

23 July 2015



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

Dear Sir / Madam

Submission Re: Reforms to Superannuation Governance

We are pleased to provide our submission in response to the proposed legislation and regulations in relation to the governance arrangements for APRA regulated superannuation funds.

Prime Super is a “not for profit” superannuation fund and is Australia's only national superannuation and pension fund dedicated to rural and regional Australia. Through a recent merger we also provide superannuation and pension products and services to the health and aged care industries nationally, the largest employment sector in rural and regional Australia. We have approximately 125,000 members, 36,000 contributing employers and \$2.9 billion in funds under management. The trustee of Prime Super is Prime Super Pty Ltd.

As an “industry” superannuation fund that is structured in a different manner to that of the majority of industry funds we are keen to relay our comments on some of the aspects of the legislation.

The trustee, Prime Super Pty Ltd has a largely independent Board and includes one employer and one member nominated director. The current Board consists of five independent directors with extensive knowledge of agricultural, and rural and regional communities as well as the healthcare and aged care industries, plus one representative from the National Farmers Federation (being the employer representative) and one representative from the Australian Workers Union (being the member representative).

Proposed Definition of “Independent”

The proposed definition of ‘independent’ under section 87 of the draft legislation is as follows:

- (1) A person is **independent** from a registrable superannuation entity (RSE) licensee if the person:



- (a) *does not have, and is not directly associated with a person who has, a substantial holding (within the meaning of the Corporations Act 2001) in the RSE licensee, or in another entity that is a member of the same group as the RSE licensee; and*
- (b) *does not have a material relationship with, and is not employed by an entity that has a material relationship with:*
 - (i) *if the RSE licensee is a body corporate – the RSE licensee; or*
 - (ii) *if the RSE licensee is a group of individual trustees – any of the trustees; and*
- (c) *has not at any time in the last 3 years been an executive officer or director of a body corporate that has, or has at any time in the last 3 years, had a material relationship with:*
 - (i) *if the RSE licensee is a body corporate – the RSE licensee; or*
 - (ii) *if the RSE licensee is a group of individual trustees – any of the trustees.*

The Explanatory Guide to the draft legislation provides that ‘material relationships’ will likely include relationships between the RSE licensee and the following:

- standard employer sponsors;
- parent companies; and
- bodies with the right to nominate potential directors.

We also understand that APRA intends to supplement the legislative definition by setting out within *Prudential Standard SPS 510 Governance* (SPS 510) some of the circumstances that will constitute a ‘material relationship’, and specifically including relationships with material professional advisors or consultants suppliers.

We strongly support the appointment of truly independent directors to the boards of superannuation funds, and believe that the **majority** of directors on a trustee board should be independent.

Ownership Structure

In our opinion, the requirement for the appointment of independent directors does not go far enough. Our view is that the ownership structure of the Trustee company is also a key limitation to the ability of independent directors to freely exercise their powers.

The typical ownership structure of industry superannuation funds sees the Trustee company being owned 50% by employer associations and 50% owned by member associations (typically unions). The ownership structure drives the composition of the Board.

In practice, the appointment of an independent director to the Board of an industry fund occurs through a nomination and appointment process which is controlled by the incumbent directors, and is therefore subject to the existing dynamics of the Board. Therefore, the ability to appoint a truly independent director is limited by the existing directors' control and influence over the appointment process. As the term of appointment and the renewal of an appointment are subject to the approval of the employer and member nominated directors, the independent director is therefore not truly independent. These independent directors are also subject to the possibility of non-reappointment for a further term (even where appropriate) or removal from the Board at any time by the employer / member nominated directors comprising the majority of the Board.

To attain true independence, the ability to appoint and reappoint independent directors must rest with the independent directors, and not be subject to any employer or member association considerations or influence. By way of example, the typical 3/3/3 Board structure (three each of employer, member and independent directors) that is highlighted as being the ideal solution, is limited in the fact that the appointment of independent directors is typically managed through alternating employer/member nominated appointments. The independent director is subject to re-appointment by those same persons and, therefore, can never be truly independent and hold strongly diverging views from either the employer or member sponsoring association.

In the case of Prime Super, the Prime Super constitution empowers the independent directors to appoint new independent directors. The independent directors are, therefore, truly independent from both the employer and the member sponsoring organisations.

These same concerns also apply to retail funds, where directors are appointed as a result of a relationship through the owning entity. True independence can only be achieved where the independent directors are not subordinate to other non-independent parties.

Recommendations

(a) Minimum number of Independent Directors

In our view, the legislation should provide for the board of a superannuation fund to be constituted initially with at least one third independent directors, rising to at least 50% of the Board being independent in due course. This could be achieved through a staggered approach during the transition period whereby one third independent directors must be achieved by 2018, and 50% of the Board must be independent by 2019. Funds should be required to outline how they intend to achieve these targets in a transition plan to be submitted to APRA.

(b) Appointment and Removal of Independent Directors

In our view, the legislation should also provide a mechanism for the creation of truly independent directors, whereby only the independent directors have the power to:

- appoint new independent directors to the Board;
- re-appoint independent directors for a further term (where appropriate); and
- remove independent directors from the Board.

We would be happy to discuss our views further at your request.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Alan Bowman', written over the text 'Yours Sincerely'.

Alan Bowman
Chairman