

14 October 2015

Senate Standing Committee on Economics
By email: economics.sen@aph.gov.au

Dear Committee Secretariat,

RE: Superannuation Legislation Amendment (Trustee Governance) Bill 2015

CHOICE thanks the Committee for the opportunity to provide comment on the Superannuation Legislation Amendment (Trustee Governance) Bill 2015 (the Bill).

CHOICE has been helping Australian consumers for over 50 years through both our advocacy and advice, making us the country's leading consumer organisation. With over 160,000 members, we are completely independent and accept no advertising or sponsorship. Our website www.choice.com.au is Australia's leading online hub for information and advice about consumer issues, and we also publish CHOICE magazine.

CHOICE welcomes this Bill as it will improve governance of superannuation funds. Superannuation is compulsory for all consumers and it is essential that all funds are held to high standards of governance.

Both the 2010 Super System Review and the recent Financial System Inquiry (FSI) Final Report called for minimum standards for independent governance of superannuation.¹ Broadly, the proposed legislation strikes a balance between the Super System Review and the FSI recommendations.

Requiring a minimum one third independent directors on boards and an independent chair is a sensible change that will strengthen the superannuation system for the benefit of consumers. However, some aspects of the Bill are unnecessary to achieve a stronger superannuation system.

¹ See Recommendation 13, Financial System Inquiry, Final Report <http://fsi.gov.au/publications/final-report/chapter-2/super-governance/>

Employer and member representation alongside of increased independence

The Bill removes the requirement for equal employer and member representation by repealing Part 9 (Equal representation of employers and members – employer-sponsored funds) of the Superannuation Industry (Supervision) Act 1993. In this repeal, the Bill removes the definition of member representative and employer representative as well as the basic equal representation rule. This amendment appears unnecessary to the overall aim of the Bill and would likely result in a long-term, major cultural change in the governance of industry superannuation funds.

CHOICE noted in submissions to the Super System Review in 2009, “The requirement for equal trustees (employers and employees) should be phased out over time. However it is important that the role of employees is maintained. Effective and fair management of superannuation requires a balance of professional experts and member representatives.”²

This Bill quickly removes a key structural component of superannuation governance. CHOICE proposes that the Bill could achieve the aim of increasing the number of independent trustees without completely removing the member and employer representative definitions and equal representation requirements. Such an approach would be in line with similar governance arrangements for mutual banks, credit unions and not-for-profit health funds.

Definition of independent director

In order for Independent directors to “improve decision making by bringing an objective perspective to issues the board considers” and to “hold other directors accountable for their conduct”, as envisaged by the FSI, the definition of ‘independent’ must be robust.³

CHOICE’s preference is that the definition of an independent director or trustee is clearly defined in the legislation and consistent with similar obligations for Authorised Deposit-taking Institutions (ADIs) and ASX standards. The draft Bill proposes that APRA be given the power to determine whether an individual is independent. This is a broader power than applied in similar

² CHOICE (2009), *Response to the Super System Review – Phase 2*, page 12.

³ Financial System Inquiry, Final Report <http://fsi.gov.au/publications/final-report/chapter-2/super-governance/>

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circumstances and appears to be unnecessary.⁴ APRA's role should be limited to providing guidance to regulated entities unless there is an issue of fitness or propriety of a director.

For further information about this submission please contact CHOICE via

Yours sincerely,

Erin Turner
Campaigns Manager

⁴ For example, deposit-taking, general insurance and life insurance industries may refer a question of independence to APRA for guidance but maintain the final decision.