



BOC Superannuation Pty Ltd

ABN 83 080 598 821

Trustee of the BOC Gases Superannuation Fund

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23 July 2015

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

Email: superannuationgovernance@treasury.gov.au

Dear Sir,

Submission Relating to Exposure Draft Legislation on Reforms to Superannuation Governance

The current focus of the superannuation industry's representative groups has been on the definitions relating to "independence" for directors on Trustee boards. I am writing specifically about the adverse impact the broader requirement for 1/3 independent directors on Trustee boards will have on many members in "*non-public-offer*" superannuation funds.

Your Explanatory Guide to the exposure draft legislation provides background on the reasoning for the decisions to implement minimum independence requirements on Trustee boards for APRA regulated funds. You assert that minimum standards for independent directors on board will promote good governance by broadening each board's pool of experience and expertise.

I must challenge this broad assertion as I expect that imposition of the changes as suggested will fundamentally alter, and in many cases undermine, the very strong governance in place in many non-public offer funds. The proposed changes will significantly increase costs and will do little or nothing to improve governance.

I speak as the Chairman of a Corporate Fund, the BOC Gases Superannuation Fund.

The BOC Fund was established in 1937 to provide benefits for BOC employees. The principles remain strong, with benefits provided being substantially above those required by law. The Company (BOC Limited) established the BOC Fund long before any legislative requirement and the fund has complied with all government changes over the years; we operate with both RSE and AFS licences and have a MySuper authorisation. The BOC Fund is overseen by APRA which has (again, in March 2015) affirmed a "normal" risk status for the fund and the trustee board.

The BOC Fund is a hybrid Defined Benefit / Accumulation scheme. With assets of about \$670m and membership of 3,600, the scheme is relatively small – but it retains its strong and personal contact with the membership, all of whom are current or former employees¹.

The trustee operates on the equal representation basis, with three Company-appointed and three Member-elected Directors appointed following a direct ballot of fund members. One of the Member-elected Directors is not a current employee and is paid a modest retainer (\$16,000 p.a.) but the other 5 receive no remuneration for their Director roles. These Directors are not paid for taking on their trustee responsibilities; all Directors serve on the Trustee board in a voluntary capacity.

All Directors are members of the fund, have (with “skin in the game”) and bring their individual skills to the board because they want to help run the fund efficiently to enhance the benefits for the members. There is no shortage of people willing to undertake this work, clearly demonstrated by the 13 nominations received for the 2013 election for the three Member Director positions.

APRA’s recent prudential review of the BOC Fund gave an opportunity for the BOC Fund’s Trustee board to directly demonstrate their competence and expertise to senior APRA personnel. The members of the BOC Fund’s Trustee board are highly qualified and experienced in a very broad range of business activity, including particular financial and operational expertise. Where external expertise is needed, qualified people from the broader industry are readily available to provide advice as required.

We do not regard the imposition of an independent director requirement will broaden the “pool of experience and expertise” at all.

No board can be expected to have a high level of skill in all aspects of operations – regardless of whether it is a Trustee board or an ASX listed Company – and boards import expertise as needed. If the skills base of a Trustee board is inadequate, there is ample opportunity for APRA to persuade a board to change under the current arrangements.

Consideration of appropriate composition of boards of major superannuation funds has focussed on unsatisfactory outcomes with the prudent management and protection of member funds. **The broad brush approach which requiring all funds to have a minimum number of independent directors on Trustee boards ignores the long-standing benefits of the equal representation model, particularly as operating in Corporate Funds.**

The government’s RSE licensing regime differentiated licences between “*public offer*” and “*non-public-offer*” funds. *Public offer* funds, which include retail and industry funds, readily compete for membership. “*Non-public-offer*” funds operate in a specific area, for the most part providing superannuation benefits superior to those normally available for members of a particular employee group. The RSE licensing arrangements already provide this clear distinction for funds which are not competing publicly to attract members.

The Company continues to provide significant subsidy for fund operations, meeting both administration and insurance costs for current employees. While former employees and spouse members mostly pay their own way, continuation of the fund is a major financial commitment from the Company.

While the Defined Benefit financial obligations are clearly a factor, the Company has remained willing to continue to finance the fund because it provides a clearly differentiated employee benefit. Under such circumstances, the relationship with the Employer Sponsor is an important ingredient and is supported by the presence of three senior Company employees on the board, with equal member representatives ensuring appropriate tension to protect the interests of members.

¹ With the exception of 35 Spouse Members, who are joined as the spouse of a current member.

I submit that the equal representation model continues to serve members of “non-public-offer” funds very well and point to the Financial Services Inquiry’s recommendation that independent directors only be required on the boards of Public Offer funds. Your Explanatory Guide omits reference to the Financial Services Inquiry report’s advocacy for the continuation of the equal representation model for single employer defined benefit funds as being “appropriate and consistent with the governance models of defined benefit pension funds internationally”.

Imposition of independent director requirements onto the board of “non-public-offer” funds generally and the BOC Fund in particular will bring additional formality between the Company and the Board, complicating the relationship for no obvious benefit.

The one aspect which is abundantly clear is that the imposition of independent director requirements onto the board of “non-public-offer” funds will significantly increase costs.

I appreciate the argument that an “independent” presence on a board will bring an alternative perspective which may improve governance. This may sometimes prove to be the case but I question the assumption that this is a given; well managed boards already actively encourage independent thought and will challenge on issues and proposals.

It is hard to argue that there would not be a governance improvement of some sort generally – but I strongly dispute your statement that these proposals will “substantially strengthen governance arrangements” for smaller funds; there will be minimal clear benefit.

For the BOC Fund, it is anticipated that appointment of independent Directors as foreshadowed would increase the operations cost base by between 10% and 25%². Especially considering that operations costs for current employee members are paid wholly by the Company, it is clear that, without significant change, it would be the Company which is expected to bear this additional cost³. There is no doubt that such a significant cost increase would threaten the continued viability of this fund.

Imposition of the suggested changes across all funds will simplify APRA’s oversight arrangements and it will certainly support the push to significantly reduce the number of superannuation funds in Australia. I note that this view was not supported by the Financial Systems Inquiry.

There is often discussion about the importance of diversity – in the workplace and particularly on boards of both ASX listed companies and superannuation funds. There is minimal justification for imposing restrictive requirements on super fund boards which will inevitably reduce the capacity of many of those funds to operate. Is there no room for diversity in delivery in our society?

The Corporate Funds which are still in existence are there because of a strong commitment from the Employer Sponsors to provide a unique offering for their employees. These funds generally provide better benefits and do so at costs comparable with the larger industry players. APRA’s Scale Test ensures that Trustees are able to demonstrate that members are “no worse off”. There is no evidence that investment returns are adversely affected by smaller scale, especially as scale (in administration and investment) can effectively be purchased by a smaller fund through appropriate service provider arrangements.

The equal representation model continues to work well in Corporate Funds. The current proposals are addressing issues which primarily relate to public offer funds.

² 2014 financial statements: General administration expenses \$1.532m. Independent chair cost estimate \$100k; independent Director cost estimate \$50k; additional committee fees likely to apply. Estimate of 10% assumes that no remuneration is provided to the Company-appointed and Member-elected board members and that the current six Director board size is retained.

³ Fund members who are not current BOC employees are charged administration fees, although the Company continues to meet some of the costs.

Imposition of the proposed changes on Corporate Funds will produce material additional costs, and potentially disengage previous committed employers. In either case, members of *non-public offer* funds are likely to be worse off.

I strongly urge you to reconsider the removal of the equal representation provisions in the SIS Act and allow Corporate Funds to continue to provide strong governance to their members under the current model.

I would be pleased to provide further information if needed.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Graeme Bartram', with a long horizontal flourish extending to the right.

GRAEME BARTRAM
Chairman

Appendix – About BOC Super

Fund Name:	BOC Gases Superannuation Fund		
ABN:	49 620 344 668		
Fund type:	Corporate Fund; Not-for-profit		
Established:	1937		
Trustee:	BOC Superannuation Pty Ltd		
Trustee ABN:	83 080 598 821		
Trustee RSE Licence:	L0000710		
Trustee AFS Licence:	287131		
MySuper Authorisation:	49620344668116		
Membership (30 June 2013):	Active Defined Benefit Employees		109
	Active Accumulation Employees		1756
	Retained Members (ex-employees)		1533
	Pensioners & others		<u>271</u>
	Total		<u>3669</u>
Assets (31 March 2015):	\$670m		
Benefit Structure:	13% Company Contributions		
	Death and Disability costs met by Company for employees		
	Competitive Death and Disability costs for other members		
Investments:	8 diversified investment options		
	Investment returns above median for most options over most time periods.		
	Default option (High Growth) return, after fees and tax, to 31/3/2015:		
	1 year:	13.5%	(13.2% median fund)
	3 years	13.5% p.a.	(12.0% median fund)
Website:	www.bocsuper.com.au		