

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates
2017 - 2018

Division/Agency: Australian Prudential Regulation Authority
Question No: 80
Topic: Superannuation Fund Governance
Reference: Written
Senator: Bushby, David

Question:

1. How is the policy shift in greater levels of independence on super fund boards proceeding for:
 - a) Retail funds?
 - b) Industry funds?
2. Of the top 10 industry funds how many have a:
 - a) i. 50/2/25 split (independent/ employer/union)?
 - b) ii. 33/33/33 split (independent/ employer/union)?
 - c) iii. 0/50/50 split (independent/ employer/union)?
3. What reasons are being encountered for a no change stance by the more intransigent boards?
4. What is the state of play regarding breakup between male and female directors on super boards generally, and retail and industry super funds specifically?
5. Does APRA have any more recent data on the longevity of super fund directors, average tenure for industry generally, and retail and industry funds specifically?

Answer:

The current policy position in relation to independent directors is as set out in the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Section 89(2) of the SIS Act allows an RSE licensee with an equal representative board to appoint one independent director as long as the additional director is ‘independent’, is appointed at the request of the employer representatives or member representatives (ie. not as a request of some other person or body) and the governing rules of the fund allow the appointment. APRA does not need to approve the appointment of a single additional independent director, as it is permitted by law.

Under s. 10(1) of the SIS Act, an ‘independent director’ is director who is not a member of the fund; is neither an employer sponsor of the fund nor an associate of such an employer sponsor; is neither an employee of an employer sponsor of the fund nor an employee of an associate of such an employer sponsor; is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more members of the fund; and is not, in any capacity, a representative of an organisation representing the interests of one or more employer sponsors of the fund.

If an RSE licensee seeks to appoint more than one independent director, APRA has the power under section 328 of the SIS Act to allow the RSE licensee to appoint additional independent directors. When considering such an application, APRA will consider whether the decision was made in accordance with the voting rule; the two-thirds voting rule is likely to be diluted;

the director(s) satisfies the definition of independent director; and the specialist skills/experience that the independent director(s) is/are expected to bring to the Board.

APRA does not have to approve the appointment of independent directors on RSE licensee boards that operate public offer funds and (under their governing rules) have an independent trustee i.e. have opted not to have an equal representation structure.

APRA notes that, whilst the Government has signalled its intention to progress legislation to require RSE licensees to have independent directors on their boards, there remain no legal obligations for RSE licensees to have independent directors. APRA has observed that, over recent times, some RSE licensees are choosing to appoint directors who are free from associations that would affect their independence as member representatives, employer representatives or as independent directors.

APRA collects data in respect of RSE licensees under *Reporting Standard SRS 600.0 Profile and Structure (RSE licensee)* and has done so since 2013.

For RSE licensees with equal representation board structure, the director types that can be reported are: member representative, employer representative and independent. At 30 June 2014, ten per cent of directors on equal representation boards were 'independent'; at 30 June 2016, 12 per cent were reported as being independent directors.

For non-equal representative boards, the director types that can be reported are: executive-directors, non-executive directors and non-affiliated directors. Table 1 includes the proportion of these types of directors across non-equal representation boards since June 2014.

Table 1: Proportion of director types for non-equal representation boards – 2014-2016

Director type	30 June 2014	30 June 2015	30 June 2016
Non-executive directors	58%	62%	58%
Non-affiliated directors	15%	17%	19%
Executive directors	27%	21%	23%

Table 2 details the respective proportions of independent, employer and member representatives on the boards of the top-ten industry funds (by asset size) at 30 June 2016. The data excludes alternate directors.

Table 2: Proportion of director types – top-10 industry funds by asset size (30 June 2016)

Fund's RSE licensee	RSE licensee board structure	Proportion of Independent representatives	Proportion of Employer representatives	Proportion of Member representatives
AustralianSuper Pty Ltd	Equal representation required by governing rules	0%	50%	50%
Unisuper Limited	Equal representation required by legislation	27%	36%	36%
Retail Employees Superannuation Pty. Limited	Equal representation required by governing rules	11%	44%	44%
Sunsuper Pty. Ltd.	Equal representation required by legislation	38%	25%	38%
H.E.S.T. Australia Ltd.	Equal representation required by governing rules	8%	46%	46%
United Super Pty Ltd	Equal representation required by governing rules	6%	47%	47%
Host-Plus Pty. Limited	Equal representation required by governing rules	33%	33%	33%
CARE Super Pty Ltd	Equal representation required by governing rules	8%	46%	46%
AUSCOAL Superannuation Pty Ltd	Equal representation required by governing rules	11%	44%	44%
Motor Trades Association of Australia Superannuation Fund Pty. Limited	Equal representation required by legislation	33%	33%	33%

APRA, in the normal course of its supervision, discusses with RSE licensees their approach to ensuring their board structure remains appropriate for the nature and scope of their

business operations, and their processes for ensuring the board has the necessary mix of skills and experience to effectively govern their business operations. This will generally include discussion as to whether any consideration has been given to adding independent or non-affiliated directors, or otherwise widening the pool of candidates for consideration, to bring additional objective perspectives and challenge to board discussions. APRA has observed that a number of boards have taken steps to update the skills matrix used, and other aspects of their nomination and appointment processes. However, a number of funds that do not currently have independent directors have indicated that they do not propose to take steps to appoint independent directors until there is a legislative obligation to do so. APRA is currently exploring board composition practices across the superannuation industry as part of a thematic review; the findings of this review are expected to be released later in 2017.

At 30 June 2016, there were:

- 121 RSE licensees with a total of 890 directors, of which 265 (30 per cent) were female and 625 (70 per cent) were male;
- 41 RSE licensees responsible for industry funds with a total of 374 directors, of which 99 (26 per cent) were female and 275 (74 per cent) were male; and
- 42 RSE licensees responsible for retail funds with a total of 237 directors, of which 85 (36 per cent) were female and 152 (64 per cent) were male.

Note that these figures exclude RSE licensees that have wound up or have no RSEs under their trusteeship.

At 30 June 2016, the average director tenure for all directors was 5.5 years. The average director tenure for RSE licensees responsible for industry funds was 6.4 years. The average director tenure for RSE licensees responsible for retail funds was 4.0 years. The below table illustrates the range of tenure for the respective sectors of the industry:

	Minimum tenure	Maximum tenure	Average tenure	Quartile 1	Quartile 3
Retail	0.0	28.1	4.1	1.2	5.5
Industry	0.0	29.8	6.4	1.7	9.0