WOMEN IN SUPER

Manager
Superannuation Unit
Financial System Division
The Treasury
Langton Crescent
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Via email: superannuationconsultation@treasury.gov.au

Wednesday 12th February, 2014

Dear Sir/Madam,

**BETTER REGULATION AND GOVERNANCE, ENHANCED TRANSPARENCY AND IMPROVED COMPETITION IN SUPERANNUATION**

Women in Super (WIS) welcomes the opportunity to comment on the above discussion paper, and confines its comments to issues relating to the governance of superannuation funds, the implications for maximising the retirement savings of women and the diversity of the governing bodies of superannuation funds.

## Introduction

Australia's superannuation system is ranked among the best in the world, designed to provide retired workers with a level of adequacy in income after a lifetime of work. More than 90 per cent of Australian workers have superannuation coverage[1], with the value of the system's assets as a whole equal to Australia's GDP.[2] Notably, the Australian system was recently ranked the highest of 20 countries for its 'integrity' in the 2013 *Melbourne Mercer Global Pension Index*.[3]

In the wake of a number of corporate collapses, the focus on governance practices has understandably increased, and superannuation has not evaded assessment.

A strong focus on the governance of superannuation funds is appropriate and WIS notes and supports the significant changes in the legislative and prudential provisions applying to superannuation trustees which have recently been made. These changes will significantly improve the governance of superannuation funds and the management of conflicts of interest.

A number of different models of superannuation funds exist in Australia, each with different governance models. WIS questions whether there is in fact an optimal or 'one size fits all' model

[1] Australian Bureau of Statistics, *Australian Social Trends* (March 2009), http://www.abs.gov.au/ausstats/abs@.nsf/lookup/4102.0Main+features70march%202009
[2] The Treasury, *Charter of Superannuation Adequacy and Sustainability & Council of Superannuation Custodians* (2013), http://www.treasury.gov.au/Policy-Topics/SuperannuationAndRetirement/supercharter/Report/Appendix-C
[3] Mercer, *Melbourne Mercer Global Pensions Index* (2013), http://globalpensionindex.com/2013/melbourne-mercer-global-pension-index-2013-report.pdf, 57.

appropriate for application across all funds. Indeed, the diversity of pension fund governance models globally is certainly evidence of this.

We also wish to reinforce that Government policy should focus on demonstrable outcomes and that, in terms of governance in particular, attention should be focussed on areas that have proven problematic. The Global Financial Crisis demonstrated that corporate models of governance at that time were not in fact optimal, a fact which has been reinforced by the number of corporate collapses and scandals that have occurred in the GFC's wake.

### *Equal representation*

WIS has long-supported the equal representation structure of governance in superannuation as this sector has consistently delivered better returns for its members.[4]

In Australia, the equal representation model has successfully been employed to ensure not-for-profit superannuation funds, in particular, solely benefit their members – and by having representatives from employer and employee organisations, the funds maintain a stronger awareness the needs and interests of their members.[5]

Member and Employer representative trustee directors of these funds have been independent of the management of the funds and the sponsoring organisations have no commercial interest in the business of superannuation. These directors substantially meet the ASX's definition of independence[6], as they are free from material interests in the funds on whose boards they sit, and are subject to strict conflicts of interest requirements.

Funds with equal representation boards have developed their governance arrangements in response to the growth and changed nature of the industry and availed themselves of the opportunity to appoint SIS-defined independent directors (currently nine per cent of directors, according to the disclosures made by not-for-profit funds) and have also appointed directors who are not employees or office-holders of sponsoring organisations to 'equal representative' board positions. These appointments have been made where the board and sponsoring organisations have identified a skill gap or where they otherwise consider such appointments to be beneficial to the governance of the fund and in the interests of its members.

WIS is not opposed to the appointment of independent directors should this be in the best interest of the board, the fund and its members. Each fund or board is in the best position to decide this. However, we note that seven of the top 10-ranked pension fund systems globally have requirements

[4] Funds with equal representation governance structures have averaged an annual return of 7.5%, as against an average of 6.4% in the retail sector (Chant West).
[5] Scott Donald, 'The competence and diligence required of trustees of a 21st century superannuation fund' (2009) 37 *Australian Business Law Review* 50.
[6] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (2nd Ed, 2010), Box 2.1.

for equal representation on the boards of their multi-employer pension funds, or to have at least a third of directors or trustee directors nominated by members.[7]

### *Retail governance structures*

The 'alternative' dominant governance model within the superannuation industry is that utilised by the retail sector. The norm or these boards has been the appointment of directors from the pool of employees or directors of either the parent company or an associated entity. For example, in a fund owned by a bank, many of the directors of the superannuation fund have been sourced from other areas of the bank's operations. Directors appointed from other areas of the organisations' operations have been conflicted given they have to consider their shareholders, the profitability of the associated entities and the profitability of the superannuation 'product'.

APRA research identified that '...trustees of retail funds pay significantly higher fees to related party service providers.'[8] Another concerning issue with such a governance model is that it can lack diversity of opinion and thought. It has been suggested that the appointment of too many 'professionals' or 'independents' results in a board of like-minded people with similar experiences, which creates blind spots in their decision-making and leads to 'group think'.[9] Certainly, in the past, retail boards have consisted of similarly-minded people, who have often sat on several of the parent company's boards. For example, the same group of directors has overseen the superannuation fund, the wealth division etc., and a single meeting is convened for that board to consider each of the entities it oversees. In this situation consideration of matters pertaining to the superannuation fund would be a subset of the broader considerations of the board.

### *Diversity*

We believe diversity at all levels is important – to ensure different backgrounds, opinions and perspectives are represented, as this leads to better decision-making.

Therefore, regardless of the model, it is essential that the gender diversity of superannuation fund boards is prioritised and improved. Presently, women make up approximately 20 per cent of directors across the superannuation industry.[10] This figure is marginally higher in the not-for-profit superannuation sector, where females make up approximately 23 per cent of trustee directors.[11] WIS has long-supported and encouraged the appointment of women to the boards of superannuation funds, and has worked with a number of organisations to improve gender diversity in this area through both specific programs and advocacy work. While we recognise that the superannuation industry leads corporate Australia in terms of the proportion of female directors, we acknowledge that there is still a long way to go to be truly 'representative' of the general population.

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[7] Fiona Stewart & Juan Yermo, 'Pension Fund Governance: Challenges and Potential Solutions' (2008) *OECD Working Papers in Insurance and Private Pensions*, OECD Publishing, No. 18, 6.
[8] Kevin Liu and Bruce Arnold, *Australian Superannuation Outsourcing - Fees, Related Parties and Concentrated Markets*, APRA Working Paper, 12 July 2010, 2.
[9] Scott Donald, 'The competence and diligence required of trustees of a 21st century superannuation fund' (2009) 37 *Australian Business Law Review* 50, 54.
[10] Women on Boards, *Boardroom diversity index 2013*, http://www.womenonboards.org.au/pubs/bdi/2013/superannuation.htm.
[11] Australian Institute of Superannuation Trustees, *Women on Boards – the inside story* (2012).

Some countries, for example Norway, have resorted to legal requirements for gender diversity on boards. WIS has advocated meeting a target of 40 per cent female directors on superannuation fund boards by 2017. If funds fail to meet this target WIS supports consideration of a quota, particularly where the composition of a fund's board does not reflect its membership. Without improvements in this area, half the population will continue to be inadequately represented in the governing bodies of superannuation funds.

We strongly encourage the Government to express an expectation that all superannuation funds meet minimum standards in terms of gender diversity, such as our outlined policy above of 40% by 2017, and demonstrate their commitment to achoieving gender diversity in their board renewal policy and process. WIS further supports disclosure and reporting on these issues, and encourages all funds to enhance transparency through disclosure around their governing bodies. Funds should be required to report to APRA on an 'if not why not' basis where they do not have a gender diverse board.

### *Women and superannuation*

Although men continue to retire with nearly double the superannuation savings of women, women are better-served by the superannuation system than ever before. Prior to the inclusion of superannuation in modern Awards and the introduction of compulsory superannuation, a very small proportion of women had superannuation coverage and historically many lost their superannuation when they changed employers or left a job, leaving them with only the contributions they had made themselves.

Women's lower superannuation account balances make it imperative that their investments are well managed and costs minimised to optimise the net return and growth of their superannuation balances. The governance structure that has delivered the best outcomes for female members is the equal representative model. WIS would be concerned to see fundamental changes imposed on the equal representative system when there is no empirical evidence that such changes will deliver equivalent or better outcomes in the future.

For the present cohort of female retirees, despite having limited access to superannuation, their savings have allowed them to do things in their retirements that they would not otherwise have been able to afford – such as travel or pay off mortgages.[12] However, the latest ABS figures show that around a quarter of women of 'working age' still have no superannuation.[13] In order for these issues to be properly considered and for all members' interests to be looked after, it is absolutely essential that the composition of boards in all governance models reflects the population and membership of those funds. Many women have very little money in their superannuation, and it is imperative that what they do have is well-managed so that they are able to enjoy their retirements after a lifetime of work. Evidently, governance and board composition has a role to play on this front, and we believe a board that is diverse in terms of its skills, gender and experiences will be vital in achieving the best outcomes for members.

[12] Janet de Silva & Alissa Harnath, *Super-poor but surviving: experiences of Australian women in retirement* (2011) The Australian Institute of Superannuation Trustees, 7.

[13] Australian Bureau of Statistics, *Gender Indicators, Australia* (July 2011) http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by+Subject/4125.0~Jul+2011~Main+Features~Superannuation~1230; figures are based on data collected in 2007.

In the context of the above statements, we make the following comments in response to specific questions from the discussion paper:

**Q2. What should 'independent' mean for superannuation fund trustees and directors?**

WIS notes the recent legislative and prudential changes that have enhanced the governance of superannuation funds.

The vast majority of equal representative trustee directors would satisfy the traditional ASX definition of independence and are free from relationships that could materially interfere with their judgement. The current definition of independence under s 10(1) of the *Superannuation Industry (Supervision) Act* (SIS Act) has essentially provided the boards of equal representation funds with a mechanism to appoint additional non-representative directors (up to a third with APRA approval) to enhance the operation of the board. There is evidence that these boards have increasingly exercised this discretion and that they have delivered superior returns at lower costs than has the alternate governance model. WIS would oppose dismantling of the equal representation model but would support additional flexibility for these boards to appoint up to a third of the board as SIS Act-defined independent directors, and the use of the ASX definition by APRA as additional guidance for boards appointing SIS-defined independent directors.

We are concerned that mandating further changes may adversely affect returns to members, and this must be a consideration.

Retail superannuation trustee boards would, in the past, rarely have had a majority of directors who satisfied the ASX definition of independence. Retail boards have voluntarily introduced governance changes which reduce the number of employees and parties with related directorships on these boards to a minority.

We strongly believe that the definition of independence must be the same for both public-offer and non-public offer funds, or for those funds utilising an equal representative structure and those in the retail sector. Legislation must be amended to reflect this.

**Q3. What is an appropriate proportion of independent directors for superannuation boards?**

Presently, requirements to appoint independent directors to a fund's governing body apply only to those boards with an equal representation structure. As stated above, the appropriate proportion for equal representative boards is a maximum of one third as this allows sufficient flexibility for boards to respond to their varying needs without jeopardising or compromising a model that has delivered strong returns at low cost for members. There is no need for the introduction of a requirement for equal representative boards to have a majority of independent directors as the vast majority of equal representative directors meet the ASX definition of independence - being independent of management and free from relationships that could materially interfere with their judgement.

New director appointments including the appointment of independent directors must be used to improve boards' gender diversity, and to achieve the appropriate mix of skills.

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The majority of the world's top pension fund systems utilise an equal-representative model of governance, and we therefore support the continuation of this model where the fund believes it is the most appropriate for its members.

**Q4. Both the ASX Principles for listed companies and APRA's requirements for banking and insurance entities either suggest or require an independent chair. Should superannuation trustee boards have independent chairs?**

It is important to note that while banks and insurance companies are regulated by APRA, as are superannuation funds, superannuation funds have entirely different structures to these other organisations. Superannuation funds operate as under a trust structure, with fund members being the beneficiaries, and therefore the obligations of directors or trustee directors are to those members, whereas the boards of banks and insurance companies are responsible to their shareholders. The fiduciary obligations that apply to the boards of superannuation funds are therefore not the same as those that apply to these other organisations.

The role of a chair of a superannuation fund board is therefore also different, and should not be directly compared to the role of a chair of a bank or insurance company. We believe that the appointment of a chair and the process of that appointment should be left up to the board. However, we encourage disclosure around such processes, encourage funds to consider independents amongst their candidates, and support APRA requiring that funds have an appropriate appointment process in place. The board must be able to appoint as their chair the person that is most suited to the role, and that will be the most appropriate choice in the best interests of the fund's membership.

We believe the appointment of the chair should be a decision for the board, provided the person is not an executive of the fund or a related entity, and that they do not hold a directorship of a parent company or related entity.

**5. Given the way that directors are currently appointed varies across funds, does it matter how independent directors are appointed?**

As outlined in response to question 4, we believe it is important for a fund to have an appropriate process in place for the appointment of directors, and that this process is disclosed to ensure transparency. Such a policy should not create a barrier to appointing independent directors, but should require that the board appoints the most appropriate person, having considered the board's diversity in terms of gender, skills and experiences, and that will be in the best interests of the fund's membership.

**Conclusion**

Australia's superannuation system will continue to grow and will become increasingly important in funding the retirements of Australian workers as the population ages. The governance of our system is already world-class, and this integrity must be maintained. We are confident that recent changes to governance requirements will, under APRA's supervision, be sufficient to enhance the governance of superannuation funds across the sector. The industry should be given sufficient time to implement and review these enhancements.

We caution against mandated changes that will fundamentally change the nature and operation of equal representation boards, which have been the most successful segment of the market. We believe priority should be given to ensuring there is prudent management of the currently meagre superannuation savings of women. We therefore believe the Government should use this review to set expectations regarding the gender diversity of superannuation fund boards.

Yours sincerely,

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# Appendix

### About Women in Super

Women in Super (WIS) is a national advocacy and networking group for women employed in the superannuation and financial services industries.

WIS lobbies on behalf of its members and women generally to government, politicians, unions, employer organisations, regulators, and superannuation funds to improve women's retirement prospects and access to superannuation.

WIS provides education and support to assist women in gaining opportunities to develop broader business, professional and personal networks, and aims to educate the greater community in order to improve their knowledge of superannuation. WIS strongly supports and encourages the appointment of women to superannuation fund boards, and works with other organisations and stakeholders to achieve this.

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