Discussion paper:
Better regulation and governance, enhanced transparency and improved competition in superannuation

February 2014

AIST Submission

AIST

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose mission is to promote and protect the interests of Australia's $600 billion not-for-profit superannuation sector. AIST's membership includes the trustee directors and staff of industry, corporate and public-sector funds, who manage the superannuation accounts of nearly two-thirds of the Australian workforce.

As the principal advocate and peak representative body for the not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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Executive Summary

AIST is pleased to have this opportunity to provide its views on the Government's discussion paper, "Better regulation and governance, enhanced transparency and improved competition in superannuation" released on 28 November 2013.

In response to the Government's discussion paper AIST has undertaken significant consultation with its members on each of the three areas of focus – governance, transparency and competition. AIST established special purpose working groups for each area with the views of those groups discussed with more than 25 super fund chairs and ultimately the AIST board. As a consequence, AIST's submission has taken on board the views of its not-for-profit super fund members, with over half of the members actively engaging in the consultation process.

As superannuation funds are run for the sole purpose of members' retirement benefits, AIST's submission is written with a view to ensuring that any proposed changes by the Government pursuant to the issues raised in its discussion paper have a corresponding benefit to superannuation fund members.

Governance

The superannuation industry is currently implementing a wide raft of changes, particularly in the area of fund governance. Following an extensive consultation period, with significant industry input, new Prudential Standards and guidance have been introduced and a new suite of legal obligations in the *Superannuation Industry (Supervision) Act* 1993 (SIS Act) have taken effect to strengthen superannuation fund governance and the duties and obligations of trustee directors. While the industry should always strive towards best possible governance practices, now is a time for consolidation to allow the heightened standards to impact governance practices in the industry.

AIST supports a light touch regulatory approach where appropriate, while acknowledging the importance of the superannuation industry to Australia's economy, the retirement savings of working Australians and the compulsory nature of the system. However, any further reforms to the system should not only be considered in light of regulatory efficiency and cost, but also through a risk management lens. The ultimate benefit to members, in a system where that priority is paramount for trustees, should also be a key consideration for Government.

For equal representation boards the SIS Act limits the number of independent directors that such a board can appoint. AIST supports greater flexibility at law around this restriction and recommends that the legislation be amended to allow equal representation boards to appoint up to a third of their number from outside of the representative pool. AIST supports the equal representation model however, and believes that up to one third independent directors preserves the nature of that system, while offering boards greater flexibility.

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AIST points to the significant complexities that underlie an attempt to align the superannuation industry with other APRA-regulated industries and listed companies. Superannuation funds are set up as trusts, a structure that has significantly different foundations and obligations, and that is not easily merged with other operating structures. AIST supports the trust structure for the management of Australians' retirement savings and considers its unique properties to be essential to the continued success of our system. It does however mean that alignment with other sectors may not be entirely possible in every respect.

The governance models within the superannuation sector itself require different treatment for equal representation boards to those with a different structure. While we support the ASX Corporate Governance Principles and their definition of independence as it applies in the corporate arena, the straight adoption across into superannuation is unworkable due to the unique nature of superannuation funds. AIST submits that the definition for independent director in the SIS Act is an appropriate characterisation of directors outside of the representative pool, and should be maintained.

AIST believes that legal entities such as superannuation funds should not be subject to regulatory overlay when it to comes to choosing who governs and leads the business. The new Prudential Standards and the SIS Act very clearly articulate the roles and responsibilities of trustee entities and their boards and APRA's expectations as a regulator have also been clarified through the recent Stronger Super reforms. AIST submits that the regulator has sufficient powers to direct funds to make appropriate changes where it has concerns regarding governance or other risk, and that funds, operating within the law, should be able to choose directors and a Chair of the fund that is appropriate for the needs of the fund, and is ultimately in the best interests of members.

Australia's superannuation system has been independently reviewed, and was found in 2013, following the introduction of APRA's Prudential Standards, to lead the world on pension fund governance and integrity.[1] We should be loath to make changes where none are necessary.

Transparency

AIST supports transparency and disclosure requirements in the superannuation industry and contends that disclosure should reflect a super fund member's experience and expectations. The disclosure of information should be consistent across different media and should be meaningful to the consumer. In this regard, AIST proposes that further consumer testing be undertaken by ASIC to achieve this outcome.

A single benchmark should be used for all diversified investment return targets, however, for single asset investment options, AIST submits that an appropriate market benchmark will be more relevant. Targets

[1] Melbourne Mercer Global Pension Index, http://globalpensionindex.com/2013/melbourne-mercer-global-pension-index-2013-report.pdf

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should be articulated in the context of a long-term time horizon to reflect the long-term nature of superannuation investments.

AIST takes the opportunity in this submission to again express its concerns with the Standard Risk Measure and proposes that to better reflect its true nature, it be renamed as a measure of volatility. AIST also supports the AustralianSuper/RiceWarner investment risk model as an additional long-term measure.

For portfolio holdings disclosure, AIST submits that as a minimum, super funds should be required to disclose their top 50 publicly held assets for each investment option level. Exemptions should however be available for commercially-sensitive valuations of listed assets.

Competition

AIST supports the existing model for the default superannuation fund system in awards, and the role of the Fair Work Commission however we submit that some of the Productivity Commission's recommendations could also be implemented to improve the model.

AIST is also keen to ensure that unnecessary duplication is avoided and that parallel bureaucracies are not created.

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Introduction

There has been significant change in the superannuation industry in recent years, particularly through the Stronger Super and Future of Financial Advice (FOFA) reforms. Within the Stronger Super reforms one of the four limbs of change was the introduction of Prudential Standards.

These Prudential Standards codified APRA expectations and in turn practice, and introduced many other changes – often with a governance focus. This includes changes in the area of trustee oversight and expectations. Hence, as an overall premise, AIST submits that there is little need at present for further substantial change in relation to superannuation fund governance. AIST submits that the prudential standards were the subject of significant consideration by regulators, funds and other advisers and now is a time for these changes to be bedded down and to let them have the positive impact that was intended.

In the context of putting this submission to you, AIST believes that it is worth briefly recalling the history of our current superannuation system and the stability it has delivered in relation to the ultimate objective of retirement savings.

Measured as a proportion of gross domestic product (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. Australia's superannuation system exists to provide an adequate and sustainable retirement income. Our superannuation system assists to provide a dignity in old age as well as recognising a lifetime of work.

The Australian Bureau of Statistics cites that in February 1974, 32% of employees had superannuation coverage[2] (generally public sector and higher paid employees in companies). In 1979, the Prices and Incomes Accord noted the importance of achieving a mechanism to ensure equitable distribution of wealth – through providing employees with a return for improvements in productivity. This led to the 1985 National Wage Case which delivered a 3% employer superannuation contribution to be paid into a superannuation fund approved by the Industrial Relations Commission. At this time, some superannuation funds enshrined equal representation - equal numbers of employer and member representatives - on superannuation fund boards. However, this did not result in all working Australians receiving superannuation, so the superannuation guarantee legislation was developed in 1991.

The Superannuation Guarantee legislation delivered:

- Universal and compulsory superannuation to Australians (excepting those earning under $450 per month).

[2] http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features70March%202009

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- The establishment of superannuation as the third pillar of Australia's retirement system.
- A method for increasing the amount of superannuation in line with the Government's retirement incomes policy (eg. progressive increases from 3% - 9% from 1992 to 2002).
- A system of superannuation fund governance through the SIS Act in 1993.

Australia's superannuation system now covers over 94% of the Australian workforce[3], has over $1.75 trillion[4] under management, and is equal to Australia's GDP[5]. A foundation of this superannuation system has been trusteeship, the result of which is that the majority of Australians rely on trustees to prudently oversee the management of their retirement savings.

Not-for-profit superannuation fund structures

Australia's $1.75 trillion superannuation industry is made up of several types of superannuation funds, each with different governance and ownership structures. Some funds are owned by banks, insurance companies or other financial institutions and operate as profit-making entities (retail funds), some are owned by individuals (self-managed superannuation funds) while others, in the not-for-profit sector, were created by mutual agreement between employer and employee bodies who established trusts to manage members' retirement savings. As an industry body, AIST represents the interests of the not-for-profit superannuation sector, ie. corporate, public sector and industry funds.

The trustee ownership structure of not-for-profit funds is distinctly different from the commercial ownership structure of most retail funds. While sponsoring organisations have an ownership interest in not-for-profit funds, they are not free to sell or trade their ownership interest, as it is held in perpetuity within the trust structure. The stewardship of the assets is protected through the trust structure set out in the governing rules and supervised by law.

Another important distinction in the ownership structures of the different types of funds is that unlike the parent companies of retail funds, sponsoring organisations of not-for-profit funds are generally not in the business of superannuation (or in any related business) and their relationship with the fund is not material or profit-driven. This is an important distinction when looking at director independence and conflicts of interest.

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[3] http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features70March%202009

[4] http://www.apra.gov.au/Super/Publications/Documents/September%202013%20Quarterly%20Superannuation%20Publication.pdf

[5] http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=speeches/2013/002.htm&pageID=005&min=brs&Year=&DocType=

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Company Structure

- Proprietary Company, Limited by shares, subclass: Superannuation Trustee Proprietary Company.
- Public Company, Limited by guarantee, subclass: Unlisted Public Company – Non-profit-company.

Shareholders/ Sponsors

- A sole employee or employer organisation e.g. MTAA Super
- Employers of the fund e.g. Equip
- 1 employee and 1 employer organisation e.g. AustralianSuper
- Multiple employee and employer sponsors e.g. CareSuper 3 employee and 3 employee; HESTA 21 Guarantors
- Directors on behalf of their respective nominating bodies e.g. LUCRF Super

Appointment process for representative directors

- Member elected and Government appointed employers e.g. Emergency Services and State Super
- Employer and employer organisation appointed e.g. AustralianSuper
- Employee and employer organisation nominated and board appointed e.g. HESTA
- Member and employer elected e.g. Equip
- Member elected and employer sponsor/shareholder appointed e.g. Christian Super/ANZ Staff Super
- Member and employer elections via a college of individual representing members and employers e.g. UniSuper.

Board Composition

(Employer: Employee: Independent)

- 4:4:0 e.g. ANZ Staff Super
- 6:6:1 e.g. HESTA
- 3:3:3 e.g. MTAA Super, HOST**PLUS**
- 4:4:3 e.g. UniSuper

Figure 1: Structures of not-for-profit superannuation funds

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The governance framework of not-for-profit funds is based on an equal representation model whereby an equal number of the fund's employer and employee-sponsored directors are nominated or elected to the fund's board with the overarching protection of a two-thirds majority vote. While the two-thirds majority rule exists to protect beneficiaries and ensure that member interests are always prioritised, in practice the voting rule is seldom required as trustee directors pursue the best interests of members, usually on a consensus basis.

The equal representation model reflects both the occupational heritage of Australia's compulsory superannuation system and the view that member representation and a mutual ownership structure are critical to delivering the best retirement outcome for Australian workers. Direct member representation on the board of not-for-profit funds aims to ensure that member interests are aligned to the board's key strategic decisions and that trustee directors act solely in the interests of their members.

AIST submits that the governance model of not-for-profit funds has proven to be highly functional and effective, as well as highly adaptive to profoundly changing markets and commercial circumstances over time.

Another important attribute of the representative model is the diversity it brings to the boards of superannuation funds that generally have far greater occupational, gender and age diversity than corporate boards.

Against this backdrop, AIST believes that equal representation should continue to underpin the governance of not-for-profit funds. We do not, however, advocate a one-size-fits-all approach to the governance of superannuation funds and recognise that there should be flexibility for boards to appoint non-representative directors where appropriate.

While there are these different models, APRA-regulated superannuation funds have stringent governance requirements, pursuant to a combination of Commonwealth legislation and trust law. We note that these governance requirements have very recently been the subject of review and significant reform under the newly introduced Prudential Standards. APRA regulated funds have generally embraced these prudential standards as being an opportunity to further enhance how their funds are governed. They should now be given the opportunity to impact fund operations and governance practices.

Why do funds choose equal representation?

AIST's member not-for-profit funds cover over $600 billion of Australia's superannuation pool and nearly two-thirds of the Australian workforce. AIST member funds have led the way through delivering low fee, high performing super funds that have provided value for members. Many of these funds are public offer funds that have chosen to operate under equal representation rules.

Inherent in the delivery of best outcome superannuation of the not-for-profit superannuation sector is the governance model of equal representation. Through providing representation of members and employers

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on governing boards the equally represented funds are structurally aligned with the needs and preferences of members. Hence there is not only the statutory obligation to act in the best interests of members, but also an empathetic one - now and into the future. AIST submits that this model also promotes greater transparency, as representative directors are more likely to operate in circumstances where they meet directly with members and engage in dialogue with the representative bodies about the fund's performance and objectives, and consequently they are more accountable.

Since the advent of compulsory superannuation, markets have risen and fallen, new demography and technology challenges have emerged and commercial challenges have proceeded apace, but not-for-profit funds have continued to deliver superior results and adapt their governance and organisational structures commensurate with the growth and complexity of their operations. Collectively, not-for-profit funds have outperformed other pooled superannuation funds with different ownership and governance structures. This outperformance (of nearly 1.6% over a ten year period)[6] translates into thousands of extra dollars in retirement savings for super fund members.

AIST submits that one of the key strengths of the equal representation system is its focus on members' interests. The fact that the representative directors are independent of management of the fund, that they do not have a material relationship with the fund and are free to act without shareholder influence, also appears to drive the out-performance by not-for-profit funds.

Trusteeship and mutuality

Superannuation funds operate under a trust structure, a legal doctrine that has existed for centuries to protect beneficiary interests. The duties and obligations of trustee directors have similarly been developed over centuries and to some extent Governments have attempted to codify these fiduciary obligations. In Australia the SIS Act clarifies some of those duties for superannuation funds, for example, in the covenants set out at sections 52 and 52A of the Act.

Because superannuation funds operate in a trust environment, as entities they cannot be directly compared or aligned with the operational models and obligations that exist in non-fiduciary and non-trust governed sectors. While APRA is the regulator for banking, general insurance, life insurers as well as superannuation funds, the fundamental structural difference of a trust limits the extent to which these industries can be aligned. The same reasons make automatic correlation with corporations fraught with problems. This is not to say that there is no potential for useful ideas from other sectors, just as the ideas validly flow the other way.

Superannuation fund trustees are required to ensure their fund is maintained solely for the provision of benefits to members and they must exercise their powers in the best interests of those members. Any

[6] SuperRatings ten year rolling returns to 31 December 2013

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conflicts are to be resolved in favour of fund members. This additional level of responsibility means that a trustee director's decisions cannot be driven by the trustee entity, their nominating or sponsoring body, a particular grouping or cohort of members or another's wishes.

All trustee directors are required to bring independence of thought and judgement, and act in the best interests of members and beneficiaries. The inference in the Discussion Paper (at page 12) that representative trustees are only on boards to have the views of their employer or employee group heard fails to recognise the duties and responsibilities of superannuation fund directors. Even prior to the introduction of the SIS Act, the obligation to put the interests of the beneficiaries first has been central to the legal obligations of a trustee.

The application of trust law to Australian superannuation funds replicates other Anglo-Saxon jurisdictions. As Keith L Johnson and Frank Jan de Graaf note in an OECD paper *Modernising Pension Fund Legal Standards for the 21st Century,*[7] "trustees have generally been held to a higher standard of conduct than is required of corporate directors or parties to a contract." The same applies to trustee directors of super funds in Australia.

What are the principles of good governance and good trusteeship?

AIST strongly recommends that the foundation for good board composition should be centred on the ability to promote independence of thought and judgment. Independent thought and judgment in conjunction with appropriate skills, knowledge and an understanding of fund members and beneficiaries is key to being a good superannuation trustee director.

AIST believes that representative directors bring this arm's length relationship while also bringing a deep understanding of the beneficiaries of their fund.

There have been substantial reviews of corporate governance practices and regulation of financial institutions (including pension funds) both in Europe and the USA following the global financial crisis.

The European models (e.g. OECD and European Commission)[8] adopt a principles based approach to corporate governance, to take into account any current or future institutional models. This approach has been endorsed following the recent global financial crisis, although the following areas have been identified as having a need for improvement:

- The two key concerns were ensuring appropriate board skills and experience; and the (lack of) management of systemic risks within financial institutions rather than a 'tick a box' mentality.

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[7] http://www.oecd.org/corporate/ca/corporategovernanceprinciples/42670725.pdf February 2009.

[8] OECD Corporate Governance and the Financial Crisis: Conclusions and Emerging Good Practices to Enhance Implementation of the Principles (24.02.2010); Calling for Ways to Improve Corporate Governance in Financial Institutions: Green Paper, European Commission, 2010.

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- There should be an objective to create boards that are capable of independent and objective judgment, and while there isn't an inherent conflict between independence and competence, sometimes formal independence may be necessary but never a sufficient condition for board membership.
- Promoting competence on boards is more important than a focus on independence.

In the USA research found that a strict definition of independent has resulted in directors being legally independent, but not independent in a real sense. A principles based approach with a focus on outcomes is the preferred structure following significant reviews in the US and Europe in particular.

In the context of the Australian Government's discussion paper, AIST submits that the following set of principles should underpin any considerations for reform (Figure 2):

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Legislation-SIS Act

- Retain SIS definition of 'Independent' for equal representation boards
- Amend SIS to:
  - Allow up to 1/3 independents on equal rep boards
  - Remove clause in definition that prohibits an Independent from being a member of the fund

APRA guidance

- AIST supports the principles of the ASX definition and sees a role for it as additional guidance in the APRA standards/guidance.
- ASX principles require adaptation to reflect the trust nature of superannuation

Demonstration to APRA

- Each fund required to formally report to APRA how the board composition is in the best interests of members of the fund

Underpinning Principles

1. Accountability to members is best achieved by Trustee Directors who have an understanding of the interests and preferences of beneficiaries. Equal representation is recognised worldwide as the best means to achieve this.
2. Trustee Directors have the highest duty of care of any director, as trustee law imposes an obligation to act solely in the best interests of members.
3. Independent Directors and Chairs can bring particular expertise. Chair selection should be based on best person for the job, not class of Trustee Director.
4. Not-for-profit funds have different governance structures from retail funds and should have distinct governance requirements, e.g. fund sponsors/shareholders are non-beneficial; all Trustee Directors are free to act in the best interests of members and are independent of fund management.
5. Support ASX principles but note, they need to be adapted from the environment of a corporation to the environment of not-for-profit trusteeship. ASX guidelines are primarily directed at protecting minority shareholder interests against inappropriate dominance by majority shareholders or management. These issues do not apply to not-for-profit trusts.
6. Not-for-profit funds have evolved to meet the different needs of fund members and are very diverse. Requirements should therefore be principles-based to allow flexibility for funds to interpret relative to their own member needs.
7. Equal representation has proved highly successful. There is a high level of risk and cost associated with proposed change - such as majority independents – with no evidence that change will deliver value to members.

Figure 2

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What is the overseas experience and trends?

Equal representation of employer and employee interests on boards of pension schemes is not a model that is unique to Australia. Many countries around the world adopt equal representation as their preferred governance model.

A 2008 OECD *Working Paper on Pension Fund Governance*[9] asserts that employee or member representation can ensure a better alignment of the interests of the board with the fund beneficiaries. That paper goes on to comment that this needs to be balanced against the need for experience and knowledge (in Australia, the fit and proper requirements deal with this matter).

That paper provides the following summary of representation on superannuation boards across various countries:

Australia	Non-public offer funds (company and industry-wide funds) must have an equal number of employer representatives and member representatives on the board of directors of the corporate trustee or in the board of trustees.
Austria	The board of supervisors of the pension fund may have two seats fewer for employee representatives than for the sponsoring employer or other shareholders of the pension fund.
Belgium	The board of directors of a pension fund must have equal representation of employers and employees.
Brazil	At least one third of the supervisory board and the audit committee must be composed of worker representatives.
Canada	There are no requirements for single employer plans. Multi-employer plans established pursuant to a collective agreement are governed by a board of trustees composed in accordance with the plan or collective agreement (typically equal representation).
Germany	Supervisory Board: employee representation depends on the number of employees in the pension fund, with a maximum of equal representation.
Hungary	Mandatory pension funds must have member representatives in their board of directors.

[9] OECD Working Paper on Pension Fund Governance, Challenges and Potential Solutions, Fiona Stewart and Juan Yermo 2008, http://www.oecd.org/finance/private-pensions/41013956.pdf

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Iceland	The board of the pension fund must have equal representation of employers and employees
Ireland	No requirement for employee representation.
Israel	No requirement for employee representation.
Italy	The general assembly and the board of directors must each have equal representation of employers and employees.
Japan	The Board of Representatives of Employee Pension Funds must have equal representation of employers and employees.
Mexico	No requirement.
Netherlands	The board of the pension fund must have equal representation of employers and employees.
Norway	The board of the pension fund must have at least as many employee as employer representatives.
Poland	Not less than half of the members of the supervisory board of the occupational pension society should be nominated by the members of the fund.
Spain	The majority of the control commission must be selected by plan members and beneficiaries. No requirement for member representation in the board of pension fund management companies.
South Africa	At least half of trustees must be elected by plan members.
Sweden	The board of the foundation must have equal representation of employers and employees.
Switzerland	The supreme council of a pension fund must have equal representation of employers and employees.
United Kingdom	At least one third of trustees must be member-nominated.
United States	No requirements for single-employer funds. Multi-employer (Taft-Hartley) funds must have equal representation of employers and employees.

Figure 3

Australia's stringent legal and regulatory requirements have resulted in our superannuation system receiving the highest score out of 20 countries for the integrity (governance and regulation) of its system in

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the Melbourne Mercer Global Pension Index[10]. With its $1.75 trillion under management, compulsory savings foundation and a proven and sustainable regulatory structure, Australia's superannuation system is the envy of the world.

[10] http://globalpensionindex.com/2013/melbourne-mercer-global-pension-index-2013-report.pdf (page 14)

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Part 1: Better approach to regulation

Q1. The Government has committed to identifying (in dollar terms) measures that offset the cost impost to business of any new regulation. What suggestions do you have for how the regulatory compliance burden can be reduced?

Implementing significant change to the governance and leadership structures of super funds needs to be carefully considered. With two-thirds of the Australian workforce entrusting their retirement savings to not-for-profit superannuation funds, the risk of destabilising decision-making structures has serious potential ramifications. The stewardship of Australia's retirement savings is taken very seriously by AIST's member funds, and with no evidence to suggest that super fund members would be better off under an alternative model of governance, AIST recommends caution. Australia's superannuation system has matured and evolved over time, and there have been no failures or collapses in the not-for-profit super sector to suggest major reform is warranted.

AIST supports the Government's intention to reduce the costs of regulation, particularly as the cost is ultimately borne by the members of super funds. Such costs should have a clearly identifiable benefit to the members and beneficiaries of super funds however before more reform is introduced. AIST strongly submits that cost considerations and the reduction of regulatory burden be reviewed through a risk management lens as well as a frame of reference that has regard to any corresponding benefit to superannuation fund beneficiaries. A discussion of the transitional and structural risks that could flow from proposed changes is absent from the Government's discussion paper, and needs to form a key part of the considerations for reform.

The superannuation industry has recently been subjected to significant change, with new regulatory imposts and significant additional costs to the industry. APRA's funding requirement for the prudential supervision of the superannuation industry was $36 million in 2012-13 compared to $28.8 million for 2011-12, an increase of 25%. This brings the underlying supervisory levy to $59.4 million for 2012-13, compared to $46.8 million in 2011-12. Excluding the SuperStream levy, supervisory levy funding from superannuation in 2012-13 represents 41% of total levies, compared with 36.8% in 2011-12. $121.5 million is required to fund the implementation of SuperStream, bringing the total 2012-13 levy to $180.9 million, compared with a total levy of $46.8 million in 2011-12. These costs are borne by the industry and ultimately by super fund members. AIST submits that further increases in regulatory cost should be underscored by a demonstrable benefit to members.

The discussion paper proposes a change to board composition. Again AIST submits that such changes should be weighted not only against the cost of implementation, but also should be considered in light of potential associated risks and quantifiable benefit the members and beneficiaries. As not-for-profit super funds have achieved good returns for members over the longer term, and in fact outperformed other industry sectors, the benefit of changing an effective system has not been made out by the Government and accordingly AIST strongly rejects the call for change.

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Appointing new directors, particularly independent directors, attracts cost. Executive search firms charge approximately $60,000 per director, and more for a Chair of the board. In comparison to the current remuneration arrangements of super fund directors in the not-for-profit sector, an individual search fee equates to an annual director fee, and in many cases is more (the average remuneration for a director on a not-for-profit super fund board is $45,000 per annum).[11]

Some super funds have elections for directors and they can cost in excess of $400,000 to run. In the event that an election process was to be adopted for board renewal, there would be significant additional cost to run these for new directors if outside of the normal board renewal cycle.

Should mandated board composition requirements be introduced boards will either need to increase their board size or terminate existing appointments. The preferred method will depend in part on the transition period that the Government sets for any such change. Regardless however, there will be significant costs to be borne by fund members to effect any required board composition change.

The current average director remuneration in the not-for-profit sector is $45,000 per annum. AIST submits that this will increase if boards are required to source additional directors outside of the representative director pool. Independent directors in the corporate world come at a premium and there is no suggestion that this would be different for superannuation funds. This will arguably put pressure on director remuneration across the board as, regardless of the class of director or how they are appointed, all directors are subject to the same obligations and legal responsibilities.

In the event that the transition period to any new mandated board composition regime is short, this will put additional upward pressure on remuneration, as the candidate pool will be competitive. Should there be a requirement for a board majority of independent directors, this will further exacerbate the cost pressure.

To accommodate regulatory change in this area funds will also need to amend their governing rules, and negotiate the optimum structure under the law across a fund’s sponsors and stakeholders. This will require time and additional costs, costs that will again need to be borne by super fund members.

[11] AIST statistics on its member funds

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Part 2: Better Governance

Q2. What is the most appropriate definition of independence for directors in the context of superannuation boards?

The Government's discussion paper appears to be seeking the consideration of directors with an independence from management (as is applicable to retails funds) and an independence from employer and employee sponsoring bodies (for the purpose of equal representation fund boards). While we maintain that a principled outcomes-based approach has the support of global governance experts when it comes to independent directors on boards, we address in this submission the various definitions relevant to the Australian financial services industry and referred to in the Government's discussion paper. We recognise the complexity that surrounds this area and offer our recommendations in that context.

AIST submits that the distinctive difference in governance structures for the retail and not-for-profit superannuation fund sectors warrant an approach that recognises this diversity and treats each of the sectors appropriately.

The existing definition of independent director in section 10(1) of the SIS Act adequately characterises non-representative directors for an equal representation board structure. The definition excludes employer sponsors and representatives of member and employer representative organisations. AIST submits however that the exclusion in section 10 (1) of members of the fund is unnecessary as membership does not engender a material conflict that impacts on the director's ability to act with independence of mind and judgement. Accordingly we submit that the definition remains appropriate for equal representation funds, save for the exclusion of fund members.

AIST supports the ASX corporate governance principles and believes that they can offer additional guidance to boards on the concept of independence. However, there remains a fundamental structural difference between RSE licensees that operate as trusts and companies with different structures and responsibilities. These differences are significant and must be overcome and hence AIST contends that a blanket transposition of the ASX principles is not valid.

The ASX corporate governance principles definition excludes substantial shareholders as part of the independence test. In a corporate context the shareholder exclusion arose from the need to protect minority shareholder interests against inappropriate dominance of substantial shareholders and management. The considerable pecuniary interest of a substantial shareholder can interfere with a director's independent exercise of judgement. In a not-for-profit superannuation context, no such issue exists.

In a superannuation fund setting shareholders could be viewed as the members of the fund and their beneficiaries, or, the owners of the trust. The owners of not-for-profit RSE licensees can include employer-sponsors, member and employer representative organisations, and in some cases sitting individual directors. Their shareholding is not tradeable, and their obligations as trustees highlight the significant

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difference in organisational structure to corporations (see Figure 1). Should appropriate amendments be made to the ASX definition to reflect the unique trust structure of superannuation funds, then as a broad principle to guide funds on the concept of independence they should take on a similar guidance role in APRA's prudential guidance material.

APRA has meanwhile attempted to merge the ASX principles with the SIS Act definition, resulting in a definition of non-affiliated director in SPG 510 *Governance*. This definition has not however resulted in a solution that appropriately recognises the trust system or the diversity of governance models in super. We note too, that some significant amendments were made to the final version of the SPG 510 definition from the draft that was released for consultation in December 2012. The addition of clause (g) at paragraph 9 of SPG 510 unjustly excludes all member and employer representatives from being non-affiliated directors, regardless of whether the organisation they represented has any connection with the RSE licensee. AIST submits that while this may be an unintended consequence of the drafting of the provision, it nonetheless extends too far. The inclusion of directors of standard employer sponsors at clause (c) of paragraph 9 of SPG 510 also covers a wide array of potential super board directors, in funds where there can be thousands of standard employer sponsors. This provision should have a materiality filter applied to it to avoid unintended consequences and the screening out of otherwise suitably qualified super board director candidates.

SPG 510 struggles to reconcile the SIS Act definition of independent director with the broader understanding of that term in a corporate context. The unique nature of trusts and the diversity of our operating models adds complexity that is not easily resolved when attempting to consolidate and align a regulatory approach across the superannuation industry. A single, workable and relevant definition will require serious consideration. AIST submits however, that the SIS Act definition is appropriate to equal representation funds (save for being excluded if a member of the fund) and that the Government should be cautious in making unnecessary changes.

AIST position: Retain SIS Act definition for equal representation boards, and remove the exclusion of members of the fund. Modified ASX principles of independence to be added as further whole-of-industry guidance in APRA guidance material, recognising the trust structure.

Q3. What is an appropriate proportion of independent directors for superannuation boards?

AIST rejects the assumption that adding independent directors to boards in and of itself results in better governance. As an organisation committed to assisting its members in achieving best governance outcomes, we support evidence-based reform that improves governance practices and leads to better retirement outcomes for superannuation fund members. However, that evidence is distinctly absent from the debate and is not referenced in the Government's discussion paper. The focus of the independence proposals appears to be directed at equal representation boards and not other sectors of the superannuation industry.

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Combined, funds with equal representation boards account for approximately a third on the $1.75 trillion superannuation fund pool in Australia. Any significant change to their operating structure, such as a mandated change to board composition should not be pursued lightly. A proper risk assessment and cost projection of a mandated board composition change - be that to a third independent directors, or moreover, a majority – must underpin such a significant structural change.

The fundamental criteria in respect to the suitability and competence of any trustee director should lie in their skills and knowledge, their commitment and dedication to a process of continuous learning and a deep understanding of the members, the membership demographics, and the members' needs. The current APRA Prudential Standards entrench these fundamental principles and clearly make trustee boards accountable.

AIST supports the equal representation system where the accountability to members through representation of stakeholders of the fund is central to its operating model. As the financial services environment continues to evolve, and the superannuation system matures, AIST submits that the new heightened obligations pursuant to the Stronger Super reforms has established the necessary framework to assist that growth and allow the industry to prosper within appropriate regulatory parameters.

Super fund boards are composed of a group of people who collectively make decisions that further the best interests of the RSE licensee's members. The skills, experience, diversity and character of each of the individual directors must add to creating value to the collective board and ultimately the beneficiaries for whom they are responsible.

AIST supports the development of trustee director skills not only in investments, insurance, risk and financial management, but also any other skills that are necessary to assist the board to drive its strategic objectives into the future and to make the best decisions as a group. Diversity, behavioural competencies and the necessary dedication and commitment to the fiduciary responsibilities of being a trustee director should sit alongside the necessary skill requirements. AIST's commitment to this principle can be demonstrated by the development of our Trustee Director Course, an educational program specifically addressing the skills and knowledge necessary to best discharge the duties and responsibilities of a superannuation fund trustee director.

Achieving the right mix of skills on a fund board has become intertwined with the independence debate and has led to some confusion as to why individual boards appoint directors that are not a representative or in any way associated with an employer or employee representative group or employer-sponsor of the fund.

As the superannuation and financial services environment has evolved over recent years, some representative boards have taken a number of active steps to supplement their skills and professional competencies at board level through the appointment of directors outside of the representative pool (10% of directors on not-for-profit trustee boards are independent; 21 of 68 not-for-profit fund Chairs are

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independent). In most cases, these appointments have nothing to do with achieving independence *per se*. Boards also regularly avail themselves of independent advisors to assist the board on a variety of issues.

AIST agrees that non-representative directors can and do add substantial value to boards. However, that does not mean that other classes of directors are therefore of lesser value. AIST does not support the prescription of board composition by legislative instrument or regulatory mandate, and rejects the assumption that directors who meet a legal definition of independence add value to the members of the trust, by that virtue alone.

Representative boards currently have the flexibility to appoint one additional independent director (section 89(9) SIS Act) or, by approaching APRA, more than one additional non-representative director. Good governance practice dictates that boards are constituted of the right mix of people. In this context AIST supports an amendment to the SIS Act allowing RSE licensees to appoint up to a third independent directors to their board. Retaining equal representation of employers and employees, and preserving a balance of diverse backgrounds remains AIST's position. It is a matter for individual boards to consider the ultimate composition of their board having regard to the best interests of their own members and the requirements at law. This may indeed include additional non-representative directors on boards.

AIST supports the implementation of a positive obligation of super fund boards to demonstrate to APRA that they have duly followed an appropriate and documented process and considered the composition of their board including the appointment of independent directors. They should be able to report to APRA on how their board composition meets the requirements of the SIS Act and prudential regulation and that it is in the best interests of members.

AIST position: That the SIS Act be amended to allow up to a third of equal representation board directors to be non-representative directors. That boards have a positive obligation imposed on them to report to APRA, if required, that they have followed an appropriate process in deciding on their board composition, and that their structure is in the best interests of members.

Q4. Both ASX Principles for listed companies and APRA's requirements for banking and insurance entities either suggest or require an independent chair. Should superannuation trustee boards have independent chairs?

Banking and insurance entities, while also being regulated by APRA, have different structures and obligations to super funds. As trusts established to provide retirement savings for members, the fiduciary obligations of the board and its Chair are significantly different to those of directors of banking and insurance entities. The responsibility for beneficiaries and the heightened standard of care that applies pursuant to the SIS Act makes the role of directors of superannuation entities unique and the role of the Chair in guiding that stewardship is incredibly important. AIST submits that the board should choose its Chair on the basis of its specific requirements and appoint the best person for the job, regardless of what class of director they fall into.

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AIST supports the implementation of a positive obligation on super fund boards to report to APRA that they have an appropriate process for appointing their Chair and that they have duly followed the process and considered the appropriateness of appointing an independent Chair. They should be able to demonstrate in their reporting on board composition to APRA that their appointment is in the best interests of members.

AIST position: Super fund boards should be free to choose the best person to Chair their fund, be they a representative director or not. Funds should be required to report to APRA if requested as to the process for the selection of their Chair, the considerations that formed part of their criteria and how the appointment is in the best interests of members of that fund.

Q5. Given the way that directors are currently appointed varies across funds, does it matter how independent directors are appointed?

Currently, where equal representation boards, in consultation with their sponsoring bodies, choose to appoint additional directors from outside of the representative pool, they are generally appointed via one of the following processes (the first two processes being the most common):

- The board appoints an external director who is not associated with any of the fund's sponsoring bodies. This typically occurs when the board wants to enhance its whole-of-board skills set. AIST's current estimates are that about one in eight directors of not-for-profit funds are appointed via this process.
- A sponsoring body (be it an employee or employer representative group) chooses to nominate an individual who is not associated with the sponsoring body to a representative position on the board. This typically occurs when the sponsoring body needs or chooses to seek outside expertise to satisfy the skill set requirement of the board. This second category is - we believe - little understood in the public discourse over superannuation funds, yet an important reflection on the way stakeholder groups on both 'sides of the table' have in fact responded to the increasingly sophisticated needs of their funds.
- The trust deed of the fund requires it to have a certain number of independent directors, in addition to the directors appointed by the sponsoring bodies. These directors are then appointed by the board. Funds that have adopted a model which prescribes the number of non-representative directors along the lines of employer nominated, employee nominated, independent directors include MTAA Super (3:3:3) HOST**PLUS** (3:3:3) and UniSuper (4:4:3).

RSE licensee boards should have appropriate policies and processes for appointing new directors, regardless of the class of director. The policy and appointment process should be documented and disclosed, and the process followed in making new appointments. The RSE licensee should have the power to reject candidates that do not meet the requirements of their governance and fit and proper policies, their skill requirements or other considerations the board deems important for the prudent governance of the fund. Again funds should be required to report to APRA on their processes and decisions if APRA requires it.

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The governing rules of an RSE licensee should not prevent a board from appointing a non-representative director should it consider such an appointment to be in the best interests of members.

AIST position: Super fund boards should be free to determine the appropriate process for their fund for selecting new directors. In line with their needs and selection criteria, they should also be able to reject unsuitable candidates. Funds should be required to report to APRA if requested as to the process for the selection of their directors, the considerations that formed part of their criteria and how the appointment is in the best interests of members of that fund.

Q6. Should the process adopted for appointing independent directors be aligned for all board appointments?

For RSE licensees with equal representation boards the governing rules will determine how the member and employer representative directors are appointed to the board. The rights of nominating bodies under the governing rules, and the process for appointing new directors varies from fund to fund, to suit the best interests of members. The preservation of the rights of the sponsors of the funds (sometimes a combination of employer and employee representative organisations, sometimes one or the other, sometimes the sitting individual directors) should remain a vital consideration in any review of director appointment processes. However, AIST supports the strengthening of governance processes and transparency, and supports the implementation of minimum standards based on good governance principles.

Equal representation boards generally work closely and collaboratively with the employer and employee sponsoring bodies when considering trustee director appointments to ensure that only the most appropriate persons contributing to the whole-of-board skills are appointed to the board.

In addition to the many different unions that nominate directors to not-for-profit funds, employer-nominated directors come from a variety of sponsoring bodies such as AI Group, the Master Builders Association and State and Territory Chambers of Commerce (as well as State and Federal governments in the case of public sector funds).

Representative trustee directors can also be nominated through a college of individuals representing members or employers. In the case of UniSuper, for example, two of the board's employer and employee representative directors are elected by such a committee that is made up of representatives of all of the fund's participating employers and employee delegates in equal numbers.

Additionally, trustee directors can be elected either directly through member and employer elections. In the case of Equip, for example, the board has nine directors, four elected by members and four elected by employers. The board appoints the ninth director. Regardless of these different approaches, all directors must satisfy fit and proper requirements and undergo formal training. APRA closely monitors the skills and suitability of directors on super fund boards.

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The right combination of people, with a complementary skill set and understanding of the fund and its members should be the primary concern in selecting directors for the super fund board.

RSE licensee boards should have appropriate policies and processes for appointing new directors, regardless of the class of director. The policy and appointment process should be documented and disclosed, and the process followed in making new appointments. The RSE licensee should have the power to reject candidates that do not meet the requirements of their governance and fit and proper policies, their skill requirements or other considerations the board deems important for the prudent governance of the fund.

While some equal representation funds appoint some new directors through an election process (there has been a trend away from director elections in recent years), these appointments too should be subject to a final approval of the RSE licensee board. The minimum requirements regarding fitness and propriety, skill and the sought-after attributes should be disclosed to potential candidates ahead of any director election.

Section 29QB SIS Act and its accompanying regulations require that funds disclose their board appointment and removal processes on their websites from 1 July 2014.

AIST position: Different funds have different appointment processes. Boards should be required to make appointments in line with their needs and selection criteria and should also be able to reject unsuitable candidates. Funds should be required to report to APRA if requested as to the process for the selection of their directors, the considerations that formed part of their criteria and how the appointment is in the best interests of members of that fund.

Q7. Are there any measures that would strengthen the conflicts of interest regime?

The existing conflicts of interest regime for APRA regulated super funds is one of the strongest in any industry sector. The nature of fiduciary obligations under trust law, the SIS Covenants and APRA's SPS 521 *Conflicts of Interest* ensure that the over-riding obligation in all cases is to give priority to the interests of beneficiaries.

The SIS covenants state (among other things) at section 52(2)(c) and (d) SIS Act:

- *(c) to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries;*
- *(d) where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee:*
  - *(i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and*
  - *(ii) to ensure that the duties to the beneficiaries are met despite the conflict; and*

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(iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and
(iv) to comply with the prudential standards in relation to conflicts

SPS 521 *Conflicts of Interest* requires all RSE licensees to have a robust conflicts framework and policy, to maintain them and then have them independently reviewed at least every three years.

Section 29QB SIS Act disclosure requirements also mandate the disclosure of a conflicts of interest and conflicts of duty register. All conflicts need to be documented and disclosed publicly on a fund's website, commencing 1 July 2014.

The obligation for ASX listed companies is to identify, monitor and manage conflicts of interest. They do not have an additional overarching obligation, in all circumstances, to prioritise the interests of the company and/or the shareholders. The obligations on super fund trustee directors in terms of prioritising member interests is therefore higher than in other APRA regulated industries and the corporate arena.

APRA's research into related-party transactions in the superannuation industry has highlighted the conflicts of interest inherent in the board composition and ownership structure of many retail superannuation funds, particularly where parent companies are aligned to the fund's material service providers. In the area of administration fees, for example, APRA found that some retail trustees using related-party administrators were paying significantly higher fees, "effectively doubling the median member's cost load". APRA noted that "reconciling this finding with the superannuation trustee's fiduciary duty to fund members will bear further investigation".[12] In contrast, APRA concluded that the fees paid by trustees of not-for-profit funds to related parties were "not significantly different than those to independent service providers".

Other research papers add weight to the view that appointing directors who are independent of management and free of the conflict of having to serve both members and parent company shareholders is one of the key issues – if not THE key issue - when it comes to best practice governance of managed funds. Bogle,[13] for example, pointed out that executive directors of American mutual funds, in trying to serve two masters, have tilted the balance of interest in favour of company shareholders to the detriment of fund beneficiaries.

Further, AIST submits that more related party conflicts are likely to result from the implementation of a mandated policy to appoint more independent directors on boards. The inference in the discussion paper is that independent directors will be drawn from the financial and professional services industries. The

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[12] http://www.apra.gov.au/AboutAPRA/Documents/APRAWorkingPaperGovernanceAnInterpretation.pdf

[13] Bogle, J. (1999). *Common Sense of Mutual Funds*. New York: John Wiley 7 Sons, Inc

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Australian financial services market is small, and the potential for conflicts that arise on boards will increase as a result. The Bogle research also supports this.

AIST position: The current legal requirements set out in the SIS Act, APRA Prudential Standards and trust law, with regulatory oversight from APRA provide a sound framework for the management of conflicts of interest. SPS 521 and the new SIS Act amendments should be allowed time to impact fund governance arrangements.

Q8. In relation to board renewal, should there be maximum appointment terms for directors? If so what length of term is appropriate?

Tenure and board appointments were subject to significant consideration and review as part of the Stronger Super reforms and as a result new guidance has been introduced by APRA to set expectations for the industry.

With regard to board renewal, SPG 510 *Governance* says the following:

> *It would be prudent practice for a Board's renewal policy to document the maximum tenure period for all directors, including the circumstances where the RSE licensee may step outside the terms of its tenure policy. APRA expects that an RSE licensee would develop and implement a considered approach for assessing each director on the cessation of their term, and at the end of the RSE licensee's maximum tenure period, to determine whether it is appropriate for the individual to be reappointed. APRA expects that the circumstances where a person is reappointed at the end of a reasonable total period of tenure would be exceptional.* (para 27)
>
> *APRA expects that the process for nominating directors would ordinarily ensure that terms of tenure are staggered to support continuity and the appropriate transfer of knowledge and skills to new directors.* (para 28)

Though only guidance, the SPG 510 requirements are highly persuasive. APRA has the capacity to consider the appropriateness of practices that do not comply with the Prudential Guide and direct an RSE licensee appropriately. Given the significant review that has taken place in this regard, there is no evidence of a need to revisit this in the short term. The new regulatory requirements should be allowed time to take effect.

The length of appointment that is appropriate for a director depends on the individual circumstances of the super fund, its fund demographics and long term strategic objectives. The board should have the flexibility to implement a board tenure policy appropriate to their specific needs, in compliance with the regulatory framework.

AIST position: The current regulatory requirements in SPS 510 and SPG 510 articulate the necessary expectations regarding director tenure.

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Q9. Should directors on boards be subject to regular appraisals of their performance?

AIST supports the assessment of board performance on a regular basis as a vital part of continuous improvement practices in any good governance model.

Following Stronger Super reforms, both superannuation boards and individual directors are required to undergo an annual performance assessment in compliance with SPS 510 *Governance* with guidance provided on the process in SPG 510 *Governance*. The guidance provided by APRA states (SPG 510 *Governance*):

> *SPS 510 requires the Board to assess its performance and that of individual directors relative to its objectives. In undertaking this assessment, a well-functioning Board would typically consider and document the objectives that it sets for the Board collectively and for individual directors*. (Para 22)
>
> *Objectives for the Board could include:*
>
> *(a) establishing the overall strategy for the RSE licensee and ensuring reporting against this strategy;*
> *(b) assessing operating and financial conditions against forecasts;*
> *(c) assessing senior management performance against agreed criteria, which would include, for relevant senior management, the effectiveness of risk controls; and*
> (d) *making key decisions in a timely manner.* (Para 23)
>
> *Objectives for individual directors may include:*
>
> *(a) demonstrating the required expertise for their role;*
> *(b) attendance and participation at Board meetings; and*
> (c) *contributing to Board deliberations and the overall direction of the RSE licensee.* (Para 24)
>
> *APRA expects the Board to consider whether its annual Board assessment would be best undertaken by a party who is free from connection to the RSE licensee or its associates. At a minimum, APRA expects the Board assessment would ordinarily be undertaken by an external party at least every three years.* (Para 25)
>
> *APRA expects that a Board would ordinarily have in place a documented policy on performance assessments which includes:*
>
> *(a) the timeframe within which assessments will be conducted;*
> *(b) how sufficient independence in performance assessments will be achieved;*
> *(c) how the Board will manage the outcomes of performance assessments and recommended courses of action in the event of performance that is below expectations; and*

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(d) *a reasonable timeframe for action after performance assessments have been conducted*. (Para 26)

AIST submits that this regulatory requirement and framework for conducting annual assessments sets an appropriate level of expectation for superannuation boards, especially when read in conjunction with the fit and proper and conflicts standards.

AIST position: The current regulatory requirements in SPS 510 and SPG 510 provide the necessary expectations regarding board performance appraisals.

Q10. Would legislation, an APRA prudential standard, industry self-regulation or a combination be most suitable for implementing changes to governance? What would the regulatory cost and compliance impacts of each option be?

The appropriateness of a particular legal instrument for the implementation of any further reforms to the superannuation industry is dependent on the nature of the reform.

Further to our recommendations contained in the governance section of this submission, AIST's position is as follows:

<u>SIS Act:</u>

- Section 89 (2) of the SIS Act be amended to allow up to a third independent directors on an equal representation board.
- Section 10 (1) definition for independent director be amended to allow non-representative directors to also be members of the fund.

<u>APRA Prudential Standards and Guidance:</u>

- ASX principles on independence be adapted for the trust nature of superannuation entities, and be included as further guidance for the superannuation industry on the concept of independence.
- RSE licensees boards to have a positive obligation to report to APRA if requested, that board composition, board appointments and the appointment of the Chair are in the best interests of members and that the board's process was appropriate taking into account the potential contribution of independent directors.

Q11. What is the appropriate timeframe to implement the Government's governance policy under each option?

AIST has 68 member funds and their ownership structures, stakeholder groups and appointment processes vary greatly (see Figure 1). With the recent introduction of board renewal policies pursuant to SPS 510 *Governance*, many funds are in the process of implementing new policies. Some funds are in merger discussions, with board composition being a key consideration in that process.

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Any changes to governance structures need to be handled carefully to mitigate any transitional and structural risks. Depending on the nature of the changes required, the appropriate transition phase will also vary.

Should the Government proceed with board composition change requirements, we recommend that funds be allowed up to a five year transition period to comply, with transition plans appropriate to individual fund needs to be approved by APRA.

Not all funds will require five years, but for those that do, the longer transition will help to reduce costs of implementing change. For example, allowing a board renewal policy to run its course, and some of the existing director terms to come to an end, will ensure that the process can be managed with a focus on retaining key knowledge and expertise, properly training and inducting new board recruits, and avoiding unnecessary increases in board size.

AIST position: An implementation period of up to five years on the basis of a transition plan reviewable by APRA.

Q12. Given that there will be existing directors appointed under a variety of terms and conditions, what type of transitional rules are required?

AIST submits that due process needs to be extended to existing arrangements and that appointments made in good faith, and within the law, should be honoured.

AIST recommends a longer transition period for any mandated board composition changes to ensure that:

- Risks are properly considered and managed;
- There is an appropriate consideration of retaining skills, knowledge and expertise;
- There is adequate time to properly recruit and train new appointments; and
- The ultimate changes a board makes are in the best interests of members.

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Part 3: Enhanced transparency

Part 3A. Choice product dashboard

Q13. Should a choice product dashboard present the same information, in the same format, as a MySuper product dashboard? In answering this question you may wish to consider, if the choice product dashboard is to present different information, what should it include and why?

In general, Choice product dashboards should present the same information, in the same format, as a MySuper product dashboard. AIST submits that MySuper members (and other fund members) wanting to compare their existing products with other superannuation products will want to compare with a wide range of products and not just MySuper products. It would be a strange outcome if comparable disclosure is not available when consumers actually want it. Commonly displayed information reduces barriers for members who are seeking engagement.

The format and layout of the product dashboard for both MySuper and Choice products should be further reviewed to ensure the highest possible level of consumer comprehension. AIST recommends that ASIC consult on the results of their previous focus group testing, and undertake further testing of possible Choice options.

Other than the qualification below at question 15 on CPI benchmarking, AIST submits that Choice product dashboards should present the same information as MySuper product dashboards.

AIST position: Choice product dashboards should present the same information as MySuper product dashboards.

Net investment return versus net return

Q14. Is it appropriate to use a single benchmark (CPI plus percentage return) for all choice product return targets?

AIST submits that a single benchmark is not appropriate for all Choice products.

In general, Choice product dashboards should use a CPI plus percentage return target. In particular, Choice product dashboards should use a CPI plus percentage return for all Choice products that have a diversified investment strategy.

Single asset and single sector Choice products however should not be required to have a CPI plus percentage return target, unless they offer a diversified investment strategy (for example, this may be possible with an equities portfolio). In such non-diversified cases, the return target should be the market-linked target appropriate to the asset or sector.

For clarity, a high growth option should be required to have a CPI plus percentage return target as it is a diversified investment structure. In contrast, an ASX 300 option should not.

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Where a Choice product does *not* use a CPI plus percentage return, the dashboard should clearly disclose that the product does not have a diversified investment strategy.

The benchmark should also be set against the super fund's level of confidence that it will be able to achieve its return target. The current requirement is set as the mean (50%) probability of achieving the target. AIST submits that funds should be required to have a high level of probability that they can reach their investment target.

AIST further submits that super funds should be required to show that they have 66% confidence (that is within one standard deviation) that they will be able to achieve their return target, and to disclose that this is their level of confidence.

AIST position: A single benchmark of CPI plus return target is appropriate for all diversified asset structures. However, AIST submits that for non-diversified assets the return target should be market-linked to the appropriate asset or sector.

Q15.Should both net investment return (investment return net of investment costs only) and net return (investment return net of all associated costs) be used to measure a product's investment return on the choice product dashboard? In considering this question, you may wish to consider:

- **If including an additional measure for a product's investment return would add unnecessary complexity.**
- **If both net investment return and net return are used on the choice product dashboard, whether they should also be used on the MySuper product dashboard.**
- **Whether it is appropriate to use a single time horizon, for example 10 years, when calculating target net return and net return for the range of possible choice products.**

As the purpose of the disclosure is to aid consumer comprehension, AIST submits that disclosure should reflect consumer experience as much a possible (that is, disclosure should show a member what they will actually receive).

Product dashboard disclosure should also be as consistent with other disclosure requirements as possible, including disclosure on member periodic statements and Product Disclosure Statements (PDSs). There should also be alignment between investment objectives and return targets.

While not perfect, AIST submits that targets net of both investment fees and the administrative fees of a representative member (with a $50,000 balance) are both consistent with PDS disclosure, closest to members' actual experience and least likely to be gamed or manipulated.

AIST submits however that the listing of both net investment return and net return should not be used on a product dashboard - only the requirement to disclose net return should be mandated. The disclosure of both would be confusing to consumers, and less representative of the member experience.

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A consistent and long-term time horizon – of at least 10 years – should be used to reflect the long-term nature of superannuation investments.

AIST position: Disclosure should reflect the consumer experience and be consistent across consumer information products and should be presented over a long-term time horizon such as ten years. Investment targets net of investment and administration fees should be used for the product dashboard.

Q16. Should the choice product dashboard include both a short-term (volatility) and long-term (inflation) risk measure?

AIST strongly supports additional consultation on the presentation of investment risk to fund members.

In line with our previous submissions, the AIST position is that the Standardised Risk Measure is deficient and should not be set in concrete by this exposure draft and associated measures. The SRM uses volatility as a proxy for risk, does not measure other forms of risk (including liquidity risk, operational risk, foreign currency risk, country risk and economic risk) and does not measure severity of market risk, particularly in relation to magnitude of risk rather than frequency. These limitations have generally been recognised by the designers of the SRM, but it was promoted as a useful first step.

While there is a clear need for consistent descriptions of risk, no single measure will be perfect. AIST proposes that there should be a measure of long-term risk in addition to a measure of short-term risk.

In considering this question, you may wish to consider:

- **Is the SRM model the best measure of short-term investment risk?**

The measure's current label suggests that it gives a general indication of investment risk. In fact, the measure captures annual downside volatility, expressed over a 20-year period. This misrepresentation may be against the member's interest. AIST strongly recommends that the measure be renamed and suggest "Volatility Rating" or "Downside Risk Measure".

By itself, the SRM is misleading and inappropriate for members who are in a mandatory long term investment environment. The use of a downside volatility measure without full explanation and without the use of other risk measures would potentially encourage more consumers to reduce volatility, and therefore reduce long-term expected returns.

- **What would be the most suitable measure of long-term risk to include on the product dashboard?**

Asset value volatility has been used as a surrogate for risk in the SRM. However, this needs to be balanced to ensure that the risk descriptor provides meaningful and complete consumer information about the risks that:

- capital value losses will reduce a member's capacity to meet expenditure needs; and
- the member's investments will not maintain their purchasing value over time.

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Any measure of long-term risk must include consideration of inflation, as expressed in terms of purchasing power. AIST supports the AustralianSuper/RiceWarner investment risk model that takes this into account. The two risk measures - the SRM and the AustralianSuper/RiceWarner investment risk model - share similar underlying methodology and can be usefully united.

The AustralianSuper/RiceWarner model uses the likelihood that an investment will underperform inflation over a 40-year timeframe as its basis.

The relationship between the volatility and return in the context of the two primary risks means that members have to consider both when making an investment decision. They need to consider which risk is most important to them and minimise that risk. Therefore, there should be useful and comparable disclosure of both risks.

It is accepted that the SRM labelling provides an appropriate descriptor for short-term risks, although it should be relabelled to make it clear that it is a measure of short-term volatility.

A measure of long-term risk is also needed to help members seeking long-term growth understand which investment option has a high probability of delivering this growth, and a low risk of not delivering it. At the same time, the SRM would also show that this option has a greater risk of short-term volatility and negative returns.

- **Is it possible to present a long-term risk measure in a similar format to the short-term risk measure (that is High/Medium/Low)?**

AustralianSuper in conjunction with RiceWarner has undertaken investment risk modelling that has underpinned the current disclosure of risk by AustralianSuper. This includes the disclosure of long-term risk labels (from Low to High) based on the probability of underperforming inflation.

These labels can be modified to match the seven bands of the SRM as follows:

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Risk Band	Risk Label	Probability of Underperforming Inflation over 40 years
1	Very Low	< 5%
2	Low	5% to 10%
3	Low to Medium	10% to 18%
4	Medium	18% to 27%
5	Medium to High	27% to 35%
6	High	35% to 40%
7	Very High	> 40%

Figure 4: Long term risk labels

- **Would including an additional risk measure add unnecessary complexity to the product dashboard?**

AIST's position on the question of a short-term risk measure asserts that existing disclosure as proposed in the short-term risk measure is both inadequate and misleading for the reasons mentioned above.

In a fact sheet prepared by AIST last year, we presented both of these risk measures together, before concluding that:

> *Disclosure of the two measures together on the product dashboard is a useful tool to assist members making investment decisions.*

Additional carve outs

Q17. Are additional carve outs from the choice product dashboard obligations required? If so, why are these additional carve outs required? In considering this question, you may also wish to consider identifying where the gaps in the current carve out provisions are.

AIST submits that wholly defined benefit products should be excluded from product dashboard requirements, as their promise to members is not directly dependent on investment returns.

Single asset Choice products also should not be required to publish a product dashboard.

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A liquidity measure

Q18. Should a measure of liquidity be included on the choice and/or MySuper product dashboard? If so, what would a suitable measure be?

AIST submits that a liquidity measure should not be required for either a Choice or a MySuper product dashboard. Liquidity is an important investment issue but difficult to convey as a useful metric to consumers.

AIST proposes that ASIC undertake consultations with the super industry (and subsequent focus group testing) on the development of a measure that would be both accurate and understood by consumers.

Implementation issues

Q19. Should the commencement date for the choice product dashboard be delayed beyond 1 July 2014? If so, what date would be suitable for its commencement? What would be the benefits and costs to such a delay?

AIST supports a commencement date of 1 July 2014 provided full requirements are settled by the end of March 2014 to enable implementation by funds.

Part 3B. Portfolio holdings disclosure

Presentation of portfolio holdings

Q20. Which model of portfolio holdings disclosure would best achieve an appropriate balance between improved transparency and compliance costs? In considering this question, you may wish to consider the various options discussed above:

- **Should portfolio holdings disclosure be consistent with the current legislative requirements (that is, *full* look through to the final asset, including investments held by collective investment vehicles)?**
- **Should the managers/responsible entities of collective investment vehicles be required to disclose their assets separately? To give effect to this requirement, legislation would require all collective investment vehicles to disclose their asset holdings, regardless of whether some of its units are held by a superannuation fund.**
- **Should portfolio holdings disclosure be limited to the information required to be provided to APRA under *Reporting Standard SRS 532.0 Investment Exposure Concentrations*?**

AIST supports portfolio holdings disclosure consistent with the current legislative requirements subject to the following modifications:

- Disclosure should be at the investment product level.
- Minimum disclosure should be of the top 50 publicly held assets.

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- Disclosure of the final investment product but without a requirement to attribute the asset to an external fund manager.
- Disclosure of the name, sector, geographic location and percentage holding.

While disclosure should generally be at the asset level, the regulations should also allow the grouping of assets at a 'project' level. That is, where the investment in an asset may be composed of holdings, trusts and other investment vehicles, it should be possible to aggregate these and provide a single disclosure.

Super funds should be able to apply for an exemption from ASIC to disclose the value of commercially-sensitive unlisted assets, where this is in the best interests of members. This may occur when price-disclosure would adversely affect the capacity of the super fund to optimise the value of its investment.

An example of where such commercially-sensitive disclosure may not be in the interests of fund members may be found in the example below.

Case study

A fund is presently investigating the possibility of using an investment fund that invests in emerging markets. The fund will be required to disclose the identity and value of assets from 1 July 2014.

The investment fund is willing to disclose the name of the assets to the fund – on the basis that this information is not disclosed publicly. The investment fund itself is considered to be an excellent investment opportunity, however, the only way that fund could invest in the fund is to request information on the underlying assets, but to resist disclosure. This would not be possible under the current proposals.

The super fund must, therefore, either decline to invest with this investment fund, or to make a 'blind' commitment. Both of these outcomes could be considered to be sub-optimal.

Figure 5

Q21. What would be the compliance costs associated with each of these models for portfolio holdings disclosure?

AIST submits, after consultation with members, that implementation and ongoing costs in excess of $100,000 are likely to be faced by all APRA-regulated super funds.

These costs will be significantly increased if there is a requirement to audit the disclosed holdings.

Q22. Should portfolio holdings information be presented on an entity level or at a product (investment option) level?

In order to provide meaningful information to a fund member, who will be making investment decisions at an investment option level, AIST submits that disclosure should be on an investment option level. There may also be benefit in providing disclosure at an entity level.

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Materiality threshold

Q23. Is a materiality threshold an appropriate feature of portfolio holdings disclosure?

There is no consensus amongst AIST members with regards to reporting of portfolio holdings. Views expressed range from no materiality threshold to disclosure of the 50 largest publicly holdings in each option, or disclosure of assets worth one percent or more of the option.

AIST position: The AIST Board has resolved to support minimum disclosure of the top 50 publicly-held assets, and to encourage funds to develop data tools to assist members using the information in a meaningful and useful manner.

Q24. What is the impact of a materiality threshold on systemic transparency in superannuation fund asset allocation?

AIST submits that the lower the materiality threshold, the greater the level of disclosure that will be achieved. The level of systematic transparency and consistency of disclosure will be impacted however with a patchwork (fund by fund) of materiality thresholds. Accordingly, AIST submits that any materiality threshold should be sufficiently low to facilitate systemic transparency and enable consistent application across the superannuation industry.

Q25. What would be the most appropriate way to implement a materiality threshold?

ASIC has discretionary powers to implement a materiality threshold. While it could do this on the basis of case-by-case applications, AIST submits that a materiality threshold should be applied on a whole of industry basis to ensure consistent disclosure.

Implementation issues

Q26. Should the commencement date for portfolio holdings disclosure be delayed beyond 1 July 2014? Is so, what date would be suitable for its commencement? What would be the benefits and costs to such a delay?

AIST submits that the commencement date should be delayed by at least six months, to 31 December 2014, to enable the super industry to plan and properly implement requirements.

In particular, this extension will allow the development of fully-compliant automated solutions, and reduce the incidence of manual solutions (thereby minimising the risk of errors and reducing cost in the long term).

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Part 4: Enhancing competition in the default superannuation market

Q27. Does the existing model (which commences on 1 January 2014) meet the objectives for a fully transparent and contestable default superannuation fund system for awards, with a minimum of red tape?

Notwithstanding the best intentions of most employers, the Government has a responsibility to protect employees and provide a safety net for them. Superannuation is an important employment condition, as it forms part of employees' remuneration package.

However, disengaged members are less likely to be aware of this entitlement, even though it will endure until their retirement. It is therefore important and efficient that its provision as a condition of employment be regulated by the Government body responsible for workplace regulation.

The existing model managed by the Fair Work Commission (FWC) is efficient and effective, provides protections and benefits for both employers and employees, with stage one already successfully implemented.

The existing model commenced on 7 November 2013 with a statement from the President of the FWC on the process to be followed for reviewing superannuation in relation to modern awards in 2013, and then as part of the four-yearly review of default fund terms of modern awards, commencing as soon as practicable after 1 January 2014.

The first stage of that process was successfully completed by the FWC by 31 December 2013 with the removal of superannuation funds that do not offer a MySuper product (or that is not an exempt public sector superannuation schemes, or is a defined benefit scheme).

This means that modern awards already require employers, in most cases, to make default superannuation contributions to a fund that offers a MySuper product. The previous ability to grandfather existing contribution arrangements ceased at 31 December 2013.

This process was undertaken by the FWC and relevant parties and was completed efficiently and expeditiously, and without any significant disruption. There have been no media or other reports about this process causing problems, being onerous or otherwise adversely effecting employers.

On the contrary, the first stage means employers now have confidence that whatever default fund they have chosen from the list in the awards covering their employees includes a MySuper product that meets the higher standard of trustee obligations, and that their employees who have not chosen a fund will not be paying for unnecessary 'bells and whistles' that they do not need or use.

The success of the first stage should give the Government and employers confidence in the capacity of the existing model as a whole, and specifically the capacity of the FWC to deliver change with a minimum of red

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tape. It should also support a position allowing the FWC to continue with the next (second) stage during 2014. Any further variation to default fund modern award terms will take effect from 1 January 2015 at the earliest, meaning there will be a continuation of the FWC's careful, considered process.

The next stage of the process will be fully transparent and contestable. The FWC will invite all superannuation funds offering a MySuper product to apply for inclusion on a Default Superannuation List. This is exactly the same universe of superannuation funds that Coalition policy proposes should be available for employer selection.

Applications will need to include a range of information about the applying superannuation fund and its standard MySuper product's performance, including but not limited to:

- The appropriateness of the product's investment return target and risk profile;
- Its expected ability to deliver on the product's return target;
- Fees and costs;
- Net returns;
- Governance practices; and
- Administrative efficiency and quality of advice.

This list of factors is the same as that recommended for consideration in the Productivity Commission's review of '*Default Superannuation Funds in Modern Awards*'. AIST supports this list of factors as being appropriate for consideration in the second stage of the selection process.

An employer having to make a choice directly might appropriately consider the same sort of factors, but would do so in a process that would be duplicated hundreds of thousands of times, and would have to do so without the expertise, resources or efficiency available through the FWC process.

Therefore, the second stage removes the administrative burden from employers, and provides comfort that an expert assessment has been undertaken of the options available, with a manageable list of potential list of funds produced as a result.

Further comfort is provided to employers by the requirement on the FWC to fulfil the overarching provisions of the *Fair Work Act* 2009 for modern awards. In particular, section 134(1)(f) requires the FWC to consider "*the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden*."

If employers so wish, they will also have the opportunity to make submissions and to appear before the FWC in relation to the relevant award(s). However, superannuation funds are not able to make submissions and appear before a Full Bench of the FWC.

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Q28. If not, is the model presented by the Productivity Commission the most appropriate one for governing the selection and ongoing assessment of default superannuation funds in modern awards or should MySuper authorisation alone be sufficient?

Notwithstanding AIST's support for the existing model, AIST also agrees with most of the key points from the Productivity Commission's Recommendations (as reproduced on page 14 of the Government's discussion paper).

AIST accepts that the previous arrangements could and have been improved, but note that many of the Productivity Commission's recommendations have been incorporated into the existing model.

In particular, AIST highlights that the Productivity Commission accepted that the FWC is the appropriate body to regulate the selection of default funds by employers. The *Fair Work Act* 2009, under which the FWC operates, was created to ensure that there is a balanced framework for cooperative and productive workplace relations. The Productivity Commission accepted that as an employment-based entitlement, the balance of employer and employee interests in relation to superannuation could be efficiently regulated by the FWC.

However, there are some Productivity Commission recommendations *not* incorporated into the existing model that could be reconsidered. In AIST view, these are:

1. The Expert Panel should be advised of the modern awards that the provider of each MySuper seeks to be listed in. In this way, the Expert Panel will be able to consider the context within which each super fund makes its claim. The Expert Panel needs to be able to assess how the factors to be considered by the FWC are met by each fund and MySuper product in the context of each award.

While this is not currently required by the legislation, the answers that would be provided by funds in response to several of the questions in the FWC's draft forms require this context in order to make sense. For example, insurance offered in relation to the MySuper product is understood in the context of the occupational nature of personal risk insurance. The FWC would be unlikely to have enough background into a fund's application (for the purposes of this question) without knowing which award (and by implication, occupations of employees covered under that award) the insurance provided is appropriate for.

AIST therefore recommends that the application forms for selection as a default fund require applicants to list all of the modern awards to which they seek to be nominated.

2. While AIST supports workplace matters being resolved by employers and employees, and their representatives – and not inappropriately influenced by third-parties who are primarily driven by commercial motivations rather than members' best interests – we also think it is important for the industrial parties to be as fully informed as possible about the merits or otherwise of each product seeking to be listed. FWC should take this into account in deciding how to gather evidence.

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AIST also notes that an employer or union that contributes or seeks to contribute to a particular super fund can intervene on behalf of that fund, and can provide information about the fund on that basis.

3. AIST also agrees that there should be some discretion on the part of the FWC on the number of MySuper products that may be listed in each modern award. While AIST supports there being a limited and reasonable number of products listed in awards (as per the legislation), the Full Bench should have some discretion to decide the number, having regard to the requirements and circumstances of each modern award and the associated industries and employers, and in particular the occupational categories covered by the award.

There is some widespread misunderstanding about this, with many observers wrongly believing there is a completely inflexible legislated limit.

While section 156H(1)(b) states that: “After reviewing the default fund term of a modern award… (b) to specify at least 2, but no more than 15, superannuation funds in relation to standard MySuper products that satisfy the second stage test”. This is then qualified by the provisions of section 156H(3). It states that: “The default fund term may specify more than 15 superannuation funds in relation to standard MySuper products that satisfy the second stage test if, taking into account the range of occupations of employees covered by the modern award, the FWC is satisfied it is warranted.”

AIST submits that this provides a reasonable and appropriate level of flexibility in determining the right number of super funds to be listed.

Q29. If the Productivity Commission’s model is appropriate, which organisation is best placed to assess superannuation funds using a ‘quality filter’? For example, should this be done by an expert panel in the Fair Work Commission or is there another more suitable process?

The Expert Panel within the FWC (as amended by the recommended approach to the previous question) is best placed to assess superannuation funds using a quality filter.

A selection process outside of the FWC would involve unnecessary duplication. It would involve the creation of a parallel bureaucracy that would need to be staffed and otherwise resourced. It would need a budget allocation, a secretariat, the ability to travel and meet across the whole of Australia, and the ability to publish its decisions. It would need to be properly regulated through detailed and accessible processes, and need to have appropriate appeal mechanisms. As an appeal may end up in the Federal Court, the initial proceedings need to be appropriately structured and constituted. In short, the panel would need all of the things that can be provided within the existing infrastructure of the FWC.

It cannot be assumed that the selection process will be a nice, neat process where decisions are made every four years, with not much happening in between. This is not how the regulation of employment conditions works, as can be seen from the large number of matters listed before the FWC every day. This

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would increase both in volume and significance where the contestability of a large slice of the $1.75 trillion superannuation industry is under consideration.

Even the previous framework (i.e., prior to 2013) allowed contestability in the selection of default superannuation funds, and has been the subject of many applications. Moving the selection process outside of the FWC would increase the regulation of industry without corresponding benefits. It would involve a significant net addition to the regulatory burden and costs faced by business.

Q30. Would a model where modern awards allow employers to choose to make contributions to any fund offering a MySuper product, but an advisory list of high quality funds is also published to assist them in their choice, improve competition in the default superannuation market while still helping employers to make a choice? In this model, the advisory list of high quality funds could be chosen by the same organisation referred to in focus question 29.

AIST submits that this proposition would result in the same unnecessary duplication identified in the answer to the previous question.

An advisory list would need to be compiled, applied for, assessed and kept up-to-date. This would be cumbersome, require additional regulation and not meet the Government's criteria for reduction of red tape for industry.

Q31. If changes are made to the selection and assessment of default superannuation funds in modern awards, how should corporate funds be treated?

For the reasons given above, it is appropriate that there are criteria for selection as a default award that are additional to a fund offering a MySuper product.

The grandfathering arrangements that applied for pre-12 September 2008 superannuation funds (and that applied between then and 27 November 2013) are inadequate and unsustainable as it involves no assessment of the benefit of these funds for the employees involved. While these arrangements applied to a number of high-quality corporate funds, they also provided a loophole through which superannuation funds with lower and untested standards could slip.

As there is no longer any grandfathering of these arrangements, it would be both unnecessary and inconvenient to revert to any grandfathering arrangements.

Many corporate funds offer a MySuper product, and these can continue to be selected in modern awards. Similarly, enterprise agreements made by the FWC from 1 January 2014 may list superannuation funds, including corporate funds, which offer a MySuper product.

However, it is important that structural arrangements do not discriminate against the listing of corporate super funds in modern awards. If a corporate fund does not have public-offer status (and so may be limited to one employer), this should not be a reason for excluding it from a list of super funds named in the

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award. This could and should be overcome by having a specific provision in the award allowing the corporate fund to be listed in respect of the relevant employer(s).

Furthermore, corporate funds that do have public offer status (or limited public offer status) could be treated either in the same way as non-public offer corporate funds (with an employer specific provision) or be listed in the general listing. Whether they are listed in either a general or specific manner should depend on the merits of each case, and the views of the industrial parties and the FWC.

Superannuation clauses in enterprise agreements approved prior to 1 January 2014 continue to apply. This means that the MySuper criterion does not have to be applied at this stage. This gives corporate funds without a MySuper authorisation the opportunity to apply for authorisation in line with the commencement date of the next enterprise agreement. It also gives the parties to the enterprise agreement the opportunity to consider the most appropriate superannuation arrangements for the enterprise in the next agreement.

The position of exempt public sector superannuation schemes and defined benefit schemes should also be clarified. These schemes were not grandfathered; persons entitled to join these schemes will be able to continue to be so entitled. These funds offer higher levels of benefits and lower level of member-level risk, and so are rightly excluded from the selection requirements.

However, in many instances, an employer associated with these schemes will have employees who are both eligible for these schemes and have other employees who are not – who will generally require access to a default fund. Therefore, a largely defined benefit fund may be listed in a modern award on the basis that it may also offer a MySuper product.

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