Private Healthcare Australia
Better Cover. Better Access. Better Care.

APRA Governance Review

June 2025

Contact:

Camilla Milazzo – Company Secretary and Director of Governance and Operations
0433838042
camilla.milazzo@pha.org.au

17 June 2025

General Manager
Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority

By email: PolicyDevelopment@apra.gov.au

About Private Healthcare Australia

Private Healthcare Australia (PHA) is the Australian private health insurance industry's peak representative body. We have 22 registered health funds throughout Australia as members and collectively represent 98% of people covered by private health insurance (PHI). PHA member funds provide healthcare benefits for more than 15 million Australians.

Introduction

PHA welcomes the opportunity to provide feedback for Australian Prudential Regulatory Authority's (APRA) Governance Review.

Governance is an important issue for our sector and PHA member funds have been diligent in constantly reviewing and elevating their governance procedures and processes.

The risk for consumers is lower in the private health insurance sector when compared to the banking or superannuation sector. Private health insurance is a portable product in comparison to other APRA regulated products, and therefore, it is not always advantageous to apply a broad-brush approach across all APRA regulated entities.

The PHI industry is relatively diverse in comparison to other financial services sectors due to consumer behaviour, market structure, competition and risk rating restraints.

The pool of experienced and eligible candidates for board and committee positions who have a thorough understanding of the nuances of the private health insurance sector is relatively small compared to the general insurance and banking sector. The proposed tenure restrictions are not appropriate for private health insurers, particularly in smaller market segments.

Response

Proposal 1 – Skills and capabilities

PHA supports proposal one.

Proposal 2 - Fitness and propriety

Clear guidelines and standards for fitness and propriety of responsible persons are supported, however PHA is concerned that the proposal will be too onerous on entities and result in APRA determining the fitness and propriety of all board members. APRA does not currently appear to have the appropriate supervisors and skill set to assess the fitness and propriety of board candidates for all regulated entities.

Further guidance will be necessary on how APRA plans to weight reputation, experience and outcomes.

PHA recommends only entities that have been issued with a supervision order by APRA be required to engage with APRA on potential appointments, including being required to notify APRA when concerns arise that may impact fitness and propriety and interview requests.

Proposal 3 - Conflicts management

PHA supports proposal three in principle, however, notes the subjective nature of perceived conflicts and recommends APRA provides guidance around what could be considered a perceived threat.

In addition to the current APRA Prudential Standards, directors and entities are already bound by legislation including but not limited to the *Corporations Act 2001* and ASIC Regulatory Guide 181.

There are distinct fiduciary director duties which differ across the bank, insurer and superannuation sector, and distinct governance methods that differ between member and shareholder structures, which do not appear to be taken into account for this proposal.

The private health insurance sector is a highly competitive market and disclosure for key personnel of their duties and interests may, in some instances, deter eligible and experienced candidates from applying for Board positions to avoid perceived conflicts. This in turn may create a risk of an overly cautious and diminished pool of candidates.

Proposal 4 - Independence (banks and insurers only)

Several PHA member funds have concerns that this proposal will be onerous and severely limit the pool of directors available to serve.

Regulated entities have a robust governance process that addresses any conflicts or independence risk. A 'sit on but step out' approach is often utilised and has proved to mitigate conflict risks.

Proposal 5 - Board performance review

PHA supports proposal five.

Proposal 6 - Role clarity

PHA supports proposal six.

PHA would welcome further advice on how this proposal intersects with director's individual responsibilities under the Financial Accountability Regime and if necessary, initiate changes to prudential standard that necessitate directors focusing on non-strategic matters.

PHA recommends that boards continue to be allowed to use their discretion to grant delegations within current limitations.

Proposal 7 - Board committees

PHA supports the proposal that external advisors be classified as non-voting members of the risk and audit committees.

Separate risk and audit committees should not be required if clear guidelines are established regarding the risks the committees are expected to consider.

Similarly, a number of the conflict concerns giving rise to this proposal could be adequately mitigated through the board and committee conflict policies, board reviews and ensuring boards and their committees have directors with the appropriate skills and experience.

Proposal 8 - Director tenure and board renewal

PHA supports the proposal that regulated entities establish a forward-looking process for board renewal.

PHA does not support the proposal to impose a lifetime default tenure limit of 10 years for non-executive directors at a regulated entity. It is not clear from the proposal what issue APRA is attempting to resolve by proposing a tenure limit.

No other regulator is currently or is attempting to impose a tenure limit of 10 years for non-executive directors sitting on the board of a regulated entity. Nor does the *Corporations Act 2001* apply a tenure limit.

Due to the cyclical nature of issues within the private health insurance sector, it is necessary that directors hold experience and knowledge that that extends beyond a decade. Additionally, the pool of eligible candidates for board and committee positions, who are experienced in the private health insurance sector, is relatively small compared to the general insurance and banking sector and as such, the proposed tenure restrictions are not appropriate.

The proposed tenure limits will have the effect of disproportionately affecting those health funds with a smaller market share as well as those in regional areas who will struggle to recruit directors who have a thorough understanding of the community they are serving. This will ultimately weaken competition and potentially board acumen.

Ultimately, tenure limits should be a decision for the board, with APRA providing guidance only. Should a tenure limit be enforced by APRA, PHA recommends a division approach, with a third of the Board having a tenure of six years or less, a third being 10 years or less and a maximum of a third being more than 10 years.

If APRA's concern is that long term tenure will result in a skill gap or outdated expertise, then the skills and capabilities requirements set out in proposal one will adequately address this issue.

If, however, APRA's concern is board culture then it would be more appropriate to build culture into proposal one rather than setting a tenure limit.

PHA's proposed three-way split across the board will address concerns about compromising independent thought. A three-way split will have most of the board's tenure under 10 years and will mitigate the risk of perceived or actual 'group think'.

APRA has not presented a strong evidentiary base for a limit of 10 years. Elms et al (2023) notes that complacency and a decline in independence has only been observed in excessive tenures of more than 25 years and that a balance needs to be maintained between allowing directors time to develop the knowledge required to contribute meaningfully and the point where experience gives way to complacency and 'group think'.[1] No consensus has emerged regarding at what point in time this balance starts to decline. If boards focus on skills and education, succession planning and director engagement, this will most likely resolve any concerns more effectively than tenure limits.

A number of private health funds have their shareholders or members vote for directors at the Annual General Meeting. The proposal will reduce the choices available to shareholders and members in these governance structures.

Many chairs of the board are selected from the pool of directors already sitting on the entity's board, meaning that the proposed 10-year tenure will affect succession planning and possibly, board effectiveness. By setting a tenure limit of 10 years (or extending the limit to 12 years), the experience and maturity of the chair is reduced, leading to a risk that the chair does not have time to acquaint themselves with the industry (if they are an independent chair) and build the maturity to lead and guide the board. Again, it would be more advantageous to set out the expectations for the chair in the entity's charter and proposals one and six.

While PHA acknowledges there would be a degree of tenure flexibility if the entity is experiencing difficulty, our view is that boards should be investing in skills and education, culture and clearly outlining roles and director engagement strategies specifically for long serving directors.

Lastly, proposal eight does not consider the cost that it would generate for external recruitment nor the additional time commitment on the board and relevant committees responsible for recruitment which will have the effect of reducing attention from strategic issues.

[1] Elms, Natalie & Pugliese, Amedeo (2023) Director tenure and contribution to board task performance: A time and contingency perspective. Long Range Planning, 56(1), Article number: 102217. https://eprints.qut.edu.au/233608/1/112786423.pdf