

Ai GROUP SUBMISSION

**Senate Standing Committee on
Economics**

inquiry into the

**Superannuation Legislation Amendment
(Trustee Governance) Bill 2015**

OCTOBER 2015



About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health and other industries. The businesses we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

Ai Group is the employer shareholder in the Trustee of AustralianSuper - a leading Australian superannuation fund. This submission reflects the views of Ai Group; it does not purport to represent the views of the Australian Council of Trade Unions (ACTU) which is the other shareholder in the Trustee of AustralianSuper and which is making a separate submission to this inquiry.

Australian Industry Group contact for this submission

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Objectives of the Bill

Ai Group supports the Government's objective of requiring APRA-regulated funds to have at least one-third independent directors and the intention of the Superannuation Legislation Amendment (Trustee Governance) Bill 2015 as expressed by the former Assistant Treasurer in his Second Reading Speech of 16 September 2015 in which he said the Bill was intended to "modernise board requirements to help ensure that directors with the best experience and expertise are represented on superannuation trustee boards, enhancing decision making and producing better outcomes for fund members."

Ai Group believes that the requirement to have one-third independent directors, if introduced and administered in an appropriate way, could build on and accelerate the gradual trend towards a greater proportion of independent directors on superannuation boards. We believe that this will further strengthen the governance of funds such as AustralianSuper and enable it to maintain its leading role in the Australian superannuation industry.

Definition of Independent

While in principle we support the Government's objective of requiring APRA-regulated funds to have at least one-third independent directors, we have a number of concerns with some of the provisions of the Bill.

- In particular, the way the Bill defines an "independent" director appears overly restrictive and in contrast with the stated intention of the Bill, may inhibit the appointment of the best available directors to the Boards of APRA-regulated funds.
- Further, the restrictive definition, along with the proposed requirement that Board Chairs be independent, may also prevent the appointment of the best person to Chair the Board.

Section 87(1)(c)(ii)

Section 87(c)(ii) prescribes that a person would not be independent if they were "a director or executive officer of a body corporate that is related to the RSE licensee".

This provision would appear to put at risk a person's status as an independent director if, for example, that person was appointed to a board of a subsidiary of the RSE Licensee or of a joint venture involving the RSE Licensee.

Yet there are many circumstances where it may make very good sense for a Board member of a fund to also serve on the board of a subsidiary or joint venture without this involving any conflicts of interest or creating any inhibitions against the person exercising independent judgement. It does not appear sensible that a person's status as an independent director could be jeopardised in this way and there is a clear risk that this provision could see a practice emerge where non-independent directors were more likely than independent directors to be appointed to subsidiary or joint venture boards.

Section 87(1)(f)(i)

Section 87(1)(f)(i) prescribes that a person would not be independent if they were, or had in the previous three years been, an executive officer or director of an employer-sponsor who employs 500 or more members of the fund.

The reasons for this provision are far from clear and no supporting argument is provided in relation to this specific provision in the Explanatory Memorandum.

Section 87(1)(f)(i) would be particularly restricting for large funds. For instance many large domestic business organisations would have 500 employees who were members of AustralianSuper. While many superannuation funds could benefit from having directors with current or recent managerial or board-level experience in large domestic organisations, this provision would see them regarded as non-independent.

Particularly in view of Section 87(1)(e)(i) which covers directors or officers of organisations with material business relationships with the RSE licensee, it seems very likely that there is no particular purpose that would be served by Section 87(1)(f)(i). The provision would, however, impose ongoing compliance costs or, more likely, give rise to a reticence to appoint to the boards of large funds current or recent directors or officers of domestic organisations with large numbers of employees.

Mandating an Independent Chair

Ai Group does not support the proposal to require that the Chair of a fund qualify as an independent director as defined by this Bill.

The general governance argument in support of having an independent chair is based on a very different notion of independence than the one put forward in this Bill – namely independence from the senior management.

While we agree that Chairs should not be part of the management team, we do not believe the case has been made that the best Chair for a fund would be “independent” as defined in this Bill.

Our view is that the Board should be free to determine the best person from those available to chair the Board.

Review of the Operation of the Legislation

The Bill attempts the inherently difficult task of setting out structural and relational factors that may inhibit a person acting with independent judgement in their role as a director of a fund.

A number of provisions in the Bill itself are evidence of this difficulty. Sections 87(1)(g), 87(3) and 87(4) all point to a recognition of the potential shortcomings of codification in this domain.

In view of these difficulties and to reduce the risks of harm from unintended consequences, Ai Group suggests that a facility be built into the Bill that embeds an opportunity to refine the legislation. This refinement should be informed by the experiences over the next couple of years as funds prepare for the new regime and as APRA gains insights into the operation of the provisions relating to the definition of independence.

A formal and transparent review within two years is recommended.



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