



**Superannuation Legislation
Amendment (Governance) Bill 2015:
Governance arrangements for
APRA regulated superannuation
funds**

**Submission by Unions NSW
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Submission by:

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Introduction

1. Unions NSW is the peak body for trade unions and union members in NSW. It has over 65 affiliated unions and trades and labour councils representing approximately 600 000 workers across NSW.
2. We welcome the opportunity to comment on the *Superannuation Legislation Amendment (Governance) Bill 2015: Governance arrangements for APRA regulated superannuation funds* (the Bill).
3. Unions NSW states at the outset it's support for the current model of equal representation. We oppose the changes to the current system of governance as set out in the Bill.
4. Unions NSW supports a strong superannuation system so working Australians can provide themselves with a retirement income that is sufficient to meet their needs. We believe the evidence shows the current model of equal representation is the best such system.
5. In preparing this submission, we have consulted with our affiliates. While the submission does not focus on every element of the Bill, this should not be taken as agreement with those terms.

Prudential standards

6. The Bill details significant changes to the composition of super boards. APRA has also given some minimalist guidance regarding the prudential standards that will support the implementation of the legislation.
7. Because the detail of the prudential framework is not available, Unions NSW submits comment on the exposure draft should be delayed until all the information regarding the proposed changes is available.
8. Unions NSW also submits it is not appropriate for the proposed serious matters of substance to be dealt with in prudential standards and not in the legislation itself.

Board composition

9. The industry superannuation model was built on the idea of joint trusteeship between representatives of employees and employers, hence the model of equal employee and employer directors.
10. Generally it is representative organisations (such as unions and employer organisations) that appoint directors of industry superannuation funds. The exact processes vary for different funds. Sometimes an election is carried out to select the representative or perhaps expressions of interest are sought or other mechanisms utilised.
11. However, no matter what the process, the person appointed has a fiduciary obligation to put the interests of the members of the superannuation fund ahead of their own, or indeed the organisation that appointed them.
12. Therefore, the current trustee system ensures trustees are independent because of the fiduciary obligation.
13. Unions NSW opposes the requirement set out in the Bill for one-third independent trustees on the grounds it is completely superfluous. The existing trustees are already independent.
14. Unions NSW also notes that the changes proposed to board composition will be costly for funds to implement and disruptive to their core purpose. Unions NSW submits such changes cannot be justified in the absence of any evidence that the current representative trustee model of governance is broken.
15. Further, the proposals will narrow, not widen, the pool of talent drawn upon to fill super board positions. Diversity of background and life experience actually brings a greater likelihood of challenging any herd tendency of a board. Unions NSW also has real concerns the change will negatively impact on the gender representation on super boards, and therefore boards generally given the role super boards play in improving the overall statistics.
16. Should any amendment be deemed necessary, it should allow each Board to make their own decision on the issue of whether to have so-called “independent” directors. This could be achieved in the current Bill by appropriately amending Part 9.

17. Further, Unions NSW opposes the reporting requirement that requires super boards to report regarding a majority of independent directors. It is confusing and unnecessary.

Independent chair

18. Unions NSW opposes the requirement in the Bill that every super board have an independent chair. The role played by the chair is so fundamental to the culture and proper functioning of the board that to not allow the best person to fill that position runs counter to good governance practice. Unions NSW submits that the choice of chair should be the decision of the super board itself.

19. Further, to mandate the requirement for so-called “independent” chairs will lead to significant disruption to the functions of a number of superannuation boards as they scramble to find a new chair. It would also increase costs as internally sourced chairs tend to be much lower paid than ones sourced externally. The cost of the recruitment process for an external chair is also significant.

Definition of independence

20. Unions NSW has serious concerns about the definition of independent director that has been proposed in the Bill. It is difficult to comment on the definition given the role APRA will play in giving meaning to key terms. Instead Unions NSW proposes the following questions:

- a) How would an “independent” director not immediately disqualify themselves as an “independent” because this is a material relationship with the RSE licensee?
- b) How will the Government ensure non-conflicted and highly-skilled potential trustee director candidates are not excluded by a strict interpretation of circumstances giving rise to material relationships?
- c) Can the Government be sure the proposed definition does not risk unintended consequences, especially given the different ownership structures of retail funds and not-for-profit funds that the definition covers?

21. Unions NSW submits that the full definition of independent should be included in the legislation itself, and not be subject to further clarification in prudential

standards. Accordingly, Unions NSW urges the government to remove clause 87(2) from the Bill.

Two-third majority

22. Unions NSW opposes the repeal of the two-thirds voting rule in regulation 4.08.

Given the equal representation model, this rule has seen a consensus form of decision making emerge on many boards. This is a positive and the superior returns of not-for-profit funds is ample evidence of this fact.

23. Unions NSW submits an appropriate voting model in the context of a one third, one third, one third model is a three quarter voting rule. We submit the Government should adopt this rule in order to promote consensus decision-making and to ensure no voice, be it employee, employer or independent, is excluded from decision-making.

Transitional rules

24. Unions NSW believes a longer transition period than 3 years is warranted to ensure stability and to ensure the preservation of an appropriate skill mix on the board. Unions NSW submits the transition should allow implementation of a new board structure consistent with any new requirements when vacancies arise in the normal course.