

Executive summary

A sound governance framework for superannuation funds is essential in order to ensure the performance of the trustee board in carrying out its trust and fiduciary duties is both optimal and transparent.

In a compulsory and concessional tax system, it is critical that those entrusted with looking after the retirement incomes of Australians are required to achieve and maintain high levels of effective governance. This is particularly important given the size of Australia's superannuation pool continues to grow and the increasingly important role trustee boards play in delivering comfortable retirement incomes, as well as investing in the economy in an efficient and cost-effective manner.

Over the past few years ASFA has consulted with our members on a number of governance-related matters, including those addressed within the draft legislation, culminating in the development of ASFA policy on, among other things, the number/proportion of independent directors, and the appointment of an independent chair.

Below is a summary of ASFA's recommendations in relation to the proposed changes to the governance arrangements for APRA-regulated superannuation funds outlined in the Bill and the Regulation:

One-third independent directors and independent chair

Recommendation 1

ASFA supports the introduction of new section 86 of Part 9 which requires RSE licensees of APRA-regulated superannuation funds to have at least one-third independent directors (or at least one third independent trustees in the case of a group of individual trustees).

ASFA considers that it is reasonable to require at least one independent director to be appointed to the Board Audit Committee and Board Remuneration Committee. However, beyond this, it should be up to each trustee board to decide how best to structure their committees.

Recommendation 2

ASFA supports the introduction of new section 86 of Part 9 which requires RSE licensees of APRA-regulated superannuation funds to have an independent chair.

However, we do not support requirement that the chair of the Board Audit Committee and Board Remuneration Committee must be an independent director.

Three-year transition period

Recommendation 3

ASFA supports the introduction of a three-year transition period for RSE licensees to move to the new governance requirements. However, this transition period should commence on 1 July 2016 and end on 30 June 2019, or three years after the legislation receives Royal Assent, whichever is later.

Recommendation 4

ASFA recommends that the transition provision in the Bill be revised to clarify its operation in relation to standard employer-sponsored funds, and that the Bill specifically permits RSE licensees that are trustees of standard employer-sponsored funds to move toward compliance with the one-third independent director requirement throughout the transition period.

Disclosing whether the RSE licensee consists of a majority of independent directors

Recommendation 5

ASFA does not support the proposed requirement for RSE licensees to publicly disclose (on an 'if not, why not' basis) in the annual report whether they have a majority of independent directors.

We strongly recommend that this requirement be removed.

Definition of 'independent' and 'material relationship'

Recommendation 6

ASFA supports the definition of 'material relationship' being addressed in the prudential standards. We support APRA's intention to supplement the definition of 'independent' by setting out in SPS 510 the circumstances which the regulator considers to be a material relationship. ASFA will be working closely with APRA to ensure that the definition of 'material relationship' that will be included in SPS 510 is both robust and flexible and does not give rise to any unintended or impracticable consequences.

Recommendation 7

The power to determine whether a specific individual is, or is not, independent should be used by APRA sparingly. In order to provide reasonable boundaries for the use of the power to determine whether a specific individual is independent, ASFA recommends that:

- the Bill includes a power providing for regulations to be made prescribing the criteria that should be considered by APRA in any application of its power to determine whether a person is, or is not, independent; and
- the Regulation sets out those prescribed criteria.

Recommendation 8

ASFA recommends that it be made clear in the APRA prudential standard dealing with the transition arrangements (SPS 512) that RSE licensees are able to reclassify current directors as independent directors if they satisfy the new definition.

That is, being a current director should not preclude the director from being reclassified as independent, as long as they do not have any other material relationship with the RSE licensee that would preclude such a reclassification.

Recommendation 9

ASFA notes that paragraph (a) of the definition of independent, regarding substantial holdings in the RSE licensee, will be problematic for funds with certain legal structures. We recommend that paragraph (a) be amended so that a director with a substantial shareholding in a corporation, that is an RSE licensee acting as trustee of an (industry or corporate) APRA-regulated fund, is not precluded from being independent where the shares are of a nominal value and are held on trust.

Recommendation 10

A person should not be precluded from being an independent director simply by virtue of having been nominated by a body that has the right to appoint a person, so long as the nominee meets all other independence requirements.

Recommendation 11

ASFA recommends the definition of 'independent' should not contain a prescribed three-year exclusion period for a person who has ceased to be employed by a supplier at an executive or director level. The ability of such individuals to be considered 'independent' should be determined by the RSE licensee on a case by case basis, with regard to prudential requirements in respect of the identification and management of conflicts of interest.

Recommendation 12

ASFA recommends that current employees, executive officers and directors of firms that are suppliers to the RSE licensee, but who themselves have had no previous dealings with the RSE licensee, should be allowed to be appointed as an independent director.

ASFA considers that such situations can be adequately addressed as part of the RSE licensee's conflicts management policy and procedures.

Recommendation 13

ASFA is supportive of the definition of independent and material relationship not excluding a person from being classified as an independent director purely as a result of being a member of the fund, where the person does not have any other material relationship with the RSE licensee.

Each of the recommendations outlined above are discussed in greater detail in the subsequent sections of this submission.