



# A Fund Governance Framework for Not-for-Profit Superannuation Funds

Third edition – April 2014

## About AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$700 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

In 2011, AIST underwent a vast overhaul, elevating its status as a professional institute to further benefit its members.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

In 2017 AIST developed the AIST Governance Code to promote good governance and position profit-to-member funds at the leading edge of international best practice. The code draws on some of the elements contained in this framework.

This framework was developed jointly with Industry Funds Forum (IFF). In December 2017 IFF merged with AIST. The merger provides more opportunity for Fund CEOs to be actively involved in shaping policy and sharing information, ideas and views in a collegiate environment.

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## Introduction

Measured as a proportion of GDP, the assets of Australia's superannuation industry are now the largest in the world. Along with almost universal workforce coverage resulting from the Superannuation Guarantee, superannuation plays a crucial part in the economic and social life of the nation. Fund trustees occupy an important and visible role managing these assets.

We believe representative trustees offer the best governance model for Australian superannuation funds through their independence from profit-making financial institutions, their diversity and investor representation, and a unique culture of commitment and innovation.

## The Governance Framework

Superannuation fund trustees operate under a comprehensive legal framework. In addition to the various legislative regimes, both APRA and ASIC provide guidance on interpretation of the relevant laws. APRA also has prudential standards making power. These guidelines should be read alongside any standards, guidance or practice notes published by the regulators.

These guidelines are designed to complement trustees' obligations under law, and are designed specifically for representative trustees.

The guidelines aim to develop the professionalism and integrity of the trustee community, while maintaining the important roles that diversity and representation play in fund governance.

This framework provides a set of guidelines on a variety of governance issues that boards should consider and determine the appropriateness of implementing individual principles within their funds. This is the third edition of these guidelines and this new edition reflects the changes that have occurred in the governance landscape since the previous edition.

We acknowledge that many superannuation funds already have comprehensive governance frameworks in place. We also acknowledge that all funds are different. We encourage all not-for-profit super fund boards to consider the guidelines set out in this framework with reference to the particular configuration of their funds. Fund boards should then make appropriate determinations in relation to the governance principles and how they may, or may not, be relevant for their governance practices. As a guide, this framework is aspirational in its targets for good governance practices.

## Part A: Governance Overview

### 1. Why Good Governance Matters

As the funds under management held by superannuation funds continue to grow and the need for consumer confidence continues to be of paramount importance, we have identified the need to provide guidelines for our members to ensure funds are optimising opportunities to embed good governance principles at all levels of their business. The impact of corporate collapses on the global economy and the returns of superannuation funds have focused the attention of the superannuation industry and the government on the need for continued vigorous governance practices.

High standards of trustee governance amount to more than mere compliance with legislative and regulatory requirements and prudent fiscal management. An effective governance framework begins with clearly defined powers and roles of trustees, chief executive officers (CEOs) and superannuation fund management. It includes articulated systems and relationships that underpin supervision, responsibility and accountability arrangements within the fund's administration and operation. It also incorporates robust risk management systems that identify, monitor and mitigate potential risks. Good governance policies and practices should permeate the fund's entire operations and all levels within the fund's management structure forming an essential part of the fund's culture. It should also be specific to the particular fund, taking into account size, scale, membership, and unique qualities of the fund as set out in their trust deed and governing documents.

Strong trustee governance practices reduce the potential risks faced by a superannuation fund with flow-on effects for the fund's enduring stability, sustainability and profitability. Good governance also ensures there is clear role definition and differentiation, allowing the board and executive team to operate optimally and with confidence. Expectations and accountability are clear and transparent, and fund members' interests are protected and front-of-mind at all times. A beyond-compliance approach of entrenched good governance practices adds value to the fund's business, its stability and pertinence.

### 2. Advancing Good Governance

Superannuation fund members expect trustee boards to formulate and apply high standards of governance behaviour. Global issues and media speculation have increased consumer awareness and expectations of corporate entities, their boards and management. The same is true for superannuation funds. Our members, with their representative boards and not-for-profit backdrop, have achieved strong returns for their members over many years. It is our aim to link these results with the good governance practices inherent in not-for-profit fund structures, build on the standards applied, and share best practice processes and outcomes with the industry.

It is our aim to advance good governance practices within the superannuation industry, highlight the benefits such practices offer and continually improve the standards as new issues emerge in the sector.

When funds take governance matters seriously within their own operations, it allows them to impose expectations of similarly high governance standards in the organisations that they invest in or associate with. A commitment to achieving good governance by superannuation funds advances good governance practices within the industry more broadly and has the potential to expand the practices of corporate entities outside of the sector as well.

### 3. Good Governance Principles

By fund governance, we refer to the systems and the relationships that underpin the framework of supervision, accountability and responsibility by those parties who administer and operate the superannuation fund. Good governance creates a framework for making ethical and informed decisions on a consistent basis.

A board should ensure that they have clearly defined and documented statements of responsibility for boards and senior management for dealing with governance issues in both the short- and long-term.

A board should articulate the fund's commitment to good governance by developing a publicly disclosed charter or code on governance conduct and ethics. This should be underpinned by a set of agreed values and should stipulate the behaviour expected not only of trustee directors, but also executive staff, other employees and service providers.

Such a charter should confirm trustee commitment to complying with relevant corporations and superannuation laws, regulations and standards, regulator guidance and rulings, and generally accepted accounting practices and standards. The charter should also articulate the trustees' commitment to relevant environmental and social standards and any additional standards it pledges to uphold in the interests of strengthening the robust nature of the fund and its commitment to tackling challenges both professionally and ethically.

The board should establish a process to ensure that governance risks are properly and regularly evaluated and managed by the board, and that they appropriately direct staff and any outsourced operations levels accordingly. The board should also promote improved governance with the fund's investment managers and the companies in which they invest.

### 4. Unique Governance Principles in the Superannuation Industry

#### 4.1 Overarching duty to members

Superannuation fund trustees are required to ensure their fund is maintained solely for the provision of benefits to members. They must also exercise their powers in the best interests of members of the fund. Where there is a conflict between the duties of a trustee to the beneficiaries and duties to any other person, the trustee must always give priority to the interests of those beneficiaries.

This means, that in addition to the ordinary duties and responsibilities of trustees and directors, trustee directors of superannuation funds have an overarching duty to the members of the fund. This additional level of responsibility means that a trustee director's decisions cannot be driven by the trustee entity, their nominating body or another's wishes.

A trustee director is required to discharge their overriding duty to the members of the fund even if that duty comes into conflict with their obligations to their nominating body or someone else.

The superannuation trustee director's duty to members of the fund is supplemented by the trustee director's duty to the proper administration of people's retirement funds.

#### 4.2 Influence of institutional investors

Over the past couple of decades there has been significant growth of institutional investment in listed companies, both in Australia and overseas. As institutional investors, with significant funds invested, Australian superannuation funds have the power to influence corporate governance in the assets they invest in, by exercising the rights attached to their shareholding. Arguably, trustees have a responsibility to influence the standards of governance practices in those companies and help to bring about improvements by exercising their voting rights in a positive manner. In endeavouring to influence the corporate behaviour of others, however, funds face the challenge of needing to have their own governance practices in order.

### 4.3 Representative boards

Not-for-profit superannuation funds, with their representative board structures, have a unique governance configuration rarely seen on other boards. The mix of member and employer representation on trustee boards ensures that a fund has the benefit of a diversity of views, skills and experience. Representative directors have an important role to play, bringing their unique understanding of social, political, environmental and industry-specific issues into the decision-making process. Some funds also appoint directors that are not associated with the employer or employee nominating bodies to their boards. This dynamic creates a different layer of perspective for boards and can also bring specialised skills.

The diversity offered by representative boards has allowed not-for-profit super funds to approach their investments, member communications and service delivery in unique ways, resulting in superior returns for their members.

Opportunities exist in the representative model for a greater understanding of how diversity impacts on improved business operations, member satisfaction and financial performance.

## Part B: Legislative and Regulatory Requirements

### 5. Legal and Regulatory Compliance

These guidelines are not intended to be a comprehensive statement of the law as it applies to superannuation funds and their trustees. Compliance with legislation and regulatory guidance is mandatory and therefore the minimum professional standard expected of all superannuation funds. We therefore assume that trustees are aware of their obligations in this regard and these guidelines will only briefly touch on the legal responsibilities of funds and trustees in so far as they relate to governance matters.

Superannuation trustees are subject to Australian corporations legislation, financial services law, trust law, as well as legislation specific to the superannuation industry, such as the SIS Act and its regulations. They must ensure they exercise their powers in accordance with the covenants found in the SIS legislation and accompanying regulations, which includes acting in the best interests of members of the fund. Superannuation trustees must also comply with APRA's Prudential Standards. They must also observe their own governing rules and trust deed. Where appropriate, trustees must also ensure they hold valid Registrable Superannuation Entity (RSE) and Australian Financial Services (AFS) licences and at all times remain compliant with their licence terms as required under the SIS and Corporations Acts.

So, in addition to the ordinary responsibilities of company directors and trustees, superannuation fund trustees are subject to additional legal obligations.

The Corporations Act 2001 (Cth) requires that directors and senior executives of companies must exercise their powers and discharge their duties in good faith, in the best interests of the company and for a proper purpose at all times. In addition a superannuation fund's responsible persons must comply with the fit and proper standard. 'Responsible persons' is broadly defined in the standard.

All responsible persons must comply with fit and proper requirements, both as a collective group and as individuals. RSE licensees are subject to a number of APRA standards including:

- operational risk financial requirement (SPS 114)
- defined benefit matters (SPS 160)
- risk management (SPS 220)
- outsourcing (SPS 231)
- business continuity management (SPS 232)
- insurance in superannuation (SPS 250)
- audit and related matters (SPS 310)
- MySuper transition (SPS 410)
- Governance (SPS 510)
- Fit and proper (SPS 520)
- Conflicts of interest (SPS 521)
- investment governance (SPS 530)

Responsible persons should also be aware of the whistleblower protections offered in Part 29A of the SIS Act, what qualifies as a protected disclosure and what actions and behaviours are prohibited by the legislation. Whistleblowing provisions also feature in SPS 520.

## 5.1 Duties of a trustee director

Trustee directors play an important role in the Australian superannuation system and it should be noted that this role is separate and distinct from that of a company director. We believe that trustee directors must perform the following duties:

- To act solely in the best interests of members, specifically:
- To avoid putting themselves in a position where their interests conflict with those of their members.
- To give priority to their duty to members, regardless of whether this conflicts with their duty to the trustee company, its shareholders or others.
- To avoid putting themselves in a position where their duty to their members is compromised by a conflict of interest.
- To avoid putting themselves in a position where their duty to others (excluding members) conflicts with their duty to the trustee company.
- Not to obtain any unauthorised benefits as a result of holding the position of trustee director.
- Not to enter contracts or undertake activities that prevent or hinder the trustee properly discharging their duties.
- To act honestly.
- To exercise independent judgement.
- To exercise the degree of care, skill and diligence that a superannuation entity director would exercise in the corporate trustee's circumstances.
- To have regard for the long-term consequences of decisions, including consideration of potential impacts on the community and the environment and on the entity's reputation.

Trustees are solely responsible and directly accountable under the SIS Act for the prudential management of their members' monies. They are also responsible for ensuring that the fund's responsible officers all meet the fitness and propriety standards.

## 5.2 Regulatory oversight

Regulatory oversight of the superannuation industry is divided among a number of bodies including the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO). These three regulators are responsible for administering various aspects of the SIS Act and Corporations Act and the Income Tax Assessment Act.

These guidelines are not intended to provide trustees with a comprehensive statement of the regulatory environment in which their funds operate; however, we recognise these regulatory bodies as having the most relevant powers over superannuation funds and their compliance with good governance requirements.

The operation and management of superannuation funds are reviewed by regulators mainly through the annual and/or quarterly returns lodged, any auditors' reports or notifications as well as any direct reviews or audits that may be carried out from time-to-time by the various regulators.

The regulators have extensive regulatory and investigative powers, with APRA also having prudential standards making powers. In addition to the mandatory regulatory responsibilities, we also recommend adherence to any practice guides or directions that are issued by these regulators from time-to-time. Even though these are mostly not enforceable at law, being the regulators' interpretation of legislation, they provide a good guide to how a fund can discharge its obligations. The Prudential Standards however have the affect of law. The regulator has the power to suspend or remove trustees in certain circumstances. Penalties under the SIS Act however, can only be imposed by the courts.

## Part C: Beyond Compliance

### 6. Trustee Board Responsibilities

The essential ingredient of a sound governance culture within a fund is an ethical and competent trustee board. Such a board should promote a healthy management culture at all levels throughout the fund's operations.

We believe rules and regulations alone are insufficient to instil high standards of corporate conduct that deliver the best protection to superannuation fund members.

Trustee directors need to develop and support cultures fostering accountability, commitment to long-term member returns, business integrity, innovation, transparency and relevant and effective disclosure and communication. They should question strategy, performance and risk management controls.

Trustee directors must have the requisite skills, capacity, ethics, and 'independence of mind' to provide effective leadership and stewardship of their fund's assets and their members' benefits.

#### 6.1 General oversight responsibilities

The primary responsibility of the board is to determine, review, ratify, and oversee the implementation of the fund's strategies.

Such a responsibility requires boards to:

- Ensure that the trustee company and the fund comply with all applicable laws
- Act in the best interests of the beneficiaries, and act impartially between beneficiaries of the same class
- Use their powers for proper purposes
- Not limit their discretionary powers
- Appropriately manage the delegation and outsourcing of activities, and
- Manage actual and potential conflicts of interest.

The board must also oversee the performance of the CEO (or similar role) and take responsibility for the management and direction of a fund. The responsibility for managing the fund is usually delegated to the CEO and the board does not actively supervise or manage day-to-day operations of the fund.

#### 6.2 Specific board responsibilities

The board is entrusted to govern the fund's investments and operations and to formulate policies and strategies to achieve these goals. A board must therefore ensure it is adequately informed of key investment and economic issues and is properly equipped to encourage management and service providers to strive for the best possible performance.

The board is responsible for governing the fund and can delegate functions, subject to proper oversight.

Key responsibilities of a board include:

- Exercising independent judgement over the trustee's business strategy, performance, resources and standards of conduct and ethics.
- Determining appropriate delegations and outsourcing of fund activities and monitoring these against stated performance criteria.
- The selection, appointment and performance management of the CEO, and overseeing the selection, appointment and performance management of other principal senior executives, and key outsourced service providers.

- Determining appropriate remuneration arrangements for the fund’s business operations in alignment with the best interests duties of the RSE licensee.
- Determining appropriate authorities of the CEO and relevant executives.
- Developing and maintaining an appropriate insurance strategy which considers the demographics of fund members, the types of insurance to be provided and the value for money provided to members.
- Developing, maintaining and approving CEO succession plans.
- Properly reviewing the fund’s and trustee company’s accounts and certifying that they comply with relevant accounting standards, and represent a true and fair view of the affairs of the fund and/or trustee.
- Ensuring the maintenance of financial integrity, including the approval of budgets.
- Setting the trustee’s commitment to environmental, social and governance standards.
- Establishing and reviewing key financial performance benchmarks.
- Overseeing the fund’s system of internal control and disclosure.
- Ensuring that proper accountability and systems are in place so that members and other stakeholders are informed in accordance with legislated disclosure obligations.
- Reviewing and assessing the board’s and each individual trustee director’s performance.
- Maintaining functional, effective relationships with any bodies entitled to nominate directors to the board; and
- Ensuring continuity of corporate learning, renewal, evolution and succession.

The scope of the board’s responsibilities should be documented in writing, in a board charter and shared with the management of the fund. Ideally a fund has policy documents to inform the board and others of their responsibilities, including, but not limited to:

- A board responsibility and expectations policy
- A trustee charter and code of conduct
- Fitness and propriety standards
- A conflicts of interest policy
- Induction and ongoing training policies
- Delegation and outsourcing policies
- Board performance evaluation policy
- Committee terms of reference
- A whistleblowing policy

### 6.3 Delegation and outsourcing

Trustee directors should ensure that any functions they delegate or outsource are within their powers under the trust deed and other governing documents. They should be sure that any service provider or person to whom they delegate is competent, reliable and acting in accordance with the fund’s outsourcing policy, code of conduct and any other relevant standards and policies the fund ascribes to.

The outsourcing of any material business activities should comply with APRA’s outsourcing standard, SPS 231.

All delegated functions should be carefully documented, monitored and evaluated by the board on a regular basis to ensure compliance with fund policies. A register of delegated functions is recommended for keeping track of responsibilities. Trustee directors should remember that the ultimate responsibility for the fund

rests with them, and despite their delegation to others, they remain liable in the event of loss or damage. The SIS Act covenants set out at section 52 (2) continue to apply to trustees regardless of whether or not others were engaged by the fund to conduct a particular function.

#### 6.4 Familiarity and capacity to oversee corporate operations

Directors should ensure that they are each familiar with the fund's operations as well as broader issues in economics and investments. Directors should not rely exclusively on information provided to them by executive management and/or their advisers, and are required to make their own enquiries, where necessary and appropriate, to ensure they discharge their duties as directors of the fund.

Boards should convey to prospective and current directors their general expectations about the workload associated with a directorship on the board. Each director should be able, and prepared, to devote sufficient time and effort to their duties as a director.

Conversely, prospective directors should inform the board of their external commitments which may impact on their capacity to properly fulfil board responsibilities. This includes full- and part-time employment or other directorships. Such disclosures will assist the board in making an appropriate judgement on the director's suitability to serve on the particular board, any potential conflicts, as well as their fitness and propriety. Such disclosures should be regularly reviewed so that boards have the best information possible in order to make decisions about an individual's ongoing suitability to serve as a director of the fund.

## 7. Risk Management

APRA regards risk management as a critical responsibility of trustee directors, and risk management policies and practices are an integral part of RSE licensing law. Trustee directors should pursue a comprehensive approach to risk management.

Board responsibilities in this regard include (but are not limited to):

- Establishing the fund's risk management framework and risk management strategy (RMS)
- Overseeing the development of the fund's RMS, and the internal controls that put the plan into effect
- Monitoring the effectiveness of the RMS and internal control systems
- Making changes to the RMS and internal control systems as required
- Ensuring there are clear lines of responsibility and accountability for risk management throughout the trustee, its staff, and external outsourced providers, and
- Ensuring there is appropriate risk management oversight by the CEO and senior management.

When establishing their RMS, trustee directors should assess their risks and controls using legal obligations, APRA's Prudential Standard and practice guides as a minimum standard. Trustee directors should adopt a broad and long-term perspective on risk incorporating environmental, social and corporate governance issues.

Boards should ensure that the fund has adequate systems for the reporting of unethical or risky behaviour, and should have effective systems for responding to such failures, with a view to prevention in the future. In the event of a significant breach, the trustee must notify APRA.

## 7.1 Environmental, social and corporate governance risks

Environmental, social and corporate governance (ESG) risks are important risks for trustees to consider as part of their investment processes. None of these risks, of course, should be considered in isolation, but rather, integrated with financial risk considerations.

Trustees need to consider the environmental and social impacts of their own operational activities and perceptions of their own fund governance practices. Disclosure of the trustee's approach to ESG risks, both through its investment portfolio, and through its own operations, should demonstrate that trustees have a comprehensive approach to addressing ESG factors.

We encourage funds to disclose to members:

- Relevant environmental, social and corporate governance policies incorporated in the fund's investment policies;
- The governance framework and strategies for managing corporate governance, environmental and social issues at the trustee level; and
- The fund's proxy voting policies and any material voting behaviour.

Trustee directors should consider independent third party assurance of ESG reports.

## Part D: Board Structure and Processes

### 8. Board Structure

The board should be comprised of individuals who are able to work together effectively to lead a viable, well-performing, and efficient fund. Board members should have diverse backgrounds (e.g. age, core experience) and have a high degree of competency, integrity, skill, capacity, experience, and commitment to discharge their duties and responsibilities. Trustee directors must comply with the fit and proper requirements under the APRA Prudential Standard, SPS 520.

The board must have in place a board renewal policy to ensure that the replacement of directors occurs in an orderly and timely manner, is transparent, and is fully compliant with the fund's trust deed, SIS law and APRA's Prudential Standards. Fund boards must have set terms for their trustee directors. Trustee director terms should also be staggered to ensure that corporate knowledge is preserved.

APRA proposes that all boards set terms for their trustee directors, Chairs and committee membership. A maximum tenure should be set with terms renewable subject to the board determining the appropriateness of individual directors serving multiple terms. This assessment should be predicated on the board's renewal policy, the individual's ongoing contribution, the overall skills matrix required and the fitness and propriety requirements set by the regulator. The board should consider staggering terms so that organisational knowledge and continuity is preserved.

#### 8.1 Gender balance on boards

Funds should develop a policy for their fund on gender balance and disclose it to their members. Strategies to identify, train and otherwise equip potential directors to work towards a fund's improved gender balance goals should be implemented.

In consultation with nominating bodies, the board should actively strive to achieve a gender balance, with a minimum of 40 percent of directors of each gender, noting the particular industries serviced by a fund and their corresponding access to directors of each gender.

The 40 per cent gender balance goal is recommended in the Cooper Review as being consistent with international best practice. The Cooper Review says, "As superannuation fulfils many social policy objectives and as superannuation covers almost all Australian workers, the Panel believes that it is important that the Code of Trustee Governance include a principle so as to ensure that gender equality is pursued on trustee boards with reasonable haste."

As of 1 January 2011, ASX-listed entities are required to comply with the amended ASX Corporate Governance Council's Corporate Governance Principles and Recommendations including (at Principle 3) disclosure in their annual report of the board's achievement against its measurable gender objectives as well as the proportion of women on their board, in senior management positions, and employed throughout the company. We believe superannuation funds should also adopt these reporting requirements and strive to improve gender balance on their boards and within their operations.

#### 8.2 Independence of directors

All Directors, irrespective of who nominates them are required to exercise a high degree of 'independence of mind' when discharging their duties as directors. However, the concept of independence of mind should be differentiated from the definition of 'independent director' for equal representation boards that exists in the SIS Act. The SIS Act limits the number of independent directors on a super fund board with equal representation to one. At the time of publishing this third edition, this was under review.

## 9. Nominating Bodies

The role of nominating bodies is crucial to effective superannuation fund governance. Boards should ensure that nominating bodies are fully aware, and fully supportive, of the role of the board in providing benefits to the membership of the fund.

Boards should encourage nominating bodies to ensure their nominees have appropriate skills and resources to discharge their duties as a trustee. Where trustee directors are full-time employees of their nominating body, boards should encourage the nominating body to provide relief from their normal duties to undertake their trustee role properly. This not only includes time for board meeting attendance and preparation, but also for participating in appropriate training.

While individual trustee directors must ensure their actions as trustees are independent of the interests of their nominating bodies, the board as a whole should maintain an active and effective relationship with each nominating body.

Boards should be clear in advising nominating bodies of their agreed requirements for appointments of people to the board, the fund's fitness and propriety policy, the expectations of board members, the desired skill matrix, diversity matters as well as expectations regarding time commitments for service and continuity of tenure. The nominating bodies should also be made aware of the fund's legal and regulatory requirements regarding board composition and individual director competency requirements.

Nominating bodies should also be aware of the circumstances under which a nomination for a trustee director position may be declined, or under which a trustee director can be removed from the board, so that this can be considered.

## 10. Disclosing and Managing Conflicts of Interest

RSE licensees must have a conflicts management framework. Trustee directors should meet their legal obligations in relation to avoiding conflicts of interest and formulate an internal policy that demonstrates the board's commitment to managing potential conflict situations.

Any potential conflict of interest needs to be considered in light of the conflicts covenants and SPS 521 as well as the fund's fitness and propriety test. Boards need to balance the risk arising from a candidate's potential conflicts with the skills and experience that candidates can bring to the board.

Perceptions are important in conflict situations and transparency is vital in managing perceptions of conflict. The decisions of a board can be tainted if there is a reasonable perception that a director or officer, their family or close associates could benefit personally from decisions of the board.

Where a trustee director has a relevant interest in a matter that relates to the affairs of the fund which could create a potential conflict of interest, then:

- The director should fully disclose and give details of the nature and extent of the relevant interest that raises the potential conflict of interest with respect to a director's duties. The relationship of the interest to the affairs of the fund should also be disclosed at a board meeting as soon as practicable after the director becomes aware of their interest in the matter. The matter should be recorded in the conflicts register.
- The obligation for the director to disclose an interest is contained in SPS 521. The Prudential Standard clarifies directors' regarding the identification, recording and management of conflicts of duty and conflicts of interest. If a director is in doubt about whether they are in a position of conflict of interest they should seek guidance from the Chair.
- It is important that a director must not be present at a meeting of the board or a committee of the board while the matter is being considered. With any known conflicts, it may also be inappropriate for the trustee director to receive the papers relevant to the relevant conflict. They must not be present and

vote on the matter unless the directors who do not have a relevant interest in the matter have resolved that the board is satisfied that the interest specified in the resolution should not disqualify the director from being present or being present and voting. In these circumstances, the fund board may proceed with any transaction that relates to the interest and the director may participate in the execution of any relevant document by or on behalf of the fund.

- In the context of this policy, a relevant interest arises where a director or officer's personal interests may be affected by a board's decision on the matter. Relevant interests are not limited to financial or pecuniary interests and can be an indirect or direct interest.

In the circumstance where funds invest their members' monies with asset managers owned or controlled by the same entity, the fund needs to have a clear, articulated policy on how investment decisions are made, and how the best interests of the members are being served. Similarly, when the fund uses a service provider who is also a nominating body, sponsor organisation or in some other way tied to the fund, additional measures to control conflicts and risk should be adopted and transparency is paramount in any such relationship. The tied service provider provisions in the SIS Act also need to be complied with.

A director should assume they have a conflict of duty wherever there is a real, perceived or potential conflict between their duty to the fund and their duty to another organisation such as their sponsoring organisation, or the fund's interests and the director's interests.

Where there is a conflict, that conflict must be managed in accordance with the SIS Act requirements to give priority to the duties to, and interests of, beneficiaries.

Boards should maintain conflicts registers for relevant duties and relevant interests and provide the register to APRA for consideration as part of the prudential review process.

### 10.1 Gifts

Boards should have a clear policy on the acceptance of gifts, such as attendance at corporate sporting events and the like. A gift register is an appropriate vehicle for keeping track of hospitality enjoyed by trustee directors and executive staff. The policy should be disclosed to members and boards should consider disclosing any material gifts received throughout the course of the year.

### 10.2 Multiple directorships

It is not widespread to have trustee directors appointed to more than one superannuation fund board. This occurrence is restricted to a small handful of the hundreds of APRA regulated superannuation entities, and is a consequence of the historical non-competitive environment prior to the introduction of choice-of-fund.

AIST recognises that where trustee directors sit on more than one RSE licensee board, there is a potential for the competing duties to the different beneficiaries to be in conflict, or to be perceived as such. AIST recommends that trustees carefully consider the SIS covenants and the requirements in SPS 521 in this regard. In the interests of greater transparency and the need for consumers to have confidence in the superannuation system, boards should avoid appointing trustee directors who also sit on another competing RSE licensee board. It is a matter for the board to determine who their competing funds are and to determine the appropriateness of all directors who sit on the fund's board. In an era of fund consolidation and increasing competition AIST believes that the incidence of directors sitting on more than one superannuation board will be phased out.

### 10.3 Related-party transactions

The board should disclose its policy for managing potential related-party transactions, any actual related-party transactions, and how those transactions are managed by the board. The board should also disclose the means by which the relevant director or directors managed any conflict(s) of interest during the board's consideration. A related party includes:

- A director's spouse, de facto spouse, parent, child or a spouse or de facto spouse of that person;
- An entity controlled by one or more of the above persons;
- An entity that the director controls;
- A standard employer sponsor or an associate of a standard employer sponsor;
- A person who acts in concert with anyone referred to above; and
- A person who was a related party in the previous six months.

Any board decisions on related-party transactions should be made at arms-length and the resolution regarding the decision should be clearly documented and disclosed.

## 11. Board Meetings

Board meetings should be conducted on a regular basis to ensure that appropriate attention is given to governing the fund. Prior to each board meeting, directors should be provided with appropriately detailed and accurate information, preferably at least a week in advance of the scheduled meeting. Directors should also be entitled to raise any matter for inclusion in the agenda for discussion at board meetings, in consultation with the Chair.

Directors should strive to attend all board meetings. Boards must disclose directors' attendance on the fund's website. We recommend that boards should not accept a director's renomination if they attend fewer than 75 per cent of board and board committee meetings for two consecutive years, unless there are compelling reasons. In addition, directors are expected to participate in a meaningful manner and attend meetings in their entirety, except where leave of absence is granted.

The board should also be able to discuss matters at regular meetings without the CEO or staff being present in order to effectively discharge their responsibilities, as and when required.

Boards should assess how board meetings are conducted and the agenda items that are discussed, as well as the time devoted to different priorities, to ensure that it continually meets appropriate governance standards for optimal fund performance.

## 12. Chairs

### 12.1 Chair responsibilities

The Chair must ensure the board functions effectively and provide leadership to oversee the operation of the fund. A Chair should ensure appropriate board procedures and structures are in place, so that all relevant issues are considered by the board.

A Chair is responsible for a number of key functions, including:

- Ensuring the agenda for board meetings addresses all relevant matters;
- Ensuring that a sufficient number of board meetings occur to facilitate effective decision making;
- Ensuring sufficient time is allowed at each board meeting to adequately deal with each agenda item;
- Ensuring that the board is provided with adequate information;

- Leading the board in monitoring the management of the fund, assessing the fund's financial position and performance, and establishing a culture that encourages directors to openly discuss risks or any material adverse developments.

The Chair performs a critical role in:

- Managing the relationship between the board members;
- Managing the relationship between the board and the CEO and key senior executives as well as leading the performance evaluation of the CEO, and if required, senior executives;
- Mentoring the CEO;
- Working closely with the company secretary or the executive who is the principal source of information on legal, compliance and administrative matters.

The board should have a clear idea about the characteristics they seek in a Chair. The board should be sure to have succession plans in place to manage the turnover of the Chair as well

as the unplanned vacancy of the Chair role due to unforeseen circumstances.

## 12.2 Separation of Chair role from CEO or executive director

The roles of Chair and CEO should be separate. Combining the roles of Chair and CEO, or another executive role diminishes the degree of accountability that would usually result from a separation of the two roles. Combining the roles removes a vital check on senior management's activities and vests unwarranted power in a single individual.

If the board believes that special circumstances exist that require the roles of Chair and CEO to be performed by the same person, they should clearly explain their reasons and also disclose these to the members.

Separating the two roles and articulating a clear division of responsibility between the two functions ensures greater accountability.

## 13. Board Committees

### 13.1 General overview

Subcommittees of the board are important in providing the capacity for trustee directors to work on more detailed matters in close consultation with executives and consultants. The APRA Prudential Standards require funds to establish an audit committee and a remuneration committee.

Such committees should be established by the board as standing committees. There may be reasons to establish other committees for other purposes, for example, an investment committee; a risk committee; a claims committee to assist with consideration of insurance claims and death benefit distribution; or an administration/member services committee.

A committee should have equal representation and should be of a reasonable size. Boards should develop terms of reference or charters outlining the scope and responsibilities of these committees. This might include, for instance, a policy regarding board expectations about the number of meetings that should occur in the year and include details of any delegated powers. The document should be clear about what is being delegated to the committee, including any relevant decision-making power, and what reporting expectations the board has of the committee. This information should also be disclosed, for example in annual reports or the fund's website. In addition, board committees should be provided with adequate staffing and the ability to obtain external advice where necessary, to facilitate committees delivering outcomes. All committees should maintain a record of their proceedings, and report these to the board regularly. For audit and remuneration committees trustees should comply with the requirements set out in SPS 510.

Having a committee of the board around a specific area does not absolve the board or individual trustees

from responsibility. They are required to make independent decisions regarding delegated powers, and make appropriate enquiries as and when necessary. Boards should vet any appointment of service providers or advisers made by a committee under delegation from the board.

The members of the committees must be appointed by the board. Committees should appoint Chair if the board does not do so. SPS 510 sets requirements for the Chair of the audit and remuneration committees. A Chair has similar responsibilities in relation to the committee as the Chair for the board.

### 13.2 Audit committee

The audit committee assists the board to discharge its responsibilities in connection with the financial management, financial performance and financial reporting of the fund. The audit committee is also responsible for reviewing the risk management framework and compliance with APRA and other statutory reporting requirements. This includes reviewing the fund's and trustee company's financial statements; and ensuring the independence of the fund's auditor and the quality of its audit.

An audit committee should review and assess the external reporting of the fund. Reporting to the board on the performance of internal and external auditors and reviewing internal control mechanisms are fundamental functions of the audit committee. The audit committee also has oversight of the fund's professional accounting requirements.

The audit committee should have sufficient technical expertise to discharge its mandate effectively.

An effective audit committee should:

- Be comprised of trustee directors with the required mix of skills, experience and relevant knowledge of the fund's investments and operations. Members of the audit committee should be financially literate, and at least one member of the committee should have experience in financial reporting and another in risk management. A member of the committee should be familiar with the fund's investment strategy. SPS 510 requires that the audit committee comprise at least three members, all non-executive directors.
- Have the appropriate powers to review the effectiveness of the external and internal auditors, to make recommendations to appoint, rotate or dismiss the auditors and to establish the scope of the audit. It should set the ongoing competency requirements that the auditor must meet.
- Be able to engage and dismiss internal auditors.
- Facilitate members of the audit committee liaising with fund executives for effective implementation of the committee's objectives.
- Receive a report from the auditor outlining the provision of non-audit work by the audit firm or any related entity.
- Be able to discuss matters with the external and internal auditors in the absence of management and external advisers.

### 13.3 Remuneration committee

The remuneration committee is responsible for conducting regular reviews of the fund's remuneration policy and making appropriate recommendations to the board. The committee is also responsible for making annual recommendation to the board on responsible persons (and others) to be covered in the remuneration policy. The committee is also responsible for making recommendations to the board on the remuneration categories of those covered in the policy. The committee must also ensure compliance with the remuneration requirements set out in SPS 510 and the SIS regulations at 2.37 regarding remuneration disclosure.

An effective remuneration committee should:

- Be comprised of trustee directors with the required mix of skills, experience and relevant knowledge of the fund to allow appropriate alignment of remuneration practices with the members' best interests. At least one member of the remuneration committee should also have some experience in setting remuneration, including the management of incentives. SPS 510 requires that the remuneration committee comprise at least three members, all non-executive directors.
- Have access to relevant internal resources such as personnel responsible for risk management, human resource management, financial control and internal audit.
- Be able to engage external advisers and ensure their independence.
- Ensure that there are adequate and appropriate conflicts management processes in place, particularly in relation to advice provided to the committee.

#### 13.4 Investment committee

The investment committee, should a board decide to appoint one, is responsible for development and monitoring of the board's investment strategies and their implementation. A fund's investment framework and investment strategies are subject to review by APRA and must comply with SPS 530. The investment covenants in the SIS Act also set out clear obligations regarding the fund's investment activities. Additional guidance is provided by APRA regarding investment governance (SPG 530) and valuations (SPG 531).

Where an investment committee appoints investment managers, it shall be done with the specific delegation of the board.

The investment committee may recommend changes to the fund's investment strategy but the power to change investment strategy must rest with the full board.

The investment committee may undertake such duties as reviewing managers as part of the investment manager selection process, performing strategic reviews of the fund's investment policies, and monitoring investment performance against benchmarks, investment objectives, and peer funds. The committee should make recommendations to the board resulting from these activities.

However, investment responsibility ultimately rests with the board. The fact that the board delegates responsibility to an investment committee does not mean that it absolves itself of investment responsibility.

An effective investment committee should be comprised of trustee directors with an appropriate mix of skills, experience and relevant knowledge of the fund's investment strategy. Members of the investment committee should be financially literate, and at least one member of the committee should have investment governance experience. Boards may engage outside experts to strengthen the committee.

### 14. Indemnity of Trustee Directors

The trustee company should indemnify directors for liability they incur while acting as directors to the extent permitted under law. An indemnity may be granted if the liability of the director is to a third party and does not arise out of a failure by the director to act in good faith.

A board should ensure that appropriate insurance cover is in place to cover any indemnities extended to the directors.

### 15. Rights of Trustee Directors

Before their appointment the fund should provide trustee directors with an outline of their rights and obligations according to the fund's governing rules, the SIS Act, the Corporations Act and other relevant instruments.

Directors should have access to training from independent sources to provide them with a clear

understanding of directors' responsibilities and liabilities.

Directors should have reasonable access to the fund's employees, information and resources. The board should formulate a policy under which directors are able to obtain independent professional or other advice at reasonable cost to the fund in order to assist them in carrying out their duties. The need for such advice should be discussed with the Chair as required.

## 16. Evaluation of Board Performance

The board should be clear about its objectives and the performance standards it expects and this should be clearly articulated in writing and distributed to potential trustee directors and existing board members. It is against these standards and objectives that the board should hold itself accountable as a collective group and as individual contributors. The board should have mechanisms to evaluate and improve its performance in governing the fund and should conduct an assessment at least annually. These mechanisms should involve assessment of performance by an independent, external source at least once every three years.

The purpose of board evaluation is to review the performance and competence of the board. It should also identify gaps in skills, experience and expertise that would need to be filled in order to promote board effectiveness and satisfy fitness requirements.

The board should have a policy detailing the process for managing non-performing directors and should act on it when required.

## Part E: The Board and Fund Executives

### 17. CEO, Fund Secretary, and Company Secretary Roles

The primary responsibility for executive actions usually lies with the CEO of the fund. Where trustee resources permit, the fund may maintain a separate company secretary, with responsibility for corporate administration, who will act as the statutory officer for the fund. The company secretary role can be combined with a senior role such as the chief financial officer, or company counsel.

Where fund resources do not permit the separation of CEO and company secretary roles, both roles can be combined.

#### 17.1 CEO responsibilities

The CEO is responsible for managing the organisation in accordance with the strategic objectives that have been set by the board, by harnessing appropriate human, financial, technical and administrative resources.

Whilst forming part of the management team, the CEO role is distinct from the management team which generally encompasses senior management positions such as the finance manager, general manager etc. The CEO should utilise the management team as a tool for achieving the objectives set by the board.

#### 17.2 Performance of the CEO

The continuity of strong fund leadership is a primary and exclusive responsibility of the board. Monitoring and evaluating the performance of the CEO is therefore an integral part of discharging this duty.

It is essential that there be a clear understanding between the CEO and the board regarding the expected performance requirements and how that performance will be measured. Boards should evaluate the performance of the CEO at least annually.

#### 17.3 Company Secretary

The board should permit the company secretary free access to the Chair, and should ensure that the CEO respects the company secretary's independence in relation to his or her corporate responsibilities.

## 18. Remuneration

### 18.1 Background to remuneration

Boards of superannuation funds have a primary role in establishing remuneration policies in order to attract, retain and motivate highly competent executives. These remuneration arrangements should reflect the complexity of the fund's operational and investment challenges and meet the requirements of SPS 510.

Many funds remunerate directors for their service on the board and sometimes any additional time, energy and commitment that individuals dedicate to committees or Chair roles to further the good governance of the fund. These arrangements should reflect the complexity of the task, the demands on the time of directors and the level of liability directors face in the proper discharge of their duties as trustees. A remuneration committee should be empowered to consider these issues.

The key issues that trustee directors should be concerned with when making determinations on remuneration include:

- Transparency and disclosure
- Remuneration linked to long-term performance and fund success
- The process of determining appropriate remuneration, including performance based components
- The interests and expectations of the fund's beneficiaries

- The fund's risk management framework

Careful consideration of these issues should alleviate any fund member concerns regarding remuneration of the fund's responsible persons and trustee directors, and how this is aligned with the best interests of the fund's members.

## 18.2 Remuneration practices

A board should have a remuneration policy which clearly states the objectives it is trying to achieve in its remuneration practices for trustee directors and other responsible persons. This policy should be disclosed to the members of the fund to promote accountability and awareness.

In seeking to establish appropriate remuneration arrangements in line with its articulated policy, the board may delegate the task to the remuneration committee.

Remuneration is a key factor in attracting, retaining and motivating appropriately skilled people to fill key roles with a fund. Remuneration should be regarded as a key tool to motivate responsible persons and harness their support for the long-term success of the fund. Incentives for contributing to the long-term, above-average performance of the fund are an appropriate remuneration consideration for funds to consider.

In broad terms, a properly structured remuneration scheme should:

- Be reasonable and aligned with fund members' long-term interests and the fund's remuneration policy;
- Be market-oriented and measurable against key corporate performance indicators while giving consideration to the fund's founding principle of 'profits to members';
- Be reported annually to members.

Superannuation funds should disclose the remuneration arrangements of their executive officers.

This should include information on how the remuneration is generated (e.g. base salary, bonuses and incentives) and how much each component is. This information must be disclosed on the fund's website. A fund's policies for remuneration of executives should be disclosed, including its relationship to the fund's performance.

Remuneration of directors must also be disclosed to members. Each individual director's remuneration should be disclosed and should include information on how the remuneration is generated (e.g. meeting attendance, chairing responsibilities, committee responsibilities, apportionment of salaries from a parent company), how much each component is, and who it is paid to (e.g. whether payments are made to a nominating organisation). Any remuneration received by a director for being a fund representative on another board should also be disclosed. Remuneration information should be disclosed on the fund's website.

## 18.3 Termination payments

We do not recommend the insertion of termination payment clauses in executive contracts. However, where these do exist, we recommend the highest levels of transparency and recommend that funds aim to meet the standards set in ASX Listing Rule 3.1 for listed companies. A fund should disclose its policy on termination payments in executive remuneration arrangements. This includes reference to contractual compensation provisions that are applicable upon the termination of an executive's employment, including the potential value of any such payment. The relevant 'triggers' for termination that arise should also be disclosed. If any accrued entitlements are material in this regard, they should also be disclosed in the fund's financial statements.

Boards should be discouraged from paying out excessive and unreasonable termination payments in circumstances where the termination is a consequence of poor and inadequate performance and should be wary of how such payments are perceived. Termination payments should never equate to more than 12

months' salary. SPG 511 also discourages the use of termination payments and points to the particular risks associated with fund mergers.

Not-for-profit superannuation funds should ensure they consider their founding principle of 'profits to members', particularly in relation to the suitability of termination payments.

#### 18.4 Performance conditions for short-term incentive schemes

Any annual bonuses paid to responsible persons should be linked to clear key performance requirements and predetermined targets. Such requirements should generally be disclosed in the fund's remuneration report.

In the superannuation industry however, it is important to remember that long-term performance is what counts. Any short-term incentives should therefore be reasonable and explicable in terms of value compared with the individual's base remuneration, and should relate to very clear and relevant performance criteria relevant to the particular period in question.

The remuneration policy of the fund should deal with a variety of issues including the exceptional performance of an individual during a period of uneven performance across the business. Trustee boards are advised to follow the guidance set out in SPG 511.

#### 18.5 Trustee director remuneration

Director remuneration should reflect the level of commitment and time invested by directors to the good governance of the fund. The level of director remuneration should be developed through a fund's remuneration committee and be adopted by the full board of the fund.

The remuneration committee is encouraged to seek external expert advice where needed in making its recommendation to the board, and to bear in mind their commitment to a philosophy of 'profits to members'.

We believe that all members of a board should be remunerated equally. We support the practice of paying additional remuneration to directors who take on additional responsibility to act as chairperson of the board or Chair of board committees. Directors recruited as non-associated directors, that is, persons appointed by the board who are not a member of a sponsoring organisation, should be appropriately remunerated. It is up to individual boards to decide whether to remunerate committee chairs or members.

Although the SIS Act currently precludes independent members of boards belonging to a fund, we support directors of fund trustee companies being members of the fund they govern. Being a member of the not-for-profit fund in no way makes a director less competent in performing their role. Boards should expect that superannuation guarantee contributions payable by the company in relation to the directors' fees (other than for independent directors) be paid to the fund.

### 19. Trustee Director Competency and Training

RSE licensees are required to implement a fit and proper policy, which deals with, among other matters, the fitness of trustee directors to discharge their duties. Trustees should meet at least the minimum levels of competence prescribed in prudential regulation, and boards should institute formal training plans for their directors.

#### 19.1 Core competencies

APRA has indicated that responsible officers must collectively have the skills needed for the effective and prudent operation of the fund. Individual directors should have the skills to "allow them to make an effective contribution to the board deliberations and processes." This includes:

- Understanding the risks of the fund's business operations

- Understanding the legal and prudential obligations
- Ensuring the fund operations are managed appropriately in light of those risks

Some of the core competencies that trustee boards should address for all of their directors include:

- Financial literacy – the ability to make informed judgements and take effective decisions about the use and management of money, including a working knowledge of accounting and auditing as well as basic investment knowledge.
- Superannuation law – understanding of legislation relating to the governance of superannuation funds, including (but not limited to) the SIS Act and regulations and licensing requirements under that Act, the Corporations Act and regulations, the Superannuation Guarantee Act, Prudential Standards, the Family Law Act, the Anti-Money Laundering and Counter-Terrorism Financing Act, taxation legislation, trust law and privacy provisions.

Responsible officers should also be able to demonstrate an understanding of and an ability to effectively implement the covenants outlined in the SIS Act.

- Governance and trusteeship – understanding the role of the trustee as outlined in the fund’s trust deed and trustee’s constitution as well as understanding the respective roles of the board and management. It should also include being able to understand and interpret technical advice on a range of subjects, being able to make decisions in a group setting on the basis of expert advice, being aware of areas where expert advice should be sought and being able to work effectively and cooperatively with others, while maintaining independence of judgement.

## 19.2 Collective competencies

In addition to core competencies, boards need to have the highest standards as a collective group. While the actual competencies required will depend to some extent on the specific circumstances of the fund, we believe collective competencies need to address at least the following areas:

- Investments
- Insurance
- Relevant areas of the law
- Accounting
- Marketing and communications
- Risk management
- Member advocacy
- Information technology systems
- Dispute resolution

## 19.3 Education

Boards should formulate and document a thorough training plan for trustee directors. The plan should identify the key competencies required of each individual director, and those required on the board overall, and provide the means to demonstrate that directors and the board meet their required standards. The standards should relate to the SPS 510 and SPS 520 requirements.

Boards should consider engaging an independent, appropriately qualified professional to conduct individual assessments of directors to develop personalised training plans. Boards will typically have directors at varying phases of their acquired knowledge and accordingly their training needs will be different. A specialised professional can recommend training courses and programs that address different skill levels and knowledge areas.

The training plan should ensure that directors undertake ongoing training to maintain their competencies as well as addressing any gaps. Thirty hours of training and professional development, comprising a mixture of formal training and a range of other professional development activities, should be an appropriate annual target for each director. It's possible that an individual assessment might indicate that greater training requirements are appropriate, it is also possible that due to a trustee director's role outside of the superfund, and the experience, training and professional activities undertaken through this role, that less training requirements are appropriate. Boards should ensure that any skills and knowledge gaps identified in an individual assessment are addressed with appropriate training in a timely manner.

All new directors should undertake an introduction to superannuation training course that includes trustee directors' duties and responsibilities, and an introduction to investments course, within the first six months of becoming a director. Exceptions can be made where a director brings particular expertise and experience – i.e. they may be an experienced director. Any introductory training should be provided by a registered training organisation. A comprehensive training manual should also be provided to all new trustee directors and this should be regularly reviewed and updated.

A register of courses undertaken in each current financial year by each director should be maintained and presented at six-monthly intervals, at a board meeting. This will also assist the board in meeting its obligations under SPS 520.

## Part F: Disclosure

### 20. Disclosure and Member Communication

Funds should ensure they have the appropriate processes and structures in place to effectively meet legislated disclosure requirements. Trustees should, however, aim to move beyond merely disclosing information toward genuinely communicating and engaging with members.

All information provided to members should be truthful and plainly presented, accepting that some members have relatively low levels of understanding of complex financial issues.

The trustee should prominently and clearly disclose, on its website, its approach to fund governance. A summary of the fund's governance policies, covering trustee director and executive remuneration, board and committee meeting attendance, and related-party transactions should be included on fund websites to all members similar to that required of companies under the Corporations Act.

### 21. Disclosure of Board Information

Disclosure of information about the trustee directors and the board is important in enabling members and other stakeholders to form a proper judgement about the effectiveness of the board.

In addition to existing disclosure requirements under the SIS Act, Corporations Act and accounting standards, we believe the disclosure of the following matters to members significantly improves the transparency of the operation of the board:

- The cycle of board and committee meetings
- Full, audited accounts made available on fund websites
- The availability of the terms of reference for the board and its committees
- Directors' attendance records at board and committee meetings
- Procedures and responsibilities in place to appraise the performance of the board, committees and individual directors
- Responsibilities and procedures for board renewal
- Biographies of all directors, including dates of appointment, the organisation they represent and some background on the individual
- The board's policy with regard to ESG matters
- Remuneration of directors and fund executives
- Any regulatory or statutory breaches of professional conduct.

## Part G: Financial Integrity

### 22. The Fund's Financial Integrity

It is of critical importance that a fund's system of financial reporting provides an accurate and true representation of its financial position. This can then be relied upon to reassure and inform all those with a financial interest in the fund.

The board and auditors should undertake sufficiently detailed analysis and enquiries into the fund's accounts to ensure that all Australian accounting standards and audit and assurance standards have been met.

A fund's CEO and CFO should certify to the board that all relevant financial information has been presented to the board and that this provides a true and fair view of the fund's financial position.

### 23. Relationship With the Auditor

#### 23.1 External auditors

Members and other stakeholders are entitled to have high levels of confidence in the financial statements of a fund. These statements should provide an accurate and detailed account of the fund's financial position.

In this regard, external auditors play a key role in verifying the accuracy of financial statements for the benefit of all stakeholders. An important obligation of auditors is to certify that the fund's accounts represent a true and fair view of the affairs of the fund. Auditors should discharge their duties and responsibilities without being influenced by factors that could impede their independence.

#### 23.2 Provision of non-auditing services

We consider that an audit firm can provide a limited range of non-auditing services, provided the fees paid for non-audit work and the level and nature of non-auditing work performed is disclosed in the financial reports of the fund and/or trustee.

The following services should not be provided by the same audit firm performing the audit for the fund, as they may be perceived to be materially in conflict with the role of the auditor:

- Preparing accounting records and financial statements (subject to paragraphs 290.167-290.174)
- Internal audit services (subject to paragraphs 290.195-290.200)
- IT system services (subject to paragraphs 290.201-290.206)
- Broker or dealer services
- Investment advice
- Actuarial services
- Legal and litigation support services (subject to paragraphs 290.207-290.213)
- Taxation advice (subject to paragraphs 290.181-290.194), or
- Valuation services (subject to paragraphs 290.175-290.180)

#### 23.3 Auditor familiarity

Auditors must meet the fit and proper requirements set out in SPS 520. Where the law permits, the partners signing off on the audit should be rotated every five to seven years. The audit committee should be involved in an ongoing review of the audit firm and its services, with active consideration given to rotating the audit firm at least every ten to twelve years. Where the audit firm is rotated, the personnel who assume responsibility for conducting the audit should not be the same personnel so that if an audit partner moves firms he or she cannot continue to be responsible for auditing the fund.

#### 23.4 Auditor to provide statements of independence

We support the auditor providing an annual statement that no circumstance has existed during the year that has affected the independence of the audit engagement team or audit firm. This statement should be included in the financial reports of the company.

## **Part H: Breaches of Good Governance**

### **24. RSE Licence Implications**

Failure to comply with the fitness and propriety standard (SPS 520) can impact the fund's ongoing entitlement to an RSE licence. APRA needs to be satisfied that the licensee can, on an ongoing basis, meet the requisite standard. Where a body corporate is the RSE licensee, and that body corporate is a disqualified person pursuant to section 120(2) of the SIS Act, APRA is empowered to cancel the licence.

### **25. Risk-Based Regulation**

Regulators have extensive powers within the current legal framework that are enforceable in a variety of different ways. Civil and criminal penalties can also flow from a court's consideration of trustee director breaches and failures, as well as exposing individual directors to liability. We recommend that boards have effective systems for responding to any breaches as well as preventing reoccurrence.

## **Part I: Conclusion**

In developing this Governance Framework we encourage all superannuation funds operating within the not-for-profit sector to benchmark their governance practices against these guidelines to ensure that they are operating amongst the highest possible standards. This document is an evolving document, and will require further amendment should the Government implement further reform of the industry.

AIST is also developing a series of Governance Toolkits to assist members in complying with the detail of Prudential Standards and other legal requirements. These are being developed on a continual basis and can be sourced on AIST's website.



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