



24 July 2015

Manager
Insurance and Superannuation Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES, ACT 2600

Email: superannuationgovernance@treasury.gov.au

Dear Treasury,

AFA Submission – Reform to Superannuation Governance

The Association of Financial Advisers Limited (“**AFA**”) has served the financial advice industry for over 65 years. Our aim is to achieve *Great Advice for More* Australians and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

Thank you for the opportunity to provide a submission in response to the reforms to superannuation governance.

Since the introduction of the Superannuation Guarantee Charge (SGC) in the early 1990’s and through the progressive increases in the SGC rate and fund mergers, a number of public offer superannuation funds have grown to become very large financial entities. This growth can be expected to continue through the ongoing effect of the SGC and the legislated further increases. The scale of these entities and the number of members involved highlights the need to apply best practice Corporate Governance arrangements. The ASX Corporate Governance Principles are widely regarded as best practice in the Australian environment and should therefore be the basis for the

governance model for Australian superannuation funds. The ASX Corporate Governance Principle 2 (Structure the board to add value) calls for, amongst other things, the following:

- A nomination committee with a majority of independent directors and an independent chair.
- Disclosure of a board skills matrix.
- Disclosure of the names of directors considered to be independent.
- A majority of the board should be independent directors.
- The Chair should be an independent director.

Accordingly we believe that the best outcome for superannuation funds would be a requirement for an independent chair and a majority of independent directors. The proposal from the Government in this draft legislation is for an independent chair and one third of directors to be independent. This appears to be a sensible compromise. We do not accept that there is any supportable argument with respect to why these changes would not be in the best interests of members.

The key to this change is in the definition of an independent director. The definition used in the draft legislation places a significant focus upon an ownership stake, or relationship with the licensee. We are concerned as to whether this definition will adequately address the objectives of this policy, particularly in the context where the licensee is owned by the members and there is naturally no person who has a substantial stake. It is also our view that it would be preferable to resolve the definition of independence in the legislation rather than delegating this to APRA.

We accept the reality that the equal representation model is no longer the most appropriate model. This model was more suited when superannuation funds were smaller and often employer specific. As the size of funds have grown in terms of both the number of members and the assets under management, the relevance of having individual members represented on the trustee board has declined. Often these directors do not have the necessary skills and experience. We support the Financial System Inquiry statement that it is more important for directors to be independent, skilled and accountable, than representative.

We support the “if not, why not” disclosure requirement from 1 July 2019 for Trustee Boards without a majority of independent directors. This provides a clear message that best practice is a majority of independent directors, even if the government is not going as far as mandating this requirement.

The three year transition period from 1 July 2016 provides a generous transition arrangement. Trustee boards with well structured nomination committees and rigorous guidelines/processes should be able to achieve this transition, without needing to unnecessarily add to the current number of directors. This change should not be allowed to lead to an unnecessary increase in the size of these boards, which should also be based upon best practice. An excessively large board will be more difficult to operate and more expensive to maintain.

The role of the independent directors is to oversight management and to represent the best interests of the fund and all members. Directors have a role to challenge management and to also challenge other directors or a group of directors who may be subject to a particular conflict or relationship. It is therefore important that there are sufficient independent directors to have the capacity to identify potential issues and to confront any issues that need to be challenged.

Whilst it makes very good sense to compare the governance arrangements of superannuation funds with the obligations of listed entities, it is important to realise that listed companies are subject to additional controls and limitations that do not apply to superannuation funds. These include Annual General Meetings and regular elections of directors. For this reason, the governance arrangements for superannuation funds need to be subject to rigorous requirements which should also be subject to regular review and improvement.

Conclusion

We thank you for the opportunity to provide feedback on the Reforms to Superannuation Governance.

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

Yours sincerely,

Phil Anderson
Chief Operating Officer