

CORPORATE SUPER ASSOCIATION

ABN 97 799 893 065

PO Box 508
Collins Street West VIC 8007
Tel: 61 3 8319 4075
Email: corpsuper@netspace.net.au
Website: www.corsuper.com.au

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Ms Toni Matulick
Committee Secretary
Senate Economics Legislation Committee
P O Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Matulick

SUPERANNUATION LEGISLATION AMENDMENT (TRUSTEE GOVERNANCE) BILL 2015 COMMENTS FROM THE CORPORATE SUPERANNUATION ASSOCIATION

Thank you for inviting the Corporate Superannuation Association to comment on this Bill.

BACKGROUND TO THE ASSOCIATION

Established in 1997, the Association is the representative body for large corporate not-for-profit superannuation funds and their employer-sponsors.

The Association represents a total of 25 funds controlling \$65 billion in member funds, held in a total of 695,396 individual accounts. In general, these funds are sponsored by corporate employers, with membership restricted to employees from the same holding company group, but we also include in our membership several multi-employer funds with similar employer involvement and focus.

Such funds have consistently out-performed retail and industry funds.

OUR COMMENTS

1. Board structure

The proposed compulsion for trustee boards to include a minimum of one-third independent members creates high cost for corporate funds and their members but without equivalent benefits.

The Financial Services Inquiry recommended that the measure be introduced in relation to public offer funds only and recognised that the non-public offer funds were in a different position so far as conflicts of interest and duty were concerned to that of retail and industry funds.

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2. Estimates of increased costs

One medium sized, long-established fund with \$670 million in assets and 3600 members, estimates base additional costs at \$150,000 per annum, an increase of 10% on administration fees. These costs cover only an independent chair and one additional independent director.

The actual costs are likely to be more, given APRA's approach to committees and its general view that "minimum 50% independent" is the target.

Another long-established fund, with close to \$5bn in assets, has several external directors appointed to meet the fund's needs for expertise. Increased costs of an independent chair and another independent director are approximately \$160,000; remuneration committee and audit committee members, other than the Chair, will add \$35,000 to \$40,000 per committee member.

Some existing personnel on the board and committees may not meet the proposed legislative requirements for independence, despite their value to and experience with the fund. The fund provides benefits peculiarly appropriate to the sector in which it operates, including specialist life and disability coverage difficult to obtain elsewhere.

Generally, we perceive that an independent chairman commands an estimated fee of \$100,000 per year, independent main board members \$50,000 to \$65,000, and committee members \$35,000 to \$40,000. Travel and accommodation expenses, for external directors, are additional costs. The introduction of paid board and committee members will create disparity in Boards. The disparity may also result in a push for remuneration of all boards on the grounds of equity, resulting in significant further cost increases.

We stress that our funds are not opposed to expenditure where benefits accrue to members, but our funds are appalled at the prospect of spending members' money to reduce the efficiency of the current system.

3. Context of FSI Report

Recommendation 13 in the Final Report of the Financial Services Inquiry supported the application of the independent trustee requirements to trustees of public offer superannuation entities only, and we still believe this limitation is appropriate.

We do support the appointment of independent trustees in corporate funds where the fund will benefit, but believe the decision as to the number required should be made by the trustee.

We believe the desire to streamline legislation in a "one size fits all" model may be intended to simplify regulation, but such streamlining results in inappropriate costs for corporate funds, and resulting reduction in member benefits.

4. Method of appointment and removal of directors

We do not believe that these important matters should be left to be specified in prudential standards by APRA. The legislation needs to contain these provisions stated in clear terms.

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5. Equal representation: balance amongst trustee boards

The abolition of the equal representation provisions will remove the balance between employer and employee group interests. There is a potential for a board to be dominated by a particular faction, with the one-third independent group unable to maintain a balanced view or to have an effective vote.

This is of particular concern so far as industry funds are concerned where unions have a particular interest in maintaining control over the trustee board and persons appointed to it. Retail funds typically have a trustee board that comprises a majority of "independent" directors in order to avoid the basic equal representation rules. With those rules being abolished it will be difficult to determine what changes will be made to trustee boards of retail funds.

6. Independence of directors: separate imperatives for non-public offer

In determining the requirements for "independence" for public offer entities and for employer-sponsored entities, we see very different imperatives.

7. Independence from financial conflict

The financial interests which can create conflicts in public offer funds are well addressed in the Bill. These conflicts, however, do not arise in corporate funds.

8. Independence as a source of required expertise

On the other hand, non-public offer employer-sponsored funds do benefit from the importation of additional specific skills through the appointment of chosen directors outside the employer group and the employee group.

The benefits arising do not arise because of the "independence" (as defined in the current Bill) of these persons but from the skills they bring to the trustee board. They are sought out for those skills rather than meeting some definition.

For corporate funds, service providers (external experts without other connections or interests in the fund) and directors and executive officers can bring valued supplementary skills which also draw on some familiarity with the work force and the fund's situation. Hence, the proposed independence requirements do not serve the needs of corporate funds, and do not protect their members while significantly adding to the costs those members will have to bear.

APPLICATION OF THE CURRENT BILL TO OUR CORPORATE FUNDS

1. Independence

We are in support of removal of the requirement for independent directors in corporate funds, with a facility for the appointment of one or more externally sourced directors on the basis of needs determined by the trustee.

If it is believed necessary to mandate independent resources, a separate definition of "independent" needs to be adopted for the directors/ trustees of our funds, indicating the focus on required expertise.

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2. Equal representation

We support the retention of the equal representation model for corporate funds. We believe that the Bill, in abolishing the equal representation requirements, leaves a vacuum in the composition of fund boards, with the hazard that factional imbalances will arise. The abolition of the equal representation rules and the two-thirds voting rule in respect of industry funds is problematic.

CONCLUSION

The policy intent behind the proposal is not articulated clearly. Apart from adding costs to corporate and a number of smaller industry funds, the proposal does not address any articulated policy objective.

The additional costs which are likely to arise where one-third independent directors are mandated, put at risk the ongoing viability of corporate funds. These funds deliver superior benefit design and consistently higher returns. These benefits will be lost to members if sponsors are forced by the increasing cost burden to withdraw their support from the corporate funds they have established.

Yours sincerely

Mark N Cerché
Chairman
Corporate Superannuation Association