Chapter 2

Views on the bills

2.1 The proposals in the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 (Measures No. 1 bill) and the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 (STA bill) seek to 'modernise and increase confidence within the superannuation system'; and 'strengthen superannuation trustee arrangements'.[1]

2.2 Submitters to the inquiry agreed with the overall objectives of the proposed legislation to improve member outcomes, accountability and transparency in the Australian superannuation system. However, support for the objectives of the bills notwithstanding, concern was noted regarding various provisions of the bills and whether they were the best way to ensure Australia's superannuation system has a strong foundation today and into the future.

2.3 Both regulators with oversight of the superannuation industry, the Australian Prudential Regulatory Authority (APRA) and the Australian Securities and Investments Commission (ASIC), were strongly supportive of the measures as they related to each regulator's remit and their ability to improve outcomes for superannuation members.

2.4 This chapter examines the evidence received in relation to the proposed reforms in the Measures No. 1 bill; before moving to the evidence received in relation to the STA bill.

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017

Strengthening MySuper

2.5 Since January 2014, if an individual had not chosen a superannuation fund, their employer had to pay their super to a superannuation fund that offers MySuper; and existing default superannuation funds (those chosen by an individual's employer) had until 1 July 2017 to transfer an individual's balance into a MySuper account.[2] The aim of these MySuper changes were to provide:

> …a simple, cost-effective, balanced product for the vast majority of Australian workers who are invested in the default option of their current fund.[3]

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1 Explanatory Memorandum, p. 9.

2 Australian Securities & Investments Commission, *MySuper*, https://www.moneysmart.gov.au/superannuation-and-retirement/how-super-works/choosing-a-super-fund/mysuper (accessed 11 October 2017).

3 Australian Government, The Treasury, *MySuper*, https://treasury.gov.au/programs-and-initiatives-superannuation/mysuper/ (accessed 11 October 2017).

2.6 It has been previously acknowledged that members of a MySuper product have effectively delegated the responsibility for making decisions regarding their superannuation, including the way their money is invested, to the trustee:

> The standards that a MySuper product must meet will be set out in legislation and enforced by the Australian Prudential Regulation Authority (APRA). Funds that do not operate as default funds, such as self-managed superannuation funds (SMSFs) or choice products, will not have to comply with these additional standards.[4]

2.7 The Measures No. 1 bill seeks to further strengthen all default MySuper products by replacing the current 'scale test' in the law with a broader 'outcomes test' to all registrable superannuation entities (RSE) licensees who offer a MySuper product:

> It will achieve this by introducing a requirement for trustees to undertake a stronger, broader annual assessment of their MySuper product outcomes to ensure they are promoting the financial interests of MySuper members with almost 15 million accounts across the system.[5]

2.8 APRA confirmed during a committee hearing that the broadened 'outcomes test' would 'apply equally to all funds that offer MySuper products'. As at June 2016, there were 115 MySuper products across the superannuation industry including 46 MySuper products offered by retail funds; 43 MySuper products offered by industry funds; 15 MySuper products offered by corporate funds; and 11 MySuper products offered by public sector funds.[6]

2.9 The amendments would require each trustee of a regulated superannuation fund to make an annual determination, in writing, as to whether the financial interests of the members in the MySuper product are being promoted by the trustee, having regard to a range of factors. This determination would follow a two-step process:

- The trustee makes an assessment of its MySuper product taking into consideration a range of matters (for example, whether the options, benefits and facilities offered under the MySuper product are appropriate to those beneficiaries), including any matter prescribed in the regulations; and
- The trustee compares their MySuper product against other MySuper products using specified comparable metrics (for example, the fees and costs that affect the return of the beneficiaries holding the MySuper product).

2.10 The determination, together with a summary of the assessment and comparison on which the determination is based, are then to be made publically

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4 The Hon Bill Shorten MP, Stronger Super–Government Response to the Super System Review, 16 December 2010.

5 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, *Senate Hansard*, 14 September 2017, p. 7311.

6 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, *Senate Hansard*, 14 September 2017, p. 7311.

available on the superannuation fund's website within 28 days of the determination being made.

2.11 While some submitters were supportive of the amendments to replace the 'scale test' with the 'outcomes test', stakeholders queried whether the test should apply to all superannuation products; what value it would add; and whether it could be improved.

Applying the 'outcomes test' to all superannuation products

2.12 Whilst supporting the need for the broadened 'outcomes test' for default MySuper products, a number of submitters suggested a more fundamental change to the existing law to apply the strengthened MySuper test to non-default, choice products.[7]

2.13 In evidence before the committee, Industry Super Australia (ISA) confirmed that:

> ….there is a need to have an outcomes test for MySuper products. There has been some concern that the existing arrangements around a scale test for MySuper have been ineffective, and we tend to agree with that.[8]

2.14 However, the Australian Institute of Superannuation Trustees (AIST) expressed concerns that the proposed outcomes test does not apply to choice superannuation products. AIST argued that as the objective of the 'outcomes test' is to improve outcomes across the superannuation system, it should therefore apply to choice products, particularly, due to the fact that choice products have a greater degree of complexity.

2.15 ISA agreed with AIST, and proposed that:

> The stated purpose of the proposed outcomes test, which would replace the scale test, is to strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering. This objective should equally apply to all superannuation products. Determining that a superannuation product is appropriate should not be limited to MySuper products.[9]

2.16 Treasury addressed this issue, noting that MySuper products often involve additional obligations on a trustee compared with other types of superannuation products.[10] Mr Beckett explained that:

> This was an explicit decision under the former government that came out of the Cooper review. It reflected a view that default products were often held

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7 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7311.

8 Mr Matthew Linden, Director of Public Affairs, Industry Super Australia, *Proof Committee Hansard,* 10 October 2017, p. 64.

9 Industry Super Australia, *Submission 8*, p. 3.

10 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

> by disengaged members and that they warranted a higher standard of consumer protection. The basic framework is that we impose some design restrictions and some fee restrictions on MySuper products in terms of the fact that it's generally a single product and a single investment strategy and there are requirements on fees.[11]

2.17 Further, in his Second Reading Speech, the Assistant Minister to the Prime Minister, Senator James McGrath explained that:

> On 11 August this year, APRA wrote to all RSE licensees to advise that it intends to consult on a proposal to apply an outcomes test to all products, not just default MySuper products. As with the MySuper outcomes test, this would include consideration of net investment returns, expenses and costs, insurance, and other benefits and services provided to choice members.
>
> The Government believes this is an efficient means through which the choice sector can be strengthened for the benefit of members and agrees with APRA's proposal and expects it to be implemented.[12]

2.18 APRA confirmed with the committee that it will implement an 'outcomes test' for all superannuation products including non-default choice products, through prudential standards to:

> …ensure that the same outcomes assessment approach is applied across the board, whether it's a MySuper product or a choice product or a non-MySuper product.[13]

The value of the 'outcomes test'

2.19 APRA also confirmed during the committee hearing that that this approach would mean that 'standards and outcomes for members will be lifted across the entire APRA regulated industry'[14] as 'prudential Standards have the force of law in the same way as legislation and regulation'.[15] This was also supported by Treasury:

> …the structure of legislation means it's very difficult. In part the way these products operate, the diversity, the lack of consistent reporting at this stage means it's not very difficult to do it in the law. But what APRA is proposing

11 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

12 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7311.

13 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 87.

14 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 88.

15 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 90.

> to do is achieve a commensurate outcome simply by using a different approach.[16]

2.20 The Association of Superannuation Funds of Australia (ASFA) also suggested that the 'outcomes test' would not be beneficial to members as it would duplicate the information that is already available in the MySuper dashboard, increasing the reporting burden that already exists.[17] ASFA also contended that members may find the assessments confusing or potentially misleading as they are primarily designed to satisfy APRA and its requirements.[18]

2.21 While supportive of improving the current 'scale test'; some submitters expressed concerns that the proposed 'outcomes test' is not primarily focussed on net returns. For example, Ms Volpato of AIST submitted that 'net returns should be the primary factor in judging the selection of default funds',[19] and Mr Linden from ISA commented:

> We are concerned that the outcomes test does not have a primary focus on net returns. Ultimately, that's the money which people will retire on and which, in the long term, will reduce taxpayers' exposure to the age pension. So the MySuper outcomes test is there. We think it could be improved.[20]

2.22 With respect to the intent of the new 'outcomes test', the Assistant Minister to the Prime Minister, Senator James McGrath clarified its purpose was to deliver greater transparency and strengthen trustees' existing primary obligation to promote the financial interests of MySuper members, including through net returns by requiring trustees to:

> …publicly release their determination of whether or not they are promoting the financial interests of members and a summary of the assessment and comparisons that lead to the determination… These changes will ensure that trustees, who have a fiduciary obligation to regularly assess the quality of their MySuper offering; the findings are transparent and address any weaknesses that they identify.
>
> To be clear, the 'outcomes test' will not weaken or lessen a trustee's primary obligation to promote the financial interests of their MySuper members, including through net returns – it will strengthen it. [21]

16 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 83.

17 Association of Superannuation Funds of Australia, *Submission 28*, p. 3.

18 Association of Superannuation Funds of Australia, *Submission 28*, p. 3.

19 Ms Karen Volpato, Senior Policy Adviser, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October, 2017, p. 67.

20 Mr Matthew Linden, Director of Public Affairs, Industry Super Australia, *Proof Committee Hansard*, 10 October 2017, pp. 64–65.

21 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7311.

2.23 In evidence before the committee, Mr Beckett of the Treasury also explained that:

> What drives relative performance is investment returns, which reflects investment strategy, fees, tax and issues like that. That can be driven by different things. I think funds can have different investment strategies. In some ways, that can reflect different liquidity requirements and different types of inflows—more stable inflows. Those are the types of things that may cause funds to be able to undertake different types of investment strategies and achieve different outcomes.[22]

Enhancing APRA's capabilities

2.24 The Measures No. 1 bill amends the law to give APRA more discretion over the authorisation and cancellation of authority to offer a MySuper product;[23] and the power to reject a change in the ownership of a corporate trustee[24]. These changes were welcomed by APRA[25] and broadly supported by submitters to the inquiry.

2.25 The Measures No. 1 bill also gives APRA the power to:

- issue a direction to an RSE licensee, and take protective or corrective action, where APRA has prudential concerns or if it is concerned that a fund is not acting in the best interests of the members;[26] and
- make reporting standards that require the RSE licensee to report expenses relating to investments of an RSE on a look through basis.[27]

2.26 APRA was also strongly supportive of these reforms as they related to its remit as a regulator, and their ability to improve outcomes for superannuation members. However, some stakeholders cautioned that the expansion in APRA's powers may weaken prudential regulation and increase the reporting burden on superannuation funds. These issues are examined below.

Directions power

2.27 The Measures No. 1 bill harmonises the directions powers across the banking, insurance and superannuation industries, by enabling APRA to intervene at an early stage to address prudential concerns in a manner that ensures actions undertaken are in the best interests of members.

2.28 The amendments provide APRA the power to give a direction to:

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22 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 82.

23 Explanatory Memorandum, p. 3.

24 Explanatory Memorandum, p. 4.

25 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 86.

26 Explanatory Memorandum, p. 5.

27 Explanatory Memorandum, p. 7.

- an RSE licensee where it has concerns about one of the RSE licensee's connected entities which raise prudential concerns and/or a connected entity of the RSE licensee directly; and
- an acting RSE licensee in circumstances in which that direction can be made.

2.29 Under the proposed amendments an RSE licensee will commit an offence if it contravenes a direction from APRA. The offence is a strict liability offence subject to a penalty of 100 units (currently $21 000) which is consistent with the current penalty for breach of a direction by an acting trustee.[28]

2.30 AIST was broadly supportive of the proposed expansion of APRA's powers, noting that APRA should be able to intervene if it considers that a particular action might result in consumer harm. AIST also expressed concerns, however, with the definition of a 'connected entity' in the bill. AIST stated that:

> …the relevant definition of a 'connected entity' within the bill and as utilised in the bill would not have application to related party service providers which existed under a common corporate parent. That's relevant because that's the most common structure that you'll see in the retail for-profit sector, so those powers to intervene would appear to be not effective in those circumstances, and we think that they should be.[29]

2.31 However, Treasury and APRA both provided clarifications that addressed the concerns expressed by the AIST in relation to the definition of a 'connected entity' and the structures they believed to be common in the retail for-profit sector.

2.32 Treasury explained that APRA would have strong directions powers in relation to trustees in all sectors: retail, corporate, or industry; and clarified that:

> APRA's prudential powers apply to trustees and connected entities, which are defined as subsidiaries. The reason they don't apply more broadly in this case is due to a constitutional limitation. That's why it was structured that way under the past Labor government and that's the reason it's limited in that way. As a reality, APRA would direct a trustee to do something. It can do that in any sector. In some ways, the connected entity would be a very rare fallback position. It would direct the connected entity, if necessary, to do something rather than direct a trustee to do something else. I don't believe it would make material difference to the effectiveness of the legislation.[30]

2.33 APRA confirmed that under their supervision, 'assuming that the related party within a corporate group is under another APRA regulated entity, then to the degree we have concerns we might have that avenue to address it if the trustee didn't address it.' Mrs Helen Rowell of APRA also noted that:

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28 Explanatory Memorandum, p. 56.

29 Mr Matthew Linden, Director of Public Affairs, Industry Super Australia, *Proof Committee Hansard*, 10 October 2017, p. 65.

30 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 84.

> …the primary focus is to get the trustee to address the issue in the first place, and that is how we would expect to achieve outcomes on 99.9 per cent of occasions.[31]

2.34 Some submitters also raised concerns about the threshold required to be satisfied to issue a direction. For example, noting that proposed subsection 131D(1) permits APRA to give a direction to an RSE licensee if APRA 'has reason to believe' that one of the criteria in paragraphs (a) through (j) is satisfied, the Australian Institute of Company Directors (AICD) submitted that:

> To ensure that this power has some appropriate checks and balances in place, the AICD recommends amending s 131D(1) of the Bill so that APRA is only empowered to act when it 'reasonably believes' one of the criteria has been satisfied. This requirement contains both an objective element (was the belief reasonable) and a subjective element (APRA did actually believe it). The AICD also is concerned that a number of the criteria in paragraphs (a) through (j) are diluted by phrasing such as the RSE Licensee being 'likely to' contravene, or that there 'might be' a material risk or material deterioration.[32]

2.35 Dr Scott Donald, Deputy Director of the Centre for Law, Markets and Regulation at UNSW Law, also provided evidence about the exclusion in the proposed legislation of a requirement that APRA's response to a situation be directed towards or proportionate to the risks or potential costs of the situation. He explained:

> Relevance and proportionality are important qualities of any regulatory scheme. Limiting the directions power to crisis situations would partly address this concern, but such circumscription would reduce the capacity of APRA to employ a proportionate response to less severe situations, and so some express requirement that the direction be crafted and calibrated to address the specific risk or harm would be preferable.[33]

2.36 ASFA also raised concerns that the proposed directions powers to be given to APRA are too broad.[34] Indeed, in its submission to the inquiry ISA considered the expansion of APRA's powers, noting that:

> The breadth of the expansion, the sensitivity of the powers to discretion, and the fact that some of the powers are not prudential in nature mean that the powers could achieve both good outcomes as well as bad ones, with little public safeguards to ensure the former. As a result, the proposals are not without risks.[35]

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31 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 90.

32 Australian Institute of Company Directors, *Submission 21*, p. 5.

33 Dr Scott Donald, *Submission 24*, [p. 5].

34 Dr Martin Fahy, Chief Executive Officer, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 48.

35 Industry Super Australia, *Submission 8*, p. 11.

2.37 The committee sought evidence from APRA regarding these concerns and they explained that the new directions power is similar to the directions power that they currently have for other APRA-regulated industries. APRA's Deputy Chairman, Mrs Helen Rowell, described the new powers as a 'reserve power' which would be used rarely, and that 'in practice, provides sufficient impetus for issues that [APRA] raise[s] to get addressed without us having to actually resort to using the directions power'.[36]

Reporting standards

2.38 The Measures No. 1 bill amends the *Financial Sector (Collection of Data) Act 2001* (FSCODA) to provide APRA with the ability to obtain information on expenses incurred by the RSE and RSE licensees in managing or operating the RSE.[37] Specifically, it gives APRA the power to make reporting standards that require the RSE licensee to report expenses relating to investments of an RSE on a look through basis.[38]

2.39 These measures are aimed to ensure greater transparency, in that members and APRA alike will be able to more easily access information relating to how superannuation funds are spending members' money.[39]

2.40 APRA noted that the proposal to permit them to collect additional data about expenditure on a look-through basis will address deficiencies and inconsistencies in the information that is currently reported to APRA; and that it will also provide additional transparency on the ultimate purpose and destination of payments than is currently available.[40]

2.41 Stakeholders also brought to the committee's attention reporting requirements with which superannuation funds currently need to comply (such as, *ASIC's Regulatory Guide 97: Fee and cost disclosure* (RG 97)), and questioned the usefulness of the additional requirements. For example, ASFA commented that this measure had the potential to increase the reporting burden on superannuation funds and noted that funds are currently adjusting for the introduction of the RG 97 regime as well as producing the annual statistical returns and quarterly returns, which is information placed in the public domain. Dr Martin Fahy explained that:

> Our concern is not about transparency and disclosures per se. That's how the market for ideas works. What we are concerned about is the level of granularity and its usefulness. Is a particular level of granularity useful to a

36 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 88.

37 Explanatory Memorandum, p. 7.

38 Explanatory Memorandum, p. 113.

39 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7313.

40 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 86.

> fund member? We have concerns that it wouldn't be, because they are already overwhelmed.[41]

Director penalties

2.42 The Measures No. 1 bill amends the SIS Act to impose civil and criminal penalties on directors of RSE licensees who fail to execute their responsibilities to act in the best interests of members, or who use their position to further their own interests to the detriment of members.[42] As noted in Chapter One, these measures are proposed in response to concerns raised in the Financial System Inquiry (FSI), which the government accepted in 2015.

2.43 Currently trustees do not face civil or criminal penalties for breaching their duties, and this bill aims to:

> …strengthen the accountability of trustee directors by making them subject to civil and criminal penalties for breaches of their fiduciary duties.[43]

2.44 The proposed measures provide for a maximum penalty of five years jail for serious misconduct; and a maximum of $420 000 in civil penalties per director.

2.45 These measures were broadly supported by submitters to the inquiry who commented that, in principle, this reform is a positive step that seeks to discourage poor practices.[44]

2.46 Mr Beckett, Principal Adviser, Retirement Income Policy Division of the Department of the Treasury explained that the measures have been drafted to impose similar criminal and civil penalties on directors of managed investment schemes who have a fiduciary duty to members, as is provided for under the *Corporations Act 2001*. Mr Beckett also drew the committee's attention to the fact that the criminal and civil penalties proposed in the Measure No. 1 bill stem directly from Recommendation 13 of the FSI report.[45]

2.47 ISA, Mercer and the Law Council of Australia also commented that this schedule would expose superannuation trustee directors to greater risk of personal liability than other directors in Australia.[46]

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41 Dr Martin Fahy, Chief Executive Officer, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 48.

42 Explanatory Memorandum, p. 4.

43 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7313.

44 See for example Industry Super Australia, *Submission 8*, p. 15; Financial Planning Association of Australia, *Submission 20*, p. 1; Australian Institute of Company Directors, *Submission 21*, p. 7; SMSF Association, *Submission 32*, p.2; Australian Institute of Superannuation Trustees, *Submission 34*, p. 4.

45 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 84.

46 Industry Super Australia, *Submission 8*, p. 15; Mercer, *Submission 16*, [p. 1]; Law Council of Australia, *Submission 37*, p. 7.

2.48 The AICD supported the objective of the director penalties measures proposed in the Measures No. 1 bill; however, noted its concern that the measure 'goes beyond equivalence' because:

- there is already a mechanism in the SIS Act to hold RSE Licensee directors directly accountable to members with the leave of the court by virtue of the covenants imposed by section 52A of the SIS Act In addition, APRA can cause civil proceedings to be commenced in the name of a person if, after investigation, the proceedings appear to APRA to be in the public interest (section 298 of the SIS Act). The Bill anticipates that the SIS Act will contain two parallel systems for holding RSE Licensee directors accountable but does not address the consequences of that co-existence, most notably for a member-initiated suit which follows an APRA prosecution.
- The considerable information advantage that APRA will have as a result of the directions power would enable the regulator to acquire and use information that would not ordinarily be available under discovery in a litigation context, or to ASIC under its existing investigatory powers. These powers have been carefully calibrated over time to ensure they are balanced and fair, and accord with principles of justice and the rule of law. The analogous regime administered by ASIC with respect to responsible entities contains a carefully calibrated set of checks and balances to ensure that it cannot abuse its position as regulator in prosecutions. The requirement that the government be a model litigator is another manifestation of this concern that the coercive powers of the state not be abused.[47]

2.49 ASFA also questioned whether the proposed penalties for directors would have adequate protections, and suggested that there ought to be statutory defences available which reflect the common law defences.[48]

Portfolio holdings disclosure

2.50 The Measures No. 1 bill amends the Corporations Act to refine the requirements for RSE licensees to make their portfolio holdings publically available.[49]

2.51 The purpose of these amendments is to ensure that superannuation fund members, and others including financial analysts, have access to publicly available information about the portfolio holdings of superannuation funds, while minimising the compliance burden on RSE licensees. Under the proposed provisions, superannuation funds will be required to disclose on a semi-annual basis:

- investments (down to the underlying asset) that they hold directly or through associated entities; and
- their initial investments into non-associated entities.

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47 Australian Institute of Company Directors, *Submission 21*, p. 7.

48 Australian Superannuation Funds of Australia, *Submission 28*, p. 2 and pp. 4–5.

49 Explanatory Memorandum, p. 5.

The aim of these measures is to ensure Australia's superannuation system remains consistent with international best practice.[50]

2.52 Amendments are made to the existing public holdings disclosure obligations in the Corporations Act. Two important changes to the obligations are the removal of:

- the obligation to include information about financial products, or other property that non-associated entities have directly invested in; and
- the reporting obligations on parties to contracts and arrangements that acquire a financial product using the assets, or assets derived from assets, of an RSE.[51]

2.53 Mr Beckett from the Treasury explained that generally, RSE licensees in the retail, corporate, industry or government sectors will be required to disclose underlying financial assets on an option by option basis. He specified that this would apply to direct holdings and holdings through related entities, however, it would not apply to non-associated entities. Mr Beckett explained that the proposed portfolio measures were:

> …making the arrangement more manageable for superannuation funds by saying you go down to the financial product level for each option in terms of direct and associated holdings but you stop at the first non-associated entity level in respect of non-associated entities. That's the level at which you disclose, and there will be regulations saying exactly how that's done, and it will happen twice a year.[52]

2.54 While stakeholders supported the portfolio holdings disclosure measures, and agreed that they would improve transparency and assist consumers to better understand and compare super products in relation to direct holdings and holdings through related entities;[53] the majority of submitters expressed concerns that the measures will not apply to non-associated entities and thereby reduce the obligations of such entities.

2.55 ISA and the Australian Council of Trade Unions (ACTU) noted their concerns that the portfolio holdings disclosure measures would amend current requirements so that the disclosure requirement does not apply to choice products that contain multiple investment options (an intrinsic feature of choice products).[54] The ACTU also noted that a superannuation fund which invested its assets in a pooled superannuation trust (which was not a connected entity) would not be required to disclose its portfolio

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50 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7314.

51 Explanatory Memorandum, p. 78.

52 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

53 See for example, Australian Institute of Superannuation Trustees, *Submission 34*, p. 26.

54 Industry Super Australia, *Submission 8*, p. 21; Australian Council of Trade Unions, *Submission 9*, p. 2.

holdings.[55] In addition to raising concerns about the reduced obligations for non-associated entities, AIST suggested that there was a need for consistent disclosure methodology reporting.[56]

2.56 However, in evidence before the committee, Treasury confirmed that there is no platform carve-out in the portfolio holdings disclosure provisions; and that they apply equally to platforms and other structures.[57]

2.57 ASFA also expressed concerns about the protection of confidential information about commercially sensitive assets and the effect this may have on disclosure and application for relief to ASIC (where asset values exceeds 5%).[58] They also raised concerns about the proposed 31 December 2018 commencement date of the portfolio holdings measures, arguing that:

> Given the time it will take to consult on the content of the regulations, some of which is highly complex, the 2018 target will not give our members enough time to make the necessary system changes. [59]

Annual members' meetings

2.58 The Measures No. 1 bill proposes to amend the SIS Act to require RSE licensees to hold annual members' meetings (AMMs)[60] to discuss key aspects of the fund and provide members with a forum to ask questions about all areas of the fund's performance and operations.

2.59 To provide flexibility and minimise compliance costs, trustees will have the option to hold AMMs electronically.[61]

2.60 Submitters broadly supported the principle of the amendments to increase member engagement. In particular, CHOICE said that they were pleased to see 'the attention on increasing member engagement with superannuation funds…through annual members meetings'.[62] However, CHOICE also noted that an AMM may not be the most productive or efficient way of achieving this outcome, noting that:

> …in principle an AMM is a positive step towards better member engagement, but greater thought could be given to how these meetings could empower members.[63]

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55 ACTU, *Submission 9*, p. 2.

56 Australian Institute of Superannuation Trustees, *Submission 34*, p. 24.

57 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

58 Association of Superannuation Funds of Australia, *Submission 28*, p. 6.

59 Association of Superannuation Funds of Australia, *Submission 28*, p. 6.

60 Explanatory Memorandum, p. 6.

61 Explanatory Memorandum, p. 90.

62 Mr Alan Kirkland, Chief Executive Officer, CHOICE, *Proof Committee Hansard*, 10 October 2017, p. 25.

63 CHOICE, *Submission 26*, pp. 7–8.

2.61 ISA indicated their support for AMMs, noting that the Review into the Board Governance of Not-for-Profit Superannuation Funds conducted by Mr Bernie Fraser recommended regular member meetings.[64]

2.62 A number of submitters including ISA, Mercer, ASFA and AMP[65] also contended that introducing AMMs would involve significant costs and fund resources. These submitters noted that they considered the costs involved to be in excess of the estimated costings put forward in the explanatory materials to the bill.[66] ASFA also contended that there 'could be a better and more cost effective mechanism to address concerns about member engagement'.[67]

2.63 AIST also considered that superannuation funds should have the flexibility to determine how they engage with their members.[68] AICD further stated that the AMM measures in the Measures No. 1 bill are too prescriptive.[69] Dr Scott Donald also cautioned that the proposed AMM measures may not achieve their desired objective.[70]

2.64 Some submitters also raised concerns about the way the legislation has been drafted, noting that in its current form, it appears as though all defined benefit plan actuaries would be required to attend AMMs. ANZ recommended that the requirement be that only one actuary attend.[71] Mercer explained that:

> On our reading, the draft legislation would require every actuary to attend the AMM, which would clearly be impractical as well as costly.[72]

Committee view

2.65 The committee believes that the broader 'outcomes test' will deliver transparency and promote the interests of MySuper members. The committee acknowledges concerns expressed by submitters that choice superannuation products are not subject to the same test. However, the committee also notes that there has always been a higher standard for MySuper products given it protects default money. Despite this, the committee notes that APRA is currently consulting on a proposal to apply an 'outcomes test' to all products, not just default MySuper products. The

64 Industry Super Australia, *Submission 8*, p. 21.

65 Industry Super Australia, *Submission 8*; Mercer, *Submission 16*; ASFA, *Submission 28*; AMP, *Submission 20*.

66 Association of Superannuation Funds of Australia, *Submission 28,* p. 4.

67 Mr Glen McCrea, Chief Policy Officer, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 48.

68 Australian Institute of Superannuation Trustees, *Submission 34*, p. 28.

69 Mr Matthew McGirr, Policy Adviser, Australian Institute of Company Directors, *Proof Committee Hansard*, 10 October 2017, pp. 53–54.

70 Dr Scott Donald, *Submission 24*, p. 6.

71 ANZ, *Submission 1*, p. 1.

72 Mercer, *Submission 16*, p. 16.

committee is of the opinion that this is the most efficient means through which the choice sector can be strengthened for the benefit of members.

2.66 The committee is focussed on ensuring Australia's superannuation system delivers outcomes for members first and foremost; and believes that Australia needs a stronger regulatory framework to protect members' money and interests. The committee notes that the measures proposed in the Measures No. 1 bill to enhance APRA's capabilities, harmonise the directions powers across the banking, insurance and superannuation industries. The committee is of the opinion that strengthening APRA's direction powers will enable early stage intervention to address prudential concerns in a manner that prevents against consumer harm. The committee acknowledges submitters concerns about the breadth of APRA's new powers, however, the committee notes that the new directions powers are similar to the directions powers they have for other APRA-regulated industries. Indeed, the committee is of the view that further circumscription of the directions powers has the potential to reduce the capacity of APRA to employ a proportionate response to less severe situations.

2.67 The committee recognises that a compulsory superannuation system needs to be transparent and accountable for the way it spends members' money. The committee considers that by enabling APRA to make reporting standards that require funds to provide detailed expense information about their operations and management will give consumers much needed transparency, and both consumers and APRA alike, a better understanding of how funds are spending members' money. The committee is cognisant that superannuation funds are currently required to comply with other reporting requirements and notes stakeholder concerns about the impact of the proposed additional reporting requirements. However, in the committee's view the additional reporting requirements will address deficiencies and inconsistences in the information that is currently reported to APRA and provide additional transparency.

2.68 The committee welcomes stakeholders in principle support for the measures which strengthen the accountability of trustee directors by making them subject to civil and criminal penalties for breaching their fiduciary duties. The committee also notes that the director penalties provisions of the Measures No. 1 bill implement a recommendation of the Financial System Inquiry, which the government accepted in 2017. The committee acknowledges concerns raised by submitters about the exposure of directors and safeguards, however, notes that the proposed measures would impose similar civil and criminal penalties as those on directors of managed investment schemes who have a fiduciary duty to members under the Corporations Act.

2.69 The committee believes that Australia's superannuation system is among the best in the world; and that the proposed changes to portfolio holdings disclosure will ensure that Australia's superannuation system remains consistent with international best practice. The committee notes that while stakeholders supported the portfolio holdings disclosure measures, and agreed that they would improve transparency and assist consumers to better understand and compare super products in relation to direct holdings and holdings through related entities; concerns were raised about the fact that the measures will not apply to non-associated entities and thereby reduce the obligations of such entities. The committee notes evidence that there is no platform

carve-out in the portfolio holdings disclosure provisions; and that they apply equally to platforms and other structures, and importantly, will apply to all RSE licensees, in all sectors: retail, corporate, industry or government.

2.70 The committee believes that increased member engagement with their superannuation fund is an important part of ensuring accountability in the industry. The committee acknowledges that the new requirements to hold annual members meetings will impose additional costs on superannuation funds. However, the committee notes that the proposed changes allow superannuation funds to hold annual member meetings electronically, providing flexibility and minimising compliance costs. With respect to confusion among stakeholders surrounding the current form of the legislation requiring actuaries to attend annual members meetings, the committee encourages re-examination of the provisions to ensure they will operate as intended.

Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

2.71 The STA bill implements the intent of two major independent reviews of Australia's financial and superannuation systems: the 2010 Super System Review (Cooper Review) and 2014 Financial System Inquiry (FSI). Both reviews recommended the need for independent directors on all superannuation boards. Both Chairmen of these reviews, Mr Jeremy Cooper and Mr David Murray AO, provided evidence to the committee confirming their continued support for the need for independent directors on all superannuation fund boards and support for the measures in the STA bill to be implemented.

2.72 The reforms are designed to strengthen the governance arrangements across the entire superannuation industry by facilitating more diversity and skills and strengthening conflict management.[73] To achieve this, the STA Bill introduces a requirement for RSE licensees to have at least one-third independent directors and for the Chair of the Board of directors to be one of those independent directors as well as an independent Chair.[74] The evidence received in relation to these proposed measures is discussed below.

Support for a consistent definition of 'independent'

2.73 The STA bill introduces a definition of 'independent'[75] and gives APRA the power to determine whether an individual satisfies the legislated definition of independent.[76]

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73 The Hon Kelly O'Dwyer MP, Media Release, *Turnbull Government puts super members first*, 14 September 2017.

74 STA Bill, Schedule 1. It also amends the *Governance of Australian Government Superannuation Schemes Act 2011* to subject civilian and military superannuation schemes to these same standards. See: STA Bill, Schedule 2.

75 STA Bill, Schedule 1. The proposed definition of 'independent' is set out in section 87 of the bill.

76 STA Bill, Schedule 1. The proposed definition of 'independent' is set out in section 88 of the bill.

2.74 Under this new definition, individuals who would not be considered independent includes those who are substantial shareholders of the RSE licensee, or who have had a material business relationship with the RSE licensee within the last three years, or who have served as a director or executive officer of the RSE licensee.[77]

2.75 The majority of submitters to the inquiry supported the introduction of a consistent definition of 'independent'.

2.76 For example, Mr David Murray AO believed, 'this is black and white. It should be very clear what the expectations on independents are'.[78]

2.77 The Financial Services Council also supported the introduction of a consistent definition, noting that the SIS Act 'does not effectively deal with a range of potential conflicts that arise in different types of superannuation funds, including retail, industry, corporate and public funds'.[79]

2.78 However, in considering the definition of 'independent' proposed in the STA bill, some stakeholders suggested alternative constructions based on more discretion for trustees to determine the meaning of 'independence'.

2.79 ASFA supported the proposed requirement for superannuation trustees to have one-third independent directors but noted that under the proposed definition:

> …a large cohort of very qualified people who currently work in the sector, work in financial services, would be excluded by the current definition—and we think to the detriment of the overall system.[80]

2.80 ASFA also suggested that the definition of 'independent' that should apply is the definition that currently exists within the wider corporate governance requirement of the ASX, tailored to the reality of superannuation funds. Dr Martin Fahy explained:

> What that would do is not only give us consistency across the wider corporate-governance environment but also ensure that people who are currently defined as independents for that purpose would also be in a position to bring their skills and experiences to bear on the superannuation sector.[81]

2.81 As noted above, APRA will be given the role of determining whether a director is independent. Professor Graeme Samuel AC, who conducted the review of

77 Explanatory Memorandum, p. 11.

78 Mr David Murray AO, *Proof Committee Hansard*, 10 October 2017, p. 2.

79 Financial Services Council, *Submission 30*, p. 6.

80 Dr Martin Fahy, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 46.

81 Dr Martin Fahy, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, pp. 45–46.

Cbus and its governance in 2015, agreed that APRA would be well qualified to identify who is an independent director.[82]

2.82 Mrs Helen Rowell, Deputy Chairman of APRA explained to the committee that there would be a 'degree of judgement and flexibility around how those provisions would be interpreted in practice'. She further noted that an assessment of a director's independence would initially be made by the trustees themselves and that they would then consult APRA:

> They may consult with us on that but primarily the onus for those sorts of decisions is, in the first instance, with the trustee. We would expect them to look at the materiality of the particular relationship and whether it precluded a view that they were independent or not.
>
> If an RSE licensee determines that an individual does not meet the definition as set out in the legislation, however, still deems that the individual is sufficiently independent of the RSE licensee, the case can be taken to APRA for determination.[83]

The value of independence

2.83 As noted above, the STA bill implements recommendations made by the FSI and the Cooper Review. It proposes to introduce new trustee arrangements to require RSE licensees to have at least one-third independent directors and for the Chair of the Board of directors to be one of these independent directors.

2.84 Mr David Murray AO, who led the FSI, commented that:

> When a governing body sits to serve the interests of the people it's meant to serve, it shouldn't be constrained by peripheral interests. That's why, in my view, independence is very important—independence from the executive and independence from peripheral interests.[84]

2.85 Mr Jeremy Cooper, who led the Super System Review agreed that independent directors on the boards of superannuation funds would provide better governance in the industry.

> I think there's an abundance of evidence that independence is a good thing.[85]

2.86 Professor Graeme Samuel AC also pointed out the value of independent directors, commenting that:

> …independent directors can be very, very important, because if they have got the right quality and the right skills and the courage of their convictions—and I emphasise that, by the way—then they can have a

82 Professor Graeme Samuel AC, *Proof Committee Hansard*, 10 October 2017, pp. 15–16.

83 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 92.

84 Mr David Murray AO, *Proof Committee Hansard*, 10 October 2017, p. 5.

85 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 9.

> significant role to play in just ensuring that dispassionate, objective positions are put on any particular issues where conflicts might arise.[86]

2.87 FSC offered its support for the introduction of a legislative measure that requires at least one-third of independent directors. FSC had itself introduced a standard for its members that required them to appoint a majority of independent directors and an independent Chair as recommended in the Cooper Review. In evidence before the committee, Mr Briggs said:

> The package would, for the first time, establish a legislated minimum standard of governance that covers every single superannuation fund in the industry. There would be no outliers. This point is critical: this debate should not be viewed through the lens of one sector versus another.[87]

2.88 Mr Briggs went on to comment that:

> An efficient and well-run superannuation fund—whether it's an industry fund, retail fund, corporate fund or government fund—has nothing to fear from a high level of oversight in terms of not only prudential oversight but the introduction of independent directors on their boards.[88]

2.89 Similarly CHOICE supported the role of independent board director members in strengthening governance in the super sector. Mr Kirkland from CHOICE explained that:

> Informing that view, we note that super is compulsory for all employees, we all depend upon the quality and stability of the system, and we think it's important that funds are held to high standards of governance.[89]

2.90 AICD were also of the opinion that the introduction of the one-third independent directors will strengthen governance within the superannuation sector. Ms Louise Petchler from AICD explained that:

> Independent directors bring a unique perspective as they are not aligned or perceived to be aligned with management or sectional interests. Good governance codes around the world recognise that independent directors contribute positively to the decision-making of boards. Their objective view can support effective evaluation of performance for both the board and management.[90]

2.91 In contrast, Mr Bernie Fraser explained to the committee that in his view, mandating a quota of independent directors was not the key to good governance, but

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86 Professor Graeme Samuel AC, *Proof Committee Hansard*, 10 October 2017, p. 14.

87 Mr Blake Briggs, Financial Services Council, *Proof Committee Hansard*, 10 October 2017, p. 20.

88 Mr Blake Briggs, Financial Services Council, *Proof Committee Hansard*, 10 October 2017, p. 19.

89 Mr Alan Kirkland, CHOICE, *Proof Committee Hansard*, 10 October 2017, p. 25.

90 Ms Louise Petchler, Australian Institute of Company Directors, *Proof Committee Hansard*, 10 October 2017, p. 51.

rather that good governance stemmed from individuals who have the necessary skills and values to make decisions in the interest of the superannuation fund members. While Mr Fraser viewed the question of independence as peripheral, when compared with the desirable skills and values, he did not consider that mandating independence had negative consequences.[91]

2.92 AIST also raised concerns about the measures 'interfering' with superannuation fund's owner's rights to run their fund by mandating how their boards are structured. AIST advised the committee that this:

> …is not something that the government does for listed companies nor, indeed, any other APRA-regulated financial institution.[92]

2.93 However it was noted that government does not mandate the purchase of shares in listed companies or the purchase of products from other APRA regulated financial institutions. Mr Cooper commented that legislating the requirement for independent directors is necessary due to the fact that superannuation is a compulsory system:

> You cannot sell out of super. If you don't like it, that's just too bad—you have to be in it. So the government has an onus in this regard to make sure that there are uniform high standards.[93]

Equal representation model vs independent directors

2.94 In introducing new minimum independence requirements for directors on superannuation fund boards, the new law will replace the existing requirements relating to equal representation of members and employers on the boards of standard employer-sponsored superannuation funds.[94]

2.95 A number of submitters to the inquiry contended that the removal of equal representation and introduction of the proposed one-third set up could potentially lead to worse outcomes for members of superannuation funds.

2.96 Some of these submitters considered that the changes proposed in the STA Bill are unnecessary and unfairly target industry super funds. In particular, ISA contended that industry super funds should not be required to change their equal representation model given that their performance has been consistently stronger than that of retail super funds which are more closely aligned to ASX corporate governance principles. ISA noted that:

> If implemented, the measures contained in the Bill will impose additional costs on members and substantially undermine a key pillar of the not-for-profit superannuation industry. At risk is the distinctive culture and ethos of

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91 Mr Bernie Fraser, *Proof Committee Hansard*, 10 October 2017, p. 32.

92 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October 2017, p. 57.

93 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 9.

94 Explanatory Memorandum, p. 11.

> service to others that defines not-for-profit superannuation and which has helped to deliver superior returns to members.[95]

2.97 AIST also commented on the proposal to remove the requirement of equal representation, noting that this model has been 'the cornerstone of member representation and accountability in the superannuation industry for decades'.[96] Ms Eva Scheerlink, AIST's Chief Executive Officer argued that:

> Representation of members and employers on super fund boards ensures a balance in decision-making and a true understanding of the membership base.[97]

2.98 The committee also heard evidence from the ACTU who explained:

> We want to maintain an approach whereby the people who are on the boards of the fund are allowed to determine what's the most effective model for their industry. Having determined the most effective model, we want an arrangement where they concentrate on working on the interests of the members as the primary goal towards which they serve as trustees.[98]

2.99 Mr Jeremy Cooper noted that those funds that are currently using equal representation models, were complying with their own constitutions as opposed to relying on any current legislation.[99] Mr Cooper further noted that the proposed legislation is sympathetic to the equal representation model, pointing out that those funds that will be required to introduce one-third independent directors will 'merely need to rearrange themselves'. He explained:

> To me, that does not disrupt the benefits of equal representation: you still have member representatives and employer representatives sitting there with an independent chair. I regard that as a 21st century model, but it doesn't break the existing model.[100]

2.100 Mr Cooper also highlighted that three industry super funds—Hosptplus, Unisuper, and, Equip—had each already transitioned to a one-third independent board with an independent chair.[101] He also drew the committee's attention to the Netherlands and Hong Kong as countries with successful and strong performing superannuation industries with a majority of independent directors.[102]

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95 Industry Super Australia, *Submission 8.1*, p. 1.

96 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October 2017, p. 56.

97 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October 2017, p. 56.

98 Mr Brian Daley, Australian Council of Trade Unions, *Proof Committee Hansard*, 10 October 2017, pp. 74–75.

99 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 10.

100 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 12.

101 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 9.

102 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 8.

2.101 Mrs Helen Rowell, Deputy Chairman of APRA informed the committee of APRA's support for the proposed amendments to require a minimum of one-third independent directors and an independent chair on superannuation boards, observing that:

> While some in the industry contend that the existing arrangements serve their members well, APRA sees little downside to an additional injection of independence.[103]

2.102 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division of the Treasury, also explained that the purpose of the STA Bill is to impose a minimum standard of independence across the entire superannuation industry. It will apply equally to retail, corporate, industry, and government funds. He further specified that:

> [W]hat the government is trying to do as part of this package is lift [governance] standards, especially on the management of conflicts and related party transactions. I think that is an issue in the not-for-profit sector and I also think it's an issue in the for-profit sector. Part of this legislation is also about lifting standards in the retail sector. So I don't see it as something that is specifically targeted at the not-for-profit sector.[104]

Committee view

2.103 The committee believes that ensuring directors on the boards of superannuation funds are independent is critical to providing better governance in the industry; and the committee notes that the majority of submitters to the inquiry supported the introduction of a consistent definition of 'independent'.

2.104 The committee acknowledges that a number of submitters have called for alternative, more flexible and discretionary definitions of 'independent' to be used, noting that the proposed definition does not align with the wider corporate governance requirement of the Australian Stock Exchange. However, superannuation is different because it is a mandated system. The committee considers that the certainty offered by an objective, legislated definition of independence is appropriate and will ensure the objective of the STA bill is achieved. This was the view of the regulator. The committee also considers that APRA is well qualified to identify who is and who is not an independent director according to the law.

2.105 The committee agrees with stakeholders that the introduction of a requirement on RSE licensees to have one-third independent directors, and a Chair of the Board of directors who is one of those independent directors, will strengthen governance in the superannuation sector. While the committee acknowledges that good governance also stems from ensuring directors have the requisite skills and values to perform their duties, the committee considers that establishing a legislative minimum standard of governance that covers the independence of directors is a step in the right direction.

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103 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, pp. 86–87.

104 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 83.

2.106 The committee acknowledges the concerns raised by some submitters that the removal of the equal representation model, and the introduction of the proposed one-third set up, will unfairly target industry super funds. However, the committee considers that the amendments proposed in the STA bill are sympathetic to the equal representation model, and that it is reasonable to require those funds who are currently using equal representation models to rearrange themselves to introduce the one-third independent directors model.

Recommendation 1

2.107 The committee recommends that the Senate pass the bills.

Senator Jane Hume
Chair