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Mr J Przydacz
Manager
Insurance and Superannuation Unit
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The Treasury
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By Email to: superannuationgovernance@treasury.gov.au

Dear Mr Przydacz,

Reforms to Superannuation Governance (Exposure Draft Legislation) - Catholic Super (CSF Pty Limited) Response

Please find attached Catholic Super's response to the Exposure Draft Legislation, Reforms to Superannuation Governance released on 26 June 2015.

The following response is consistent with Catholic Super's response to the "*Better regulation and governance, enhanced transparency and improved competition in superannuation*" discussion paper, released in November 2013 and to the Final Report of the Financial System Inquiry.

Yours sincerely

Frank Pegan
Chief Executive Officer

Catholic Super's response to the Exposure Draft Legislation, Reforms to Superannuation Governance released on 26 June 2015

Reforms to Superannuation Governance

The Government has announced its proposed changes to the board composition of all APRA regulated funds with the June 26 release of the Exposure Draft Legislation, Reforms to Superannuation Governance in which it mandates:

1. All Australian Prudential Regulation Authority ("APRA") regulated superannuation funds be required to have a minimum of one third independent directors on their trustee board, and an independent chair;
2. The definition of 'independent' is to include persons who do not have a substantial holding in the trustee board or do not have (or have not had within the last three years) a material relationship with the trustee board, including through their employer;
3. Trustee boards of APRA regulated superannuation funds that do not have a majority of independent directors will be required to report on an 'if not, why not' basis and
4. A three year transition period will apply for existing APRA regulated superannuation funds.

SUMMARY OF RESPONSE

Catholic Super supports the general tenent of the four changes contained in the draft legislation and looks forward to the alignment of requirements for independence for trustee boards of APRA regulated superannuation funds with those that presently apply to ASX listed companies and with the provisions of the Corporations Act. Catholic Super also supports the efforts the Government is making in its attempt to achieve a consistent application of these important principles to both ASX listed companies and trustee boards of APRA regulated superannuation funds.

Catholic Super believes it complies with the "independence" provisions outlined in the Exposure Draft Legislation and as such considers that each of its trustee directors to be independent. Further, it believes its selection process and the director eligibility rules it applies to the appointment of trustee directors ensures the ongoing independence of the

trustee directors as defined in the draft Bill. Catholic Super also looks forward to commensurate changes prposed in the new Part 9 of the SIS Act.

REPSPONSE TO KEY PROVISIONS

1. Minimum of three independent directors

The Government rightly considers independent directors on superannuation trustee boards as a way of strengthening the current superannuation system because it believes independent directors are more likely to provide a greater degree of dispassionate discernment and conflict-free governance. Catholic Super supports this view - accepting the logical premise upon which the draft legislation is based. It also explains why a superannuation fund must be governed by a board that is free of any relationship that could materially interfere with or influence its judgement.

Catholic Super also believes that the Exposure Draft Bill is consistent with the ASX corporate governance principles and therefore appropriate that APRA amends SPS 510 to supplement the proposed new definition of independence in the SIS Act - substantially aligning it with the requirements that apply to the banking and insurance industries which in turn would broadly align with the ASX corporate governance principles.

Catholic Super contends that independence is more than being ‘non- aligned’. It is about individual actions and a preparedness to act honestly in all deliberations. It is also about disclosure of any potential conflict and being prepared to act in the best interest of members, “free from direction or control”. However, Catholic Super also contends that being “free from direction and control” can be achieved by either appointed directors or by those directly elected. The quality and effectiveness of a Board will be enhanced by a director whose position is a result of a clear nomination process and the board’s ability to attract the right skill sets.

Catholic Super member directors are elected by the entire membership of the Fund and employer directors are elected by all participating employers. The term of office for a director is five years with a maximum period of three terms. Two director positions (one employee and one employer) are declared vacant and elections are held each year. The process allows for continual renewal while experience is not lost. The Chair and Deputy are elected by the Directors for a term of three years. Employees (including Executives) of the Fund are not eligible for election until they have left the Fund's employment for five years. Suppliers of services to the Fund are also deemed ineligible.

Catholic Super agrees with this consistent principled approach for consideration of independence. Under the ASX Principles, independence is explained as "*a non-executive director who is not a member of the management and who is free of any business or other relationship that could materially interfere with or could reasonably be perceived to materially interfere with – the independent exercise of their judgement."* Catholic Super believes this should be consistently applied with respect to directorships of superannuation boards.

Catholic Super argues that Directors elected by the employers or members of the Fund should not be excluded if they are elected or appointed (by a nomination committee of the Board) in an open and transparent process. Catholic Super also believes (and practices) that directors' fees should be paid to the individual director not to the sponsoring organisations' such as a unions or an employer association. This rightly reinforces the individual director's fiduciary responsibilities.

The ASX principles explicitly list the factors that preclude directors from being considered independent. As with the ASX principles which enable independent directorship to be readily determined for publicly listed companies, the Government's proposal properly aligns these conditions for superannuation funds.

With like changes to the SIS Act, superannuation funds will be brought in line with all other commercial entities. (For example, the removal of the stipulation that a person is deemed ineligible to be considered independent if they are a member of the superannuation fund for which they seek to be a director). Catholic Super argues that exclusion of a member from directorship makes no logic sense nor does it impact on a director's capability to be or even perceived to be 'independent '. A director of an ASX listed company can have shares in the company and still be regard as independent as long as the shareholding is not substantial (as defined in section 9 of the Corporations Act). Therefore, the definition of independence to be used for superannuation fund should be the same as currently set out in the ASX principles.

2. Directors not to have a material relationship

The proposed new section 87(1) of the Superannuation Legislation Amendment (Governance) Bill 2015 states that a director is deemed to be "independent" if they do not have a substantial holding in the trustee or related entities; are not directly associated with a person who has such a substantial holding; does not have a material relationship with the trustee, (including through their employer) and has not in the last three years been an executive or director of a body that has a material relationship with the trustee. Catholic Super supports these conditions of independence.

Catholic Super believes its trustee director election process satisfies the governance requirements contained in the new Part 9 of the SIS Act which relates to the definition of "independent director" in the context of equal representation. Catholic Super's directors' election process is based upon two elector divisions; one for members and the other for the employers of the fund, providing equal representation and therefore satisfies the proposed SIS Act requirements.

Catholic Super meets the requirements as outlined in the exposure draft, ASX principles and hopefully with the amended CSP 510. In Catholic Super's case, members and employers carry only one vote and therefore cannot exert control over their election. This prevents unions or sponsoring employers from controlling or appointing directors. Therefore for Catholic Super, the Directors are in every sense independent by virtue of their election (free from direction and control) and satisfy the definition of independence as outlined in the exposure draft. This would also be the case if the Directors were appointed via a nomination committee of the Board.

Most industry fund trustee company shares are held by the sponsoring organisations (unions, employers association) and usually the sponsoring organisation appoints or elects the Directors to the Board. This could be considered as not being independent. However, in Catholic Super's case, the shares in the trustee company are held by the Chair on behalf of the members of the trustee not the sponsoring organisations (unions, employers association) who currently elect onto the trustee board the Directors.

In Catholic Super's case, there is no perceived conflict with the sponsoring organization or stakeholders as Directors are not appointed but elected by members and employers rather than by any sponsoring organisation. This could be considered to fit easily within the spirit underlying the new SIS definition of independence and align with the ASX principles and the CSP 510.

In summary, Catholic Super Directors:

- Are free from "direction or control" due to the fact that each is elected to the Board;
- Are not appointed by a sponsoring organisation. Each go through a nomination process that is scheduled into a ballot program and then face open election;
- Do not hold a substantial holding in the trustee;
- Do not either executives or directors with bodies that have a material relationship with the Trustee.

3. 'If not, why not' reporting

Catholic Super supports this provision.

4. Three year transition to the new requirements

Catholic Super supports this provision.