



14 February 2014

Manager  
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Financial System Division  
The Treasury  
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Dear Treasury,

**AFA Response to the Discussion Paper on Better Regulation and Governance, Enhanced Transparency and Improved Competition in Superannuation**

The Association Of Financial Advisers Limited (“AFA”) has been serving the financial advising industry for over 65 years. Its aim is to provide members with a robust united voice, continually improve practices and focus firmly on the exciting, dynamic future of the financial advising industry. The AFA also holds the client to be at the center of the advice relationship and thus supports policies that are good for consumers and their wealth outcomes.

With over six and half decades of success behind it, the AFA’s ongoing relevance is due to its philosophy of being an association of advisers run by advisers. This means advisers set the agenda, decide which issues to tackle and shape the organisation's strategic plan.

Thank you for the opportunity to provide feedback on the discussion paper on better regulation and governance, enhanced transparency and improved competition in superannuation.

Some of the issues raised in this discussion paper go to the core of the ability for Australian consumers to have trust and faith in the operation of the Australian superannuation system. Consumer confidence in the superannuation system is critical to maintaining a strong retirement income system that is increasingly less reliant upon the Government pension. Too much has occurred in recent years that has undermined consumer confidence and therefore the actions being considered in this paper are worthy of review and implementation.

With respect to the provision of financial advice to employers of superannuation funds, we are most concerned that a combination of the impacts of FoFA and MySuper now means that corporate superannuation advisers cannot be appropriately remunerated for the provision of advice on the selection of a new employer superannuation fund and the ongoing provision of services to the members of the fund. Employers will need a lot of support with respect to the selection and ongoing management of their superannuation arrangements and therefore a vibrant corporate superannuation advice sector is essential.

In our submission we have responded principally to the two areas of governance and competition in the default superannuation market. We have not provided feedback with respect to the dashboard or disclosure on superannuation fund holdings.

## **Part 2: Better Governance**

**Focus Question 2.** *What is the most appropriate definition of independence for directors in the context of superannuation boards?*

We believe that the definition of independence needs to be rigorous and exclude people who may have a recent historical connection with the fund, including as a service provider or consultant to the fund. For this reason we largely support the definition as articulated in the Cooper Review: ‘that the Director is independent based on being at arm’s length from the fund, a person who generally has no historic connection with the fund or the appointer.’ It would however be reasonable to put a time limit on the issue of historical connection, such that someone who had had no connection for a period of say 5 years, could still be eligible.

**Focus Question 3.** *What is an appropriate proportion of independent directors for superannuation boards?*

We support the ASX Corporate Governance principles with this respect and recommend that independent directors on superannuation boards should represent a majority of directors.

**Focus Question 4.** *Both the ASX Principles for listed companies and APRA’s requirements for banking and insurance entities either suggest or require an independent chair. Should superannuation trustee boards have independent chairs?*

We support a requirement for the chair of a superannuation trustee board to be an independent director.

**Focus Question 5.** *Given the way that directors are currently appointed varies across funds, does it matter how independent directors are appointed?*

In the listed corporation context, the appointment of directors is done through a nominations committee with the chairperson having a large role in the selection and appointment for future directors. The qualifications and suitability (including independent status) of the directors is probably more important than the appointment process. In the listed corporate context the nomination process and consideration/voting at an Annual General Meeting are critical steps in the process. The same process does not apply for trustee directors of superannuation funds.

It is probably necessary for some minimum standards to be established, however beyond that, there should be no disadvantage in having some flexibility.

**Focus Question 6.** *Should the process adopted for appointing independent directors be aligned for all board appointments?*

We suspect that it will be inevitable that this process will differ for non-independent directors, however it should be subject to the same quality controls around qualifications and suitability.

**Focus Question 7.** *Are there any other measures that would strengthen the conflict of interest regime?*

The AFA believes that directors of trustee boards should be prevented from holding multiple and competing superannuation board positions. As this is an extremely difficult conflict of interest to manage, the best solution is to avoid it.

**Focus Question 8.** *In relation to board renewal, should there be maximum appointment terms for directors? If so, what length of term is appropriate?*

The AFA supports consideration of a maximum term for directors. In our opinion the maximum term should be 10 years. It is important for trustee boards to be managed in a manner where there is a good retention of corporate knowledge, such that there is an avoidance of a large exodus of directors at any point in time.

**Focus Question 9.** *Should directors on boards be subject to regular appraisals of their performance?*

The AFA supports a performance review process for all trustee directors. It would be essential that these reviews were wide ranging and touch on issues such as qualifications, contribution and conduct. There need to be powers that enable a chairperson to facilitate the removal of a trustee director, whose performance has been assessed as unsatisfactory.

**Focus Question 10.** *Would legislation, an APRA prudential standard, industry self-regulation or a combination be most suitable for implementing changes to governance? What would the regulatory cost and compliance impacts of each option be?*

The AFA does not support a self-regulation solution. There is inadequate certainty that this would achieve the required changes. Thus we would support either legislation or an APRA prudential standard.

**Focus Question 11.** *What is the appropriate timeframe to implement the Government's governance policy under each option?*

Whether the form of achieving these changes are legislation or an APRA prudential standard, the AFA would support a 12 months notice period before the obligations come into effect.

**Focus Question 12.** *Given that there will be existing directors appointed under a variety of terms and condition, what type of transitional rules are required?*

Given the likely changes, including independent chairpersons and a majority of independent directors, there will need to be some time allowed for in making these changes. Given that different directors will have different remaining terms, progress towards these objectives can commence at the first opportunity. It is reasonable to allow a transition period of up to two years in order to achieve full compliance

## **Part 4: Enhancing Competition in the Default Superannuation Market**

**Focus question 27.** *Does the existing model (which commences on 1 January 2014) meet the objectives for a fully transparent and contestable default superannuation fund system for awards, with a minimum of red tape?*

The existing model does not meet the objectives of either transparency, contestability or a minimum of red tape. In fact the existing model serves to entrench existing arrangements and make it difficult for alternative superannuation options to be successful.

In our view the best option is for the connection between Modern Awards and superannuation to be dismantled and for employers to have the flexibility to select a default fund from among the MySuper options that are available. There is already an APRA approval process that applies to MySuper funds.

In our view, the critical point for selection of a fund is at the employer level, or even the employer location level and not the award level. In fact within an award there is likely to be a number of different types of employees, where the most suitable option will differ. Further, for an individual employer it makes greater sense that there could be one default fund, rather than different ones for each award that might apply to their employees.

As mentioned above, it is critical that corporate superannuation advisers are enabled to provide support and advice to employers seeking an alternative superannuation arrangement. An understanding of the specific needs of the employees is critical to the determination of the most appropriate superannuation fund for that employer. Corporate superannuation advisers play a very important role in this process.

**Focus question 28.** *If not, is the model presented by the Productivity Commission the most appropriate one for governing the selection and ongoing assessment of default superannuation funds in modern awards or should MySuper authorisation alone be sufficient?*

No we do not support the model presented by the Productivity Commission. In our opinion MySuper authorisation should be the only necessary requirement for consideration as a default superannuation fund.

**Focus question 29.** *If the Productivity Commission's model is appropriate, which organisation is best placed to assess superannuation funds using a 'quality filter'? For example, should this be done by an expert panel in the Fair Work Commission or is there another more suitable process?*

In the context that we support a model where all MySuper funds (authorised by APRA) should be eligible for selection as the default fund, we do not believe that any additional entity needs to be involved in the selection process. We also believe that the existing model contains too much bureaucracy and unnecessary complexity (red tape).

Employers often seek the support of a Corporate Superannuation adviser to assist them to select a default superannuation fund, to support the installation and to provide ongoing services to the fund.

Corporate superannuation advisers add a significant amount of value for the employer by the selection of a fund and the negotiation of fees and insurance cover. Once again, we emphasise the point that the FoFA and MySuper regulatory models need to enable the appropriate remuneration of these advisers to ensure that they exist in the necessary quantity to meet the needs of employers.

**Focus question 30.** *Would a model where modern awards allow employers to choose to make contributions to any fund offering a MySuper product, but an advisory list of high quality funds is also published to assist them in their choice, improve competition in the default superannuation market while still helping employers to make a choice? In this model, the advisory list of high quality funds could be chosen by the same organisation referred to in focus question 29.*

The introduction of an advisory list adds a significant level of complexity and cost to the process. This would require a suitably skilled panel or body to undertake the assessment, and the participants in that list may change on a regular basis.

This is an area where access to experts is more critical and where competition will play out in a manner where the best funds will become apparent. Through the design of the MySuper product structure, it is clear that this will be a tough low margin market and the achievement of scale will be essential for long term success.

**Focus Question 31.** *If changes are made to the selection and assessment of default superannuation funds in modern awards, how should corporate funds be treated?*

We believe that Corporate funds should continue to have a role in the superannuation market. There will necessarily need to be provisions under which they can operate effectively in this market.

## **Conclusion**

We thank you for the opportunity to contribute to this consultation process. We believe that the issues raised in this discussion paper are critically important and we support the Government in the investigation of changes that should be pursued in this area.

Should you have any questions, please do not hesitate to contact me on (02) 9267 4003.

Yours sincerely,

**Philip Anderson**  
**Chief Operating Officer**