in its framework [25] and defines perceived as 'in the mind of the public.'[26] Basing the suitability of a director on public sentiment may unintentionally set a dangerous precedent. Public perception may be based on incomplete information, not objective analysis. As the OECD notes in its guidance on Managing Conflict of Interest in the Public Sector, perceived conflicts require a" reasonable **person" test** [27] to avoid bias or personal prejudice in decision-making.

SMC has concerns with the term '**conflicts that affect the reputation of the business**.' A conflict of interest for a director arises when their personal, financial, or other private interests could improperly influence, or appear to influence, their decisions or actions in their role. A conflict of interest (real or perceived) may impact an entity's reputation when that conflict is not managed properly. That is why SMC agrees that robust conflict management processes reflect good governance practice. It is unclear how this additional requirement would work in practice and be different to the current requirement to avoid, mitigate and manage conflicts of interest.

SMC also holds concerns with the proposed inclusion of theterm **'personal affiliations'** in the prudential framework. Personal affiliation is cited as an example of a common challenge APRA has identified within conflicts management. SMC has concerns regarding how personal affiliations may be used in the conflicts management assessment process.

The term personal affiliation generally refers to an individual's official or close connection with a group, organisation, or cause. This connection can be based on membership, participation, or association, and often reflects the individual's involvement, support, or identification with that entity.

The nature and significance of a personal affiliation varies depending on the context, but most people would have an affiliation with something. Examples may include clubs, social associations, or religious and educational institutions. Personal affiliations of themselves may not create conflicts of interest. It is when those personal connections or interests improperly influence, or appear to influence, a person's professional judgment or actions. If a person follows a conflicts management process, these risks should be avoided or managed.

SMC is concerned that in addressing the problem statement, APRA proposes to assess the personal affiliations of directors. These concerns are:

- **Privacy and fairness:** overly intrusive scrutiny of personal affiliations may infringe on directors' privacy or lead to unfair assumptions about their independence or integrity, especially if affiliations do not result in actual conflicts.
- **Board diversity:** Directors may be discouraged from joining boards or engaging in community or professional groups, reducing the pool of qualified candidates and limiting diversity of thought and experience.
- **Misinterpretation of affiliations:** Regulators may misinterpret the significance of certain affiliations, mistaking benign or historical associations for current conflicts of interest, which could unjustly damage reputations or careers.
- **Administrative burden:** The process of disclosing, monitoring, and assessing personal affiliations can be complex and resource-intensive for both organisations and regulators, potentially diverting attention from more material risks.
- **Potential for inconsistency:** Without clear guidelines, regulatory assessments may be inconsistent or subject to bias, leading to uncertainty and perceived unfairness in enforcement.
- **International comparisons**: SMC cannot find a comparable example in international regulatory frameworks or governance literature that looks at personal affiliations as an impetus for conflicts of interest. It is unclear on what evidentiary basis APRA has made this proposal.

[25] ECB, Guide to fit and proper assessments, page 24

[26] ECB, Guide to fit and proper assessments, page 23

[27] OECD, Managing conflict of interest in the public sector, page 104

SMC recommends that:

- subjective terms such as ‘perceived’ conflicts and references to personal affiliations should not be adopted within the fit and proper test in the prudential standards but instead be managed diligently by entities through their conflicts management processes.

4. Independence

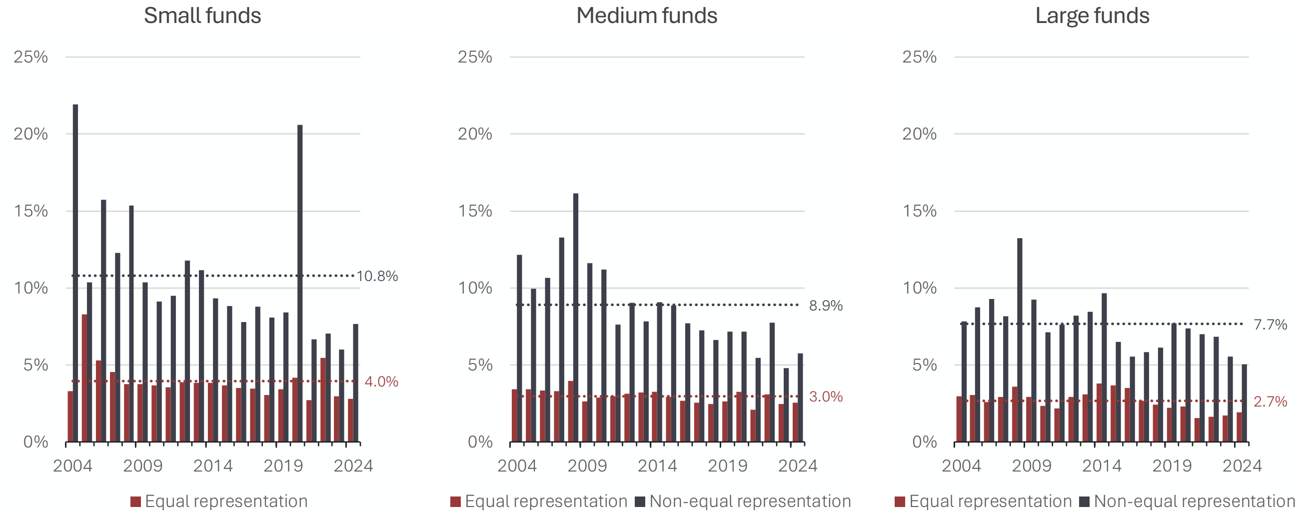
While APRA has indicated that a review of the equal representation model is not within scope of its discussion paper, SMC research reiterates that equal representation aligns with good governance practices. We submit a comprehensive analysis of the characteristics and performance of equal representation funds compared to non-equal representation funds. This research intersects significantly with good governance principles, highlighting the advantages of equal representation in terms of accountability, transparency, efficiency and member trust.

Efficiency and effectiveness

Net cash flow: Net cash flow is a critical indicator of fund sustainability, capturing the balance of contributions, benefit payments, investment earnings and rollovers. Across all fund sizes, equal representation funds recorded significantly stronger average net cash flows than their non-equal representation counterparts over the period 2004 to 2024. Among large funds, equal rep funds achieved average net cash inflows of 9.2% of FUM annually, compared to just 2.5% for large non-equal rep funds. This pattern holds across medium and small funds, with the gap particularly wide among small funds (+5.0% vs +1.0%).

Net rollover activity further illustrates the stability and stronger member retention of equal representation funds. While both fund types receive rollovers, equal rep funds experience much lower outward rollovers, resulting in stronger net rollover figures. For instance, large equal rep funds achieved average net rollover gains of +3.9% of FUM, with outward rollovers of just 2.7%. In contrast, non-equal rep funds recorded lower net gains of +1.5% and significantly higher outward rollovers of 7.7%. These differences suggest that equal rep funds not only attract new members and contributions but also retain them – a key marker of trust and member satisfaction. The lower churn, particularly in outward flows, reflects more stable membership and investment relationships, and compounds over time to support greater scale efficiencies and long-term viability.

Figure 3: Outward rollovers



Notes: Funds are grouped annually by FUM: small (0–66th percentile), medium (66–90th percentile), large (90th+ percentile). Cohorts are dynamic and funds may move between categories across years. Only funds active throughout the year are included.

Source: SMC Analysis, APRA Annual fund-level superannuation statistics (and legacy publications).

Asset allocation: Equal representation funds tend to allocate a greater share of their portfolios to unlisted assets and infrastructure, while non-equal representation funds hold a larger proportion of listed equities and cash. This strategic asset allocation contributes to the long-term performance and stability of the funds.

Member engagement and trust

Investment options: There is a strong correlation between fund returns and the proportion of assets held in the default strategy. Funds with equal representation boards are more likely to concentrate assets in the default strategy, with nearly 60% allocating over 60% of their assets to it. In contrast, 63% of funds with non-equal representation boards have no assets in the default strategy, and 86% allocate less than 40%.

Figure 4a: Default strategy

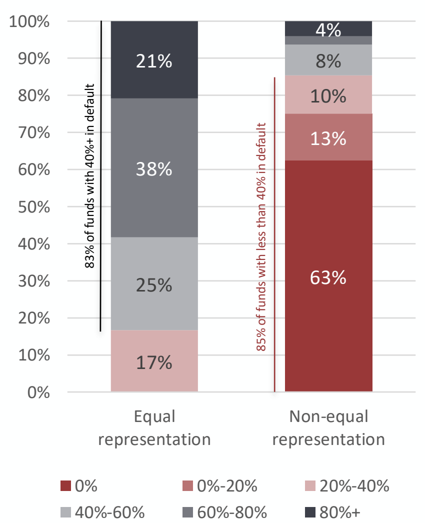
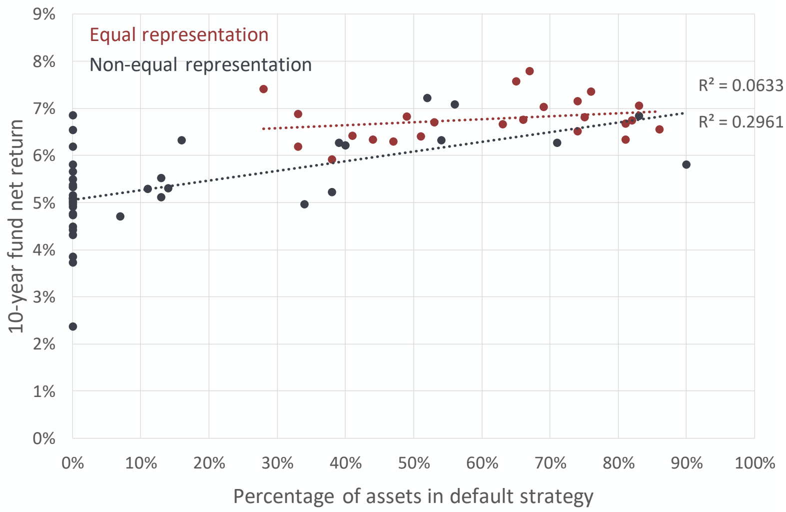


Figure 4b: Link between fund returns and default strategy



Notes: Default strategy allocations for some funds are imputed using prior year data (typically June 2023) where June 2024 data was unavailable.

Source: SMC Analysis, APRA Annual fund-level superannuation statistics (and legacy publications).

Funds with non-equal representation boards typically offer an overwhelming number of investment options—far more than their equal representation counterparts. In 2022 (the last year data is available), the median number of options for equal representation funds was just 20, while for non-equal representation funds it was an extraordinary 322. A striking 65% of these funds offered more than 100 investment options, and 25% offered over 800—with one fund offering a bewildering 6,700. By contrast, no equal representation fund had more than 100 options, and only two (of 30) exceeded 50.

5. Board performance review

> APRA proposes to require SFIs to commission a qualified independent third-party performance assessment at least every three years which covers the board, committees and individual directors.

SMC welcomes this proposal, viewing it as good governance practice. While there may be increased compliance costs for some entities, the positive impact to improved governance could result in long-term reduced operational costs. To offset this, SMC recommends the annual assessments be progress reviews evaluating the implementation and impact of recommendations made in triennial reviews. This will give entities the opportunity to track progress of those larger issues identified in the triennial reviews and reduce administrative burden annually. Triennial reviews signal commitment to accountability and boosting trust among members. SMC seeks clarity as to how this proposal will work practically - such as whether these reports will need to be submitted to the regulator. APRA's proposal also states that credible and appropriately qualified experts should be used for board performance reviews. SMC welcomes the inclusion of what APRA considers credible and qualified in any future guidance material.

SMC recommends that:

proposal 5 be explored further, welcoming it as good governance practice.

6. Role clarity

SMC welcomes APRA's proposal to clarify the respective roles of the board, chair and senior management. We agree that clearer articulation of these roles and of appropriate delegation will support boards to focus more effectively on strategy, risk, and oversight and reduce time spent on operational matters.

We also request that APRA's stated commitment to reviewing its prudential standards be extended to its guidance materials. Given the influence guidance has on industry practice, it is important that guidance is subject to the same level of scrutiny and periodic review to ensure it remains fit for purpose.

In practice, funds often adopt a conservative interpretation of APRA's guidance materials. Where guidance includes examples of matters a board "may consider", these are frequently treated as de facto requirements. This can result in boards being reluctant to delegate, even when doing so would be appropriate and consistent with good governance. Clarity is also required in whether reference to the board includes sub-committees of the board.

By way of illustrative example, many aspects of remuneration design outlined in *CPG 511 Remuneration* (particularly those detailed in paragraphs 60, 62, and 63) are highly detailed and technical. These responsibilities are more appropriately handled by a board sub-committee with the necessary expertise and capacity to consider them in depth. This approach would support effective governance while ensuring the full board retains accountability through oversight and approval mechanisms.

APRA's expectations regarding business continuity is another area in which the APRA's standards and guidance appear to diverge from the role of the board as outlined the Governance review discussion paper. While the board already holds ultimate responsibility for risk management, including setting risk tolerances and approving the Risk Management Framework, the recent expansion of its oversight to include detailed business continuity planning (BCP) risks diluting its core strategic focus.

Operational responsibilities such as approving the BCP and defining detailed operational risk tolerances for each critical function should rest with senior executive management. The Board's role should remain one of high-level oversight and approval, supported by clear delegations to management and, where appropriate, oversight by board sub-committees.

We also request that guidance on delegation frameworks should be illustrative rather than prescriptive and should acknowledge the diversity of regulated entities. This will help avoid the risk of boards defaulting to overly cautious interpretations that undermine the very delegation the proposal seeks to promote.

SMC recommends that:

APRA guidance on delegation frameworks be clearly articulated as illustrative rather than prescriptive and acknowledge the diversity of regulated entities. This will help avoid the risk of boards defaulting to overly cautious interpretations that undermine the very delegation the proposal seeks to promote.

7. Board committees

APRA proposes to:

- extend the current requirement for bank and insurer boards to have separate risk and audit committees, to apply to SFI RSE licensees as well;
- repeal this requirement for non-SFI banks and insurers, allowing flexibility for smaller entities; and
- mandate that only full board members can be voting members of APRA-required board committees.

This proposal will likely have a minimal impact across the profit-to-member super sector as many super funds operate separate audit and risk committees. In terms of good governance practice and international examples, there are a variety of approaches across banking and pension schemes. European banks are required to separate audit and risk committees[28] which is a by-product of changes attributed to the 2007-2008 global financial crisis.[29] The separation allows for a more focused approach to each area, with audit committees concentrating on financial oversight and compliance, while risk committees address broader risk governance and strategy.

There is no explicit requirement in jurisdictions such as Denmark for pension funds to establish sperate audit and risk committees. Danish regulations emphasise robust risk management frameworks with the board of directors ultimately responsible for risk management, with assistance by the audit committee.

The ASX Corporate Governance Principles and Recommendations recognise the importance of audit and risk committees but leave the management of their structure to the entity. The principles state:

> *'The risk committee(s) could be a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk. Where it is a combination of committees, the listed entity should disclose how it has divided the responsibility for overseeing risk between those different committees.*[30]

There is 'no consensus about whether it is preferable to have a stand-alone audit committee and stand-alone risk committee, or to combine these committees.'[31]

What is proposed must balance the objectives of proportionality, effective risk management, transparency, and international alignment, while ensuring the change is practical and enforceable for the industry.

Voting rights: The approach to voting rights differs across SMC's fund membership, reflecting that it is ultimately the trustee board that retains responsibility for the fund's operations, even when delegating authority to sub-committees. By setting voting structures, the board ensures that only appropriately qualified directors have voting rights, while non-directors may participate in discussions but not in decision-making. Sub-committees are established to focus on certain issues, allowing for detailed scrutiny and expert input.[32] The board's ability to define voting structures ensures that sub-committees operate effectively within their delegated authority, with clear reporting lines back to the board. Granting voting rights to such members elevates their role beyond advisory capacity and ensures these committee members retain a formal stake in decision-making. Preserving flexibility in committee composition allows boards to maintain robust governance while drawing on a broader range of expertise. For these reasons, SMC does not support APRA's proposal to mandate that only full board members can be voting members of APRA-required board committees.

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[28] Federation of Risk management Associations, Audit and risk committees: News from EU legislation and best practice

[29] Harvard Law School, Forum on Corporate Governance, Governance of the 25 largest European Banks a decade after the crisis, 2018

[30] ASX Corporate Governance Council, Corporate Governance Principles and Recommendations 4th Edition February 2019, page 26

[31] Governance Institute, Risk management for directors: A guide, 2022

[32] Corrs, Chambers, Westgarth, 'The role and responsibilities of directors on board sub-committees', 2004

SMC recommends that:

- boards retain the flexibility to appoint committee members as voting members of APRA-required board committees.
- greater discussion is needed on proposal 7 in the context of how it would improve governance practices in superannuation.

8. Director tenure and board renewal

APRA proposes to:

- impose a lifetime default tenure limit of 10 years for non-executive directors at a regulated entity; and
- require regulated entities to establish a robust, forward-looking process for board renewal.

SMC urges careful and nuanced consideration of lifetime tenure limits. Given there is a lack of consensus in empirical studies on the optimal tenure length for directors[33] SMC recommends a potential alternative approach to APRA's proposal. Regular board renewal allows organisations to bring in new directors with fresh ideas, diverse perspectives, and skills that align with evolving strategic priorities and industry challenges. Structured renewal processes help boards build diversity in experience, background and thinking, which strengthens decision-making and governance.

To be effective contributors to the board, directors should exhibit those behaviours set out in our submission above under skills and capabilities.

Term limits and board refresh - other perspectives

The ASX Corporate Governance Principles and Recommendations do not prescribe a maximum tenure limit for directors. Companies listed on the ASX are free to set their own policies on director tenure. While there are no strict term limits, the ASX model emphasises the importance of assessing director independence in relation to tenure.

The ASX model encourages a mix of tenures to ensure continuity and experience of longer tenured directors balanced with fresh perspectives. The decision to retain or replace long-serving directors is left to the board's discretion, provided they regularly evaluate the impact of tenure on board effectiveness and independence.

Boards are expected to review, at least annually, whether long-serving directors remain independent, particularly once they exceed 10 years of service. This approach is based on the principle that independence is essential to challenge management decisions and to provide objective and strategic oversight. Boards are required to regularly assess whether long-serving directors remain independent and effective, especially after extended periods of service. While independence is a key factor, effectiveness as a director also depends on experience, diversity, skills, and the ability to contribute to board discussions and oversight.

The Australian Institute of Company Directors (AICD) considers that limiting director tenure is important to encourage renewal, while recognising the importance of a mix of tenure on the board and retention of institutional knowledge. The AICD recommends nuance in the approach to tenure to encourage:

- board renewal and fresh perspectives
- staggering board tenure to allow mentoring opportunities from experienced directors

[33] Elms, N. and Pugliese, A., 'Director tenure and contribution to board task performance: A time and contingency perspective,' Science Direct, Volume 56, Issue 1, February 2023 https://doi.org/10.1016/j.lrp.2022.102217

– processes that recognise where it may be reasonable and in the interests of an organisation to extend a director's tenure beyond 10 years.

These examples support the premise that applying a blanket approach to tenure may have unintended consequences. As such, SMC recommends a balanced approach which recognises a tenure limit that is weighed against other considerations as set out below.

Fixed limits may unnecessarily force high-performing directors off the board

A detailed study in 2022 of five firms operating in the Australian financial services industry demonstrated that 'as long as they remain motivated and empowered, long-tenured directors can continue to contribute at a high level to board task performance.'[34]

This research found:

- 'notable instances of long-tenured directors' who were 'vigilant in their monitoring and oversight role.'
- 'long-tenured directors were just as willing to challenge management as their lowered tenured counterparts.'[35]
- examples of 'cognitive rigidity' were observed in 'extreme cases of extended tenure of over 25 years.'[36]

Evaluating director performance as suggested under Proposal 5 will assist in informing whether a director's tenure should be extended. Reasons to do so may include continuity of service at a time when organisational knowledge, industry expertise, and historical context is critical. Their accumulated experience can be especially valuable during periods of strategic change or crisis, providing continuity and stability that benefits the organisation and its members.

For these reasons, director tenure should be managed by boards as a risk, the same as any other risk capable of impacting organisational performance. Rather than imposing strict tenure rules, better governance practice would be to remove underperforming directors.

Tenure is just one aspect of board composition

Diversity on a board should be welcome, including a range of directors with various levels of industry experience. Novice directors may take longer to contribute meaningfully to board discussions. Interactions among experienced and new board members may help new directors settle in and contribute more quickly. Combining new and experienced directors can provide fresh perspectives with valuable insights from gained from various economic cycles.

Impact on the pool of chairs

The board of a super fund is responsible for appointing the chair, often selecting from among the directors already serving on the board. Any limitation on overall board tenure is therefore also likely to impact the pool of potential candidates for chair, and their tenure.

APRA requires trustees to formulate and regularly review investment strategies that consider the long-term needs and objectives of members. Limiting the tenure of chairs may inadvertently disrupt continuity in multi-year strategies. It may also incentivise shorter-term decision-making to demonstrate immediate results, rather than longer term strategies.

Exclusion of alternate directors in tenure limits

APRA's tenure limit proposal is silent on the impact to alternate directors. Alternate directors maintain board functionality during absences while ensuring continuity in decision-making including maintaining the equal representation model during periods of director absence. Serving as an alternate director provides valuable experience that helps an individual develop skills necessary to fill a permanent role. Alternates are subject to the same legal obligations as permanent directors (e.g., duty of care, conflict avoidance), providing practical insight into director liabilities. Interaction with experienced directors offers mentorship opportunities and insights into effective leadership.[37] It also serves as a mechanism for succession planning.

[34] Ibid.

[35] Ibid.

[36] Elms, N. and Pugliese, A, 2023, page 10

[37] Australian Institute of Company Directors, 'Alternate director', 2025

Given the role that alternate directors play in the function of a board, it is vital that any tenure limits that are applied to directorships do not apply to alternate directors – either in their capacity as an alternate and to those that become a permanent director. This will:

- allow alternate directors to gain the necessary skills and experience they need to become permanent directors; and
- potentially serve as a succession plan.

Alternative approach: SMC advises against a one-size-fits-all policy for director tenure and recommends evaluating directors' contributions on a case-by-case basis with a view to a reasonable tenure limit and process for extension as set out below:

- **a 12-year tenure limit (four 3-year terms),** noting many super funds have tenure limits between 9 to 12 years in place. Extending the option of a tenure limit to **up to** 12 years allows for four 3- year terms, providing a balance between continuity and renewal. This approach aligns with practices in other jurisdictions (see Attachment B), as well as APRA's existing guidance. It also offers a more flexible framework while balancing continuity and renewal.
- **Positive obligation for trustees**: Impose a positive obligation on trustees to demonstrate reasons for extending tenure beyond 12 years. Such an extension would be for one additional term only and by exception. This approach ensures that tenure decisions are based on performance and contribution rather than arbitrary limits. An extension should be transparently justifiable with clear communication about the reasons for the extension and relevant succession plans. SMC considers it reasonable that a fund would notify APRA of its intent to extend the tenure of a director and provide supporting reasons. Unless there are strong reasons to the contrary, it is envisaged that APRA would not oppose a one-time renewal if substantiated. Relevant criteria to consider when extending tenure may include:
  - **Continuity and stability:** an extension of time would provide valuable continuity during a period of significant change such as a successor fund transfer or high market volatility.
  - **Board diversity:** extending tenure can ensure board renewal is staggered with a long-serving director supporting new directors to fully transition. This reason would need to consider the composition of the board and if there are other long-tenured directors with less experience still capable of serving in this role.
  - **Exceptional circumstances:** an extension is justified in exceptional situations, such as ongoing projects, succession planning, or when the director's specific expertise is uniquely valuable at that time.

SMC recommends:

- a 12-year lifetime tenure limit; and
- a positive obligation on trustees to demonstrate reasons for extending tenure for one additional term beyond 12 years. Such an extension would be for one additional term only and by exception.
- APRA provide expanded guidance regarding the range of scenarios in which it may be appropriate for an entity to consider extending the tenure of a director in exceptional circumstances.
- any tenure limits that are applied to directorships do not apply to alternate directors.

Attachment A – Summary of recommendations

1. **Skills and capabilities**

– APRA clarifies the intent of proposal one; and

– APRA adopt a balanced approach to documenting individual director skills within matrices aligned to collective board competency. Rigidly prescribing individual competencies should be avoided to mitigate an overemphasis on individual directors' capabilities.

– APRA does not propose behavioural attributes be documented in skills matrices.

2. **Fitness and propriety**

– A proposal to grant a new power for APRA to be able to request an interview with candidates for responsible person roles, prior to appointment or reappointment not be adopted.

– Substantial consequences for an individual, the sector and the rule of law would outweigh any perceived improvements to the prudential framework.

– SMC recommends retaining existing supervisory oversights rather than adopting a formal prudential requirement that SFIs, and non-SFIs subject to heightened supervision, keep APRA informed of succession plans and nominations prior to appointment or public announcement.

– SMC invites further engagement on this issue to understand how what is proposed balances good governance against potential over-reach.

– A proposal to require regulated entities to notify APRA prior to a determination having been reached if they have concerns about a person's fitness and propriety be amended to ensure that notification is only required once a full assessment for fit and proper is complete.

– Criminal history and other compliance checks are an important step in assessing fitness and propriety. Given the complexity and sensitivity of these matters, assessments should be on a case-by-case basis rather than with a blanket approach. The final decision should be up to the entity.

– Character references may be an appropriate step in assessing fitness and propriety noting character should be assessed on scale and on a case-by-case basis.

– Assessing financial and reputational performance of previous organisations may be relevant to consider as a part of the fit and proper test but should always be applied in context and weighed against other factors.

– The inclusion of sufficient time in the fit and proper test be limited to:

  » the board estimating the time commitment required of a director; and

  » a proposed director agreeing to commit sufficient time to meet that requirement.

– 'Reputational risk' is a potentially subjective measure that should not be embedded in the regulatory fitness and proprietary test but instead be managed diligently through broader risk management frameworks and under the FAR regime.

3. **Conflicts management**

– Subjective terms such as 'perceived' conflicts and references to personal affiliations should not be adopted within the fit and proper test in the prudential standards but instead be managed diligently by entities through their conflicts management processes.

5. **Board performance review**

– Proposal 5 be explored further, welcoming it as good governance practice.

6. **Role clarity**

- APRA guidance on delegation frameworks be clearly articulated as illustrative rather than prescriptive and acknowledge the diversity of regulated entities. This will help avoid the risk of boards defaulting to overly cautious interpretations that undermine the very delegation the proposal seeks to promote.

7. **Board performance review**

- boards retain the flexibility to appoint committee members as voting members of APRA-required board committees.
- greater discussion is needed on proposal 7 in the context of how it would improve governance practices in superannuation.

8. **Director tenure**

- a 12-year lifetime tenure limit; and
- a positive obligation on trustees to demonstrate reasons for extending tenure for one additional term beyond 12 years. Such an extension would be for one additional term only and by exception.
- APRA provide expanded guidance regarding the range of scenarios in which it may be appropriate for an entity to consider extending the tenure of a director in exceptional circumstances.
- any tenure limits that are applied to directorships do not apply to alternate directors.

Attachment B – International comparisons

Proposal 2

Committing sufficient time

Under the Dutch pension scheme (DNB), an applying entity must complete an FTE score which is a statutory standard[38] expressing the time commitment of board members of pension funds. All new candidates must be given an FTE score. The candidates FTE score must include all current positions held by the candidate that **come under the scope of the statutory standard**, including the position under assessment. [39]

> *Pension funds are not permitted to appoint proposed board or supervisory board members with an FTE score higher than 1. If proposed board members have an FTE score of 1 or less (i.e. if they do not exceed the maximum permitted number of positions), DNB will assess whether the candidate can commit sufficient time to the proposed position. In its assessment, DNB will consider aspects such as the requirements of the proposed position and all current activities and positions, including any existing secondary activities.*

The DFSA fit and proper test also requires candidates to confirm they have sufficient time to undertake the role. This includes whether the person holds the office or position full-time. 'If this is not the case, the number of hours per year the applicant intends to spend on the office or position must be stated. This information is included in the assessment of the allocation of sufficient time.'[40]

For the ECB, 'time commitment is assessed on a case-by-case basis, taking the principle of proportionality into account. The time a member of the management body can commit to their functions is affected by several factors, such as the number of directorships held; the size and the context of the entities where directorships are held and the nature, scale and complexity of their activities; the place or country where the entities are based; and other professional or personal commitments and circumstances.'[41]

In both examples, the applying entity seeking to nominate a director to the board must be satisfied that the person can commit sufficient time to the role by assessing what the role will demand and comparing that with the roles that person already holds relevant to the sector.

Reputational risk

International frameworks (the Netherlands, Denmark) include an assessment of reputation in fitness and propriety which is generally based on an individual's criminal, civil and regulatory compliance history. In the Netherlands, the DNB considers integrity, propriety, and a person's professional competence.[42] In Denmark, the DFSA will consider 'a member of the board of directors to have a good reputation unless otherwise documented, and if there is no reason to doubt the good reputation of the person in question.'[43]

> *The member is considered not to have a good reputation if the personal or business conduct of the person in question gives rise to reasonable doubt about the abilities of the person in question to ensure sound and secure management of the financial undertaking. This assessment is made on the basis of e.g. all criminal and administrative violations, withdrawal of previous authorisations, licences or similar, previous dismissals and the background for these.*[44]

Under the ECB fit and proper test, 'an appointee is not considered of good repute if their personal or business conduct gives rise to any material doubt about their ability to ensure the sound and prudent

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[38] Candidates to be appointed as board or supervisory board member of a pension fund in the Netherlands must comply with the time commitment requirements laid down in Section 35a of the Decree implementing the Pensions Act and the Mandatory Occupational Pension Scheme Act

[39] De Nederlandsche Bank (DNB) – January 2025

[40] English translation of DFSA 'Guidance on suitability and integrity for board members, executives and key persons in financial institutions,' 2024, page 1

[41] European Central Bank (ECB), Guide to fit and proper assessments, 2021, page 30

[42] De Nederlandsche Bank (DNB): Initial assessment - reputation-assessment

[43] DFSA (Denmark)- DFSA - Guidelines on fitness and propriety, page 13

[44] DFSA (Denmark) DFSA - Guidelines on fitness and propriety, page 13

management of the institution.'[45]

In the ECB framework a 'person has either a good or a bad reputation' (which considers the three elements of criminal, civil and regulatory compliance. The principle of proportionality does not apply.

Proposal 3

The ECB Guide to Fit and Proper assessments references perceived conflicts in its framework:

> *'When submitting a fit and proper application, the supervised entity should provide information on all actual, potential or perceived conflicts of interest, whether or not it considers a conflict of interest to be material.'* [46]

The ECB defines perceived as 'in the mind of the public.'[47] The ECB's guidelines allow for mitigation measures (e.g., recusal, cooling-off periods) to address perceived conflicts. If these measures are insufficient, the appointee may be deemed unsuitable, but this would likely involve actual or unresolved risks rather than perception alone.

Proposal 8

International precedents favour flexibility:

- United Kingdom: The Prudential Regulation Authority (PRA) does not impose tenure limits on directors in financial institutions but encourages periodic evaluations of board effectiveness.
- United States: No prescribed tenure limits under the Federal Reserve or Office of the Comptroller of the Currency (OCC); governance practices focus on experience and expertise rather than arbitrary term restrictions.
- European Union: The European Banking Authority (EBA) stresses board suitability criteria rather than tenure caps.
- Canada: While some Canadian financial institutions adopt age and tenure limits, there is no universal mandate for tenure caps. Governance guidelines emphasise board renewal mechanisms rather than rigid term limits.
- Netherlands: Dutch financial institutions generally follow principles-based governance, with tenure decisions left to individual boards. The average tenure for non-executive directors is 4.2 years, but there is no strict regulatory cap.

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[45] European Central Bank (ECB), Guide to fit and proper assessments, 2021

[46] European Central Bank (ECB), Guide to fit and proper assessments, 2021, page 24

[47] European Central Bank (ECB), Guide to fit and proper assessments, 2021, page 23