

File Name: 2015/31

2 December 2015

Hon. Kelly O'Dwyer, MP
Assistant Treasurer
Parliament House
Canberra ACT 2600

Dear Minister,

Superannuation Governance

We are writing concerning the debate surrounding the Governance of super funds.

About ASFA

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90 per cent of the 14 million Australians with superannuation.

Comments

ASFA's role is to provide a venue where all sectors can collaborate and form where possible, a consensus view. All industry sectors are equally and strongly represented. Our mandate is to put the fund member at the front of our policy and advocacy. We are not politically aligned and work with all parties.

ASFA's positions on the draft of the Bill have been known for some time and provided to all Parliamentarians. Those positions would, we hope, guide the Senators in their discussions this week.

It has been a long journey to reach this stage. Along the way, ASFA has consistently supported improvements to superannuation Governance. ASFA believes that this Bill is important and that one third of a trustee's board directors should be independent. This is the most important and significant principle contained in the Bill.

ASFA, however, has conveyed concern regarding particular matters in the Bill including the definition of independence, maintenance of equal representation, and "if not/why not" reporting requirements. We are grateful to the Government - and cross benches - for hearing us on these matters.

We understand that the Government is open to removing the requirement for trustees to disclose to members (on an 'if not, why not' basis) whether their board has a majority of independent directors, and replacing it with a general reporting obligation that requires trustees to provide information about the composition of their board (including the level of independence) and to explain the reasons why that board composition has been chosen (including the benefits for members that are expected to be obtained through the composition).

We also understand that a further amendment may be circulated by Senator Muir that will effectively provide for the retention of equal representation (for the 2/3 non-independent directors), recognising the ongoing importance of maintaining these arrangements within the governance framework. For non-public offer funds that have historically operated under an equal representation model, the provisions will operate on an opt-out basis. Other parts of the sector can also opt-in, effectively giving all trustees the opportunity to construct their board in this manner where it is appropriate to their circumstances.

ASFA believes these amendments can work. Addressing these matters demonstrates the commitment of the Government and cross benches to finding appropriate balance in these reforms and ensuring they operate efficiently and effectively.

ASFA remains concerned with the definition of independence and the power provided to APRA to make determinations in relation to this. We believe that a better approach would be a definition that is principle-based and which allows trustees to make reasonable determinations on independence. A principle such as, 'a person will not be independent if a trustee board is satisfied that the person is unlikely to be able to exercise independent judgement' might be a good starting point for a principle based standard. APRA's role should be to regulate trustee determinations and ensure the spirit of the reforms are adhered to, rather than to make determinations on an exception basis.

ASFA is concerned that the role of APRA in deciding "independence" of directors should be minimal. Clarity and certainty is still needed in this regard.

We ask that if the current draft definition of independence is passed there be a clear and firm commitment to ensure that the definition of independence does not operate in an overly prescriptive manner and that APRA's powers contained in the Bill are utilised effectively.

We also ask that the definition be reviewed prior to the end of the three year transition. In this regard ASFA will work with its members to bring issues to the attention of Government during this transition phase.

In summary, whilst we remain concerned about the definition of independence, we strongly believe in the concept of independence and that it is possible to make all aspects of those reforms work.


The aforementioned amendments, combined with addressing remaining concerns regarding the application of the director independence provisions, represent a worthwhile outcome for superannuation governance arrangements and fund members into the future.

There have been some good initiatives by the Government, the cross benches and all parties in seeking to improve the proposed Bill.

We thank you, the Government, cross benches and Opposition for your consultation to date and look forward to working with you on these matters going forward.

If you have any queries or comments in relation to the content of our letter, please contact Pauline Vamos on 02 8079 0805 or by email pvamos@superannuation.asn.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M Easson', followed by a horizontal line.

Dr Michael Easson AM
ASFA Chairman

A handwritten signature in blue ink, appearing to read 'Pauline B Vamos'.

Pauline Vamos
ASFA Chief Executive Officer