

The Fraser Governance Review

Industry Super Australia (ISA) and Australian Institute of Superannuation Trustees (AIST) have asked Bernie Fraser to lead a Review of governance arrangements in respect of not-for-profit superannuation funds, and to propose a best practice Governance Code for such funds.

The attached paper provides some background to this Review and identifies the kinds of issues expected to be considered in the course of the Review.

Interested parties are invited to offer comments and make submissions on these issues, and any other matters they consider relevant to this Review.

Comments/submissions can be lodged online at submissions@thefraserreview.com and should be lodged by Monday 1 February 2016. For further information regarding the lodgement of comment please visit the Review website at thefraserreview.com

About Bernie Fraser: Bernie Fraser is the former governor of the Reserve Bank of Australia from 1989 until 1996 and Treasury Secretary from 1984 to 1989. Bernie Fraser was one of the first independent trustees of industry super funds and has served on various industry super fund boards as well as serving as chair of ME Bank.

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GOOD GOVERNANCE AND NOT-FOR-PROFIT SUPERANNUATION FUNDS

Background

Not-for-profit super funds have become a prominent feature of the Australian financial landscape over the past couple of decades. Today they manage around \$700 billion of the nation's savings which, on the way to supporting the retirement incomes of 8 million members, help to finance Australia's investment needs, including for infrastructure and innovation.

Two distinguishing features of not-for-profit funds stand out. One is their focus on the overriding primacy of members' interests. This is reflected in their governance and operational arrangements, and underpinned by board structures based generally on equal representation from employer and employee organizations. Secondly, they can point to sustained outperformance in the returns they deliver to their members compared with other groups of funds.

This outperformance lends weight to the contention that the mutuality of not-for-profit funds (with all profits to members) and their representative board structures add up to a successful business model and a culture that inspires members' trust in their funds - a rather limited commodity in many parts of the financial system these days. The values, beliefs and diverse experiences of representative trustees have very likely contributed to these outcomes and any changes to the structure of boards would need to be considered very carefully to ensure that not-for-profit funds are in no way impeded in their efforts to continue to build on their enviable record.

With these kinds of considerations in mind, the Senate has signalled it is unwilling to support the *Superannuation Legislation Amendment (Trustee Governance) Bill* which, among other things, seeks to prescriptively mandate a quota of "independent" directors regardless of circumstances. Key crossbench senators have instead proposed an alternative way forward where the industry acts proactively to further strengthen its governance.

Not unreasonably, the question has been asked whether the not-for-profit governance model could be improved through a best practice code that preserves a central role for the successful representative trustee model while also providing guidance on how funds might move pragmatically towards some greater representation of "independents" on their boards where such moves were considered likely to enhance (and not threaten) the interests of their members.

Some Questions and Issues

This is where the present Review comes in: its task, in essence, is to consider the relevant issues and propose its preferred arrangements for delivering good governance in the not-for-profit superannuation sector. To assist individuals and organizations interested in having an input into this process, the next section identifies the kinds of questions and issues the Review Team is proposing to consider.

1. In broad terms what should be the hallmarks of good governance for superannuation funds operating in Australia and how might performance against such standards be assessed and monitored?
 - 1.1. Can international experiences/studies provide any insights relevant to assessing current Australian

practices?

- 1.2. Should not-for-profit funds be viewed any differently from other categories of funds in terms of governance requirements/practices?
2. In considering the general case for requiring super funds to have a number of independents on their boards various issues arise, including:
 - 2.1. How "independence" is best defined;
 - 2.2. The appropriate number of independents for particular funds and how this number should be determined and the timeframe over which it might be implemented;
 - 2.3. Current practices among different groups of super funds in Australia and the perceived (and actual) strengths and weaknesses of those practices;
 - 2.4. Any findings of overseas studies which might have examined the impact of similar requirements in respect of board composition; and
 - 2.5. Possible implications of 2.3 and 2.4 for the governance of boards of not-for-profit funds in Australia.
3. Similar issues arise in relation to any mandatory requirement for not-for-profit funds to have an independent Chair, including:
 - 3.1. Current practices among different groups of super funds in Australia and the perceived (and actual) strengths and weaknesses of those practices;
 - 3.2. Any findings of overseas studies which might have examined the impact of a similar requirement in respect of an independent Chair; and
 - 3.3. In what circumstances would it be appropriate to appoint an independent Chair, and what procedures and implementation timeframe would be appropriate; and
 - 3.4. Possible implications of 3.3 for the governance of boards of not-for-profit funds in Australia.
4. In the light of the views expressed in comments/submissions from interested parties, and in a proposed round of consultations with major stakeholders, the Review Team will consider the feasibility and nature of a Governance Code for not-for-profit funds which will seek to encapsulate both the positive elements of the existing arrangements and procedures for increased representation of independents where this could be expected to enhance the interests of fund members. The preparation of such a Code would require a careful review of the details of existing governance arrangements, with some modifications here and there. Relevant issues include:
 - 4.1. The nature and status of funds' commitments to such a Code, and procedures for handling any breaches;
 - 4.2. An appropriate definition of independence;
 - 4.3. The permissible number of independents (which could be set as a maximum), and the timeframes for making appointments (again some flexibility might be appropriate);
 - 4.4. The broad rationale for seeking to appoint independents, and the mechanics of identifying and selecting them;
 - 4.5. The kinds of circumstances (and related procedures) leading to the appointment of an independent Chair of a not-for-profit fund; and
 - 4.6. Suitable arrangements for handling conflicts of interest; related party transactions; relevant disclosures, including numbers of independents, their backgrounds, genders and salaries; and so on.

The Review Team's formulation of these and other requirements/guidance would be in line with best practice, and compliant with all APRA, ASX and other regulatory bodies.