



AIST Governance Code

12 April 2017

Australian Institute of Superannuation Trustees

Introduction

The compulsory nature of our superannuation system, together with its size and significance in Australian public policy, means it is imperative that superannuation funds implement and maintain the highest standards of governance.

AIST is committed to the highest standards of governance in the profit-to-member superannuation sector and to a culture of continuous improvement in governance practices. This Code was developed to build on AIST's Fund Governance Framework for Not-for-Profit Superannuation Funds (first published in 2011 and now in its third edition), a set of guidelines and principles for good governance in the industry.

This Governance Code however reflects the increasing attention devoted to superannuation governance matters, the advanced maturity of the industry and the importance of safeguarding and growing members' retirement savings through robust governance practices, thereby evolving a voluntary set of principles into a mandatory Code for AIST registered funds.

All AIST member funds must demonstrate how they have fulfilled each requirement set out in the Code, or provide a reasonable explanation of why it was not possible to comply, or why it would not be in the interests of members of the fund if they were to comply.

This Code seeks to:

- Promote continuously improving governance in the profit-to-member super sector
- Ensure that the culture of the profits-to-members concept is fully supported by governance structures
- Improve accountability and transparency

The Code is to be read in the context of existing licensing, prudential and legislative requirements imposed on the superannuation industry. Where a conflict exists between the law and the elements of this Code the law shall prevail and the Code elements are invalid to the extent of the inconsistency. Appendix A sets out the main legal and regulatory requirements for superannuation funds.¹

The rights of superannuation fund members and beneficiaries are protected through the augmented trust law structure within which the Australian retirement savings system operates. The fiduciary nature of trustees' obligations are such that the trustees' discretionary powers are limited by the terms of the

¹ Not including exempt public sector funds that each have their own legislative requirements.

governing rules of the fund and duties are assigned to specifically protect the interests of scheme beneficiaries.

In addition to the existing legal and regulatory requirements on Australia's superannuation funds, a continuous focus on safeguarding and growing members' retirement savings, and increasing accountability and transparency can be achieved through a range of measures set out in this Code.

The AIST Governance Code does not cover consideration of ESG risks and stewardship of fund members' assets. AIST is considering the development of a Stewardship Code separately from the Governance Code and members will be consulted on its scope and content.

Code elements

Principle	Requirements
<p>1 Lay solid foundations for management and oversight:</p> <p>A profit-to-member superannuation fund must determine the respective roles and necessary skill profile of the board and management and set these out in writing. They must also determine how the respective performance of the board and management will be measured and evaluated.</p>	<p>1.1 A profit-to-member superannuation board must conduct all appropriate enquiries to ensure that nominees have the appropriate skills and experience before appointing a person as a trustee director. For the appointment of representative directors in particular, this includes engagement with sponsoring organisations.</p>
	<p>1.2 A profit-to-member superannuation fund must have a written agreement with each trustee director and senior executive setting out the terms of their appointment.</p>
	<p>1.3 The fund's company secretary is accountable directly to the board, through the Chair, on all matters concerning effective board operations and must provide every assistance to the board to fulfil their obligations in acting in the best interests of members. The Chief Executive Officer must not be the company secretary.</p>
	<p>1.4 Profit-to-member superannuation funds must have a written diversity policy, appropriate to the circumstances of the fund, which sets out clear and measurable objectives and provides for annual reporting to the board and members. This policy must establish objectives concerning gender balance as a minimum, with other forms of diversity considered by the fund as appropriate. Objectives must relate to processes, which may, but do not necessarily, include targets for participation at board and management levels, to ensure that the fund taps the broadest talent pool and is responsive to the needs of all its members.</p>
	<p>1.5 In accordance with SPS 510, profit-to-member superannuation funds must have procedures to evaluate the performance of the board and individual trustee directors at least annually. The fund must disclose a summary of those procedures and confirm annually that the performance evaluations were undertaken during the reporting period.</p>

	<p>1.6 The board of a profit-to-member superannuation fund must have a documented process for evaluating the performance of the senior management. The fund should disclose whether such a performance evaluation was undertaken during the reporting period.</p>
<p>2 Structure the board to add value: A profit-to-member superannuation fund board must have a diverse board composed of highly competent and committed directors. Representation of member and employer interests must be ensured, and the board should be of an appropriate size, composition and skills to be able to discharge their duties effectively.</p>	<p>2.1 The board of a profit-to-member superannuation fund must have a committee responsible for board renewal that has at least three members. The committee must have a charter that is disclosed and it should meet at least annually. For each reporting period the fund must disclose the members of the board renewal committee and attendance records for any meetings during that period.</p>
	<p>2.2 A profit-to-member superannuation fund must maintain a matrix showing the skills, relevant experience and diversity the board currently has and acknowledge gaps it is looking to fill in order to effectively fulfil its strategic plan. It must disclose annually a representation of the existing collective skills, experience and diversity of the board.</p>
	<p>2.3 In disclosing the names of its directors, a profit-to-member superannuation fund must identify for each director whether they are a member representative, an employer representative or a non-representative member. In each instance, the name of the nominating body must also be disclosed.</p>
	<p>2.4 The voting rights of all trustee directors on the board must be equal, regardless of their status as a member or employer representative director, or non-representative director. The voting majority for any board decision should be no less than two-thirds of all trustee directors.</p>
	<p>2.5 The Chair of a profit-to-member superannuation fund board must be appointed by the board, and must satisfy all the requirements of skill and experience identified in the fund’s skills matrix for the role of Chair.</p>
	<p>2.6 The CEO must not be a director of the fund.</p>

	<p>2.7 A profit-to-member fund must have an induction program for new trustee directors and provide appropriate ongoing professional development and training opportunities to continuously enhance their skills and knowledge.</p>
<p>3 Act ethically and responsibly: A profit-to-member superannuation fund must act ethically and responsibly.</p>	<p>3.1 A profit-to-member superannuation fund must have a code of conduct for its board, senior management and employees. This code, or a summary of it, must be disclosed.</p>
<p>4 Safeguard financial integrity: A profit-to-member superannuation fund must have appropriate and rigorous processes for financial governance.</p>	<p>4.1 The board of a profit-to-member superannuation fund must ensure the financial integrity of both the fund and the trustee entity.</p>
	<p>4.2 A profit-to-member superannuation fund must ensure due process in all transactions, and ensure that any related party transactions are conducted under market conditions with full transparency and disclosure.</p>
	<p>4.3 The board of a profit-to-member superannuation fund must receive an attestation from the fund’s CEO and CFO that the fund’s accounts are a true and accurate reflection of the fund’s financial position and that the financial records have been properly maintained, before approving the financial statements.</p> <p>In accordance with SPS 510 an independent auditor must be appointed. The auditor must be fit and proper pursuant to SPS 520 and must issue their opinion on the financial statements to the trustee and members of the fund.</p>
<p>5 Respect the rights of scheme participants: A profit-to-member superannuation fund must respect the rights of stakeholders. These scheme participants must be provided with open and transparent disclosure as well as opportunities to participate in dialogue with the fund’s board and management.</p>	<p>5.1 A profit-to-member super fund must develop and implement a stakeholder engagement program, for effective disclosure of relevant and material issues. The program must provide opportunities for directors and senior management to communicate directly with stakeholders and for stakeholders to ask questions of them.</p>

<p>6 Recognise and manage risk: In accordance with SPS 220, a profit-to-member superannuation fund must establish a robust risk management framework, monitor and regularly review the effectiveness and continuing appropriateness of that framework. The risk management framework must consider the maintenance and prioritisation of a member-first culture.</p>	<p>6.1 A profit-to-member superannuation fund must have a strong risk culture with a board that provides robust oversight of the fund’s material risks. The risk management framework must explicitly address factors that may erode the fund’s members-first culture.</p>
<p>7 Remunerate fairly and responsibly: A profit-to-member superannuation fund must establish a remuneration policy for its trustee directors and staff in alignment with the best interests of the members of the fund that complies with SPS 510 and SPG 511.</p>	<p>7.1 A profit-to-member superannuation fund must have policies and practices in place to attract and retain highly competent people, assessed relative to the size, nature and complexity of the fund. These policies and practices must be consistent with its responsibilities for maximising members’ retirement outcomes and encouraging and rewarding ethical practices and behaviour.</p>
<p>8 Strong investment governance practices: A profit-to-member superannuation fund must establish an investment framework to deliver appropriate retirement outcomes for its members and continually monitor and review the effectiveness and continuing appropriateness of that framework.</p>	<p>8.1 A profit-to-member superannuation fund must design and manage appropriate investment strategies having regard to member demographics and circumstances during both the accumulation and decumulation phases.</p>

Who must report against this Governance Code?

AIST registered funds include industry funds, public sector funds and corporate funds – all run on a profit-to-members basis. AIST acknowledges the differences that exist in the structure, size and complexity of its registered funds, and recognises that exempt public sector funds' operating parameters are established by Acts of Parliament.

Reporting against the Code is on an 'if not, why not' basis. Compliance is measured against the 21 listed requirements. These reporting requirements are complementary to the funds' reporting obligations to APRA, ASIC and other authorities.

The proposed AIST Governance Code is intended to apply to all registered funds of AIST.

AIST recognises that for some funds, the existing governing rules may constrain compliance. Where possible, AIST expects that fund boards would negotiate with key stakeholders to secure changes in the governing rules to facilitate compliance.

AIST acknowledges the additional constraints experienced by funds, whose governing rules are established in legislation where that legislation and supporting regulations impose restrictions on their ability to comply with the Governance Code. AIST requires registered funds so affected to fulfil the Code requirements where possible within the parameters of their legislative framework, and use the 'if not, why not' reporting framework to explain any deviations from the principles. Deviations resulting from over-riding legislative requirements will not draw adverse comment for the purpose of this Code.

Reporting against the Code

AIST proposes that the Governance Code require the boards of its registered funds to turn their minds to the principles and accompanying requirements in the Code and consider how compliance with and the application of each principle best achieves outcomes in the best interests of their members. Funds should consider the requirements for achieving each principle and then report, on an annual basis, on compliance with the Code. Reporting should be publicly available either in member funds' annual reports or on the relevant governance pages of their websites. A reporting form will be developed by the independent code monitoring body.

It is possible to deviate from the stated requirements, provided the registered fund board has had appropriate dialogue about the matter, considered the appropriateness of its alternative approach and the suitability of that alternate methodology for its particular circumstances. This process allows funds space for individual responsibility in respect of the policy choices they make in the areas covered by this Code.

AIST recognises that there may be a good reason an AIST registered fund is not compliant with a particular requirement of this Code. The 'if not, why not' reporting framework upon which this Code is based anticipates this. It requires that in these situations, funds should acknowledge and draw attention to any

specific areas of non-compliance and provide reasons for the divergence. This is transparent and invites discussion or further consideration in relation to the reasonableness of any such departures from the Code.

Public sector funds that are unable to comply due to their legislative constraints should report their inability against the relevant requirements in this Code.

Monitoring member compliance with the Code, and review of the Code principles

AIST proposes to use an independent body to review member funds' compliance with the Code and make recommendations to AIST on areas where further guidance might be warranted, or where the principles might require amendment.

AIST's Governance Code will be reviewed on a three-yearly basis, in consultation with AIST members.

Appendix A

Main legal requirements for superannuation funds

The information in this part:

- Excludes public sector superannuation schemes that are exempt from regulation under The *Superannuation Industry (Supervision) Act 1993*.
- Does not cover the requirements placed on various superannuation fund service providers such as auditors, insurers, administrators and custodians.

Table 1: Regulators and government bodies with responsibility for superannuation

Regulators and government bodies	
Australian Securities and Investments Commission (ASIC)	Ensures fair play in business, promotes market integrity, consumer and investor protection, disclosure, and prevents corporate crime. Functions include licensing of financial service providers, enforcement, and administering the <i>Corporations Act 2001</i> .
Australian Prudential Regulation Authority (APRA)	Prudential regulator. Administers aspects of <i>Superannuation Industry (Supervision) Act 1993</i> , promotes prudent management of superannuation funds and ensures trustees are aware of their obligations to members. Has a strong focus on the financial stability of funds.
Australian Taxation Office (ATO)	Collects superannuation tax, administers the Superannuation Guarantee legislation and receives returns and reports from funds.
Australian Transaction Reports and Analysis Centre (AUSTRAC)	Oversees compliance with the <i>Financial Transactions Reports Act 1988</i> and the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> .
Office of the Australian Information Commissioner	Administers the <i>Privacy Act 1988</i> and seeks to ensure that trustees collect, store and use member information appropriately.

Australian Competition and Consumer Commission	Ensures conduct in the sale or distribution of financial products to retail clients does not contravene the <i>Competition and Consumer Act 2010</i> .
Superannuation Complaints Tribunal	Hears complaints from fund members regarding trustee decisions.
Department of Human Services	Responsible for administering applications for early release of benefits on compassionate grounds.

Table 2: Existing legal requirements related to fund governance

<i>Superannuation Industry (Supervision) Act 1993</i>	
Relevant subject matter and obligations	Relationship with governance
<ul style="list-style-type: none"> • Prudent management of superannuation funds • Sets roles of regulators • RSE registration & licensing • MySuper authorisation • Establishes fund and service provider audit and reporting obligations • Sets out civil and criminal consequences for contravention of provisions • Establishes monitoring and investigation powers for regulators 	<ul style="list-style-type: none"> • <i>Operating Standards:</i> Allows for regulations to be made that set operating standards for funds, which can affect, amongst other things, the composition of the board • <i>Prudential Standards:</i> Gives APRA the power to set prudential standards affecting the way funds conduct themselves. There are currently 14 standards • <i>Governing rules and covenants:</i> Sets out the covenants that are taken to be included in the governing rules – effectively establishing what trustees must have regard to when operating a fund • <i>Equal representation:</i> Contains rules on board equal representation • <i>Trustee duties:</i> Codifies special trustee duties that must be adhered to

	<ul style="list-style-type: none"> • <i>Disqualification and suspension:</i> Gives power to the regulator to disqualify individuals from serving on trustee boards, and to suspend the trustee as a whole • <i>Successor fund:</i> Rules for transferring the members and assets of a fund from one trustee to another • <i>Notifying APRA and ASIC:</i> Obligation to report likely/actual significant breaches of prudential standards to APRA and other breaches to ASIC if relevant. Also requires funds to notify APRA following defined events • <i>Appointment, removal and information about directors:</i> Obligation to establish procedures for director appointment and removal, informing members of procedure, and reporting to APRA. Prohibits appointment of disqualified persons • <i>Responsible officers:</i> Obligation to notify APRA of changes to composition of RSE licensee, including directors • <i>Reserves strategy:</i> Obligation for trustee to formulate a strategy to manage the financial reserves of the fund • <i>Trustee duties when investing:</i> Establishes investment duties, including arm's length contracting, borrowing, valuation of assets, monitoring, and due diligence. • <i>Trustee records:</i> Imposes requirements to keep up-to-date records, including board minutes and changes of directors • <i>Trustee insurance:</i> Imposes limits on director indemnification • <i>Sole purpose test</i> • <i>Disclosure of conflicts of interest</i>
--	---

	<ul style="list-style-type: none"> • <i>Outsourcing:</i> Trustee requirements when dealing with custodians and investment managers and contains broader outsourcing requirements
Superannuation Industry (Supervision) Regulations 1994	
Relevant subject matter and obligations	Relationship with governance
<ul style="list-style-type: none"> • Addresses various technical matters, such as annuities, pensions, fund classification and payment of benefits • Financial management of funds • MySuper product requirements • Disclosure to regulator and members • Retirement income, eg account based pensions, transition to retirement 	<ul style="list-style-type: none"> • <i>Operating standards:</i> Imposes obligations on trustees on various matters, including permissible types of member insurance, voting rules, and investment strategies • <i>Rules affecting the governing rules</i> • <i>Majority requirements for trustee resolutions</i>
The Corporations Act 2001 and Corporations Regulations 2001	
Relevant subject matter and obligations	Relationship with governance
<ul style="list-style-type: none"> • Trustee corporation requirements • Sets out regulatory regime for financial products and their providers – including disclosure, licensing, and conduct of superannuation entities • Financial product/services disclosure requirements, including: preparation, content, and issuing of product disclosure statements and financial service guides and other documents • Registration of trustee company • Financial reporting obligations and audits • Appointment and removal of auditors • Market misconduct penalties • Record keeping • Reporting to members and ASIC • Insurance • Australian Financial Services license conditions • Provision of member statements • Obligations with regard to arrangements under the <i>Family Law Act 1975</i> 	<ul style="list-style-type: none"> • <i>Director duties:</i> Sets out the legal duties of directors, including disclosure obligations to manage conflicts of interest • <i>Director powers and meetings</i> Sets out powers of directors and meeting mechanics (subject to the constitution) • <i>Appointment and resignation of directors:</i> Rules around appointment, eligibility, resignation and retirement of directors • <i>Internal management of company:</i> Replaceable rules and constitution • <i>Director liability and offences</i> • <i>Member reporting and content of reports:</i> Annual reports, transaction confirmations, significant event notices, periodic benefit statements, disclosure statements • <i>Professional indemnity insurance:</i> Prohibition on insurance to cover directors in certain circumstances • <i>Disclosure of Conflicts of Interest</i>

	<ul style="list-style-type: none"> • <i>ASF licence conditions:</i> Obliges trustees to manage conflict of interests, appoint managers of good fame and character and to monitor authorised representatives
Family Law Act 1975 and Family Law (Superannuation) Regulations 2001	
Relevant subject matter and obligations	Relationship with governance
<ul style="list-style-type: none"> • Allows for certain payments in respect of a superannuation interest to be allocated between the parties to a marriage, either by agreement or court order • The regulations address splittable and non-splittable payments 	<ul style="list-style-type: none"> • The splitting provisions override provisions contained in the fund's trust deed • Obliges trustee to comply with Family Law requirements
Superannuation (Unclaimed Money and Lost Members) Act 1999 and Superannuation (Unclaimed Money and Lost Members) Regulations 1999	
Relevant subject matter and obligations	Relationship with governance
<ul style="list-style-type: none"> • Keeping a register of members' unclaimed money, lost member accounts, and superannuation of former temporary residents • Matching of unclaimed money (including superannuation of former temporary residents) and lost member accounts to persons entitled to receive it 	<ul style="list-style-type: none"> • Sets out procedure for funds to deal with unclaimed money, lost member accounts and superannuation of former temporary residents
General law	
Subject matter	Relationship with governance
<ul style="list-style-type: none"> • Common law • Trust Law 	<ul style="list-style-type: none"> • Trustees are required to comply with the governing rules (including trust deed), avoid conflicts of interest, hold assets appropriately, act in best interests of beneficiaries, keep proper records and accounts, act prudently regarding investment decisions

Table 3: Existing legal requirements related to funds generally

ASIC Legislative Instruments
<ul style="list-style-type: none"> From time to time ASIC issues legislative instruments (Class Orders) to clarify the operation of legislative provisions or to exempt funds/persons from certain provisions of Acts administered by ASIC
<i>Superannuation (Resolution of Complaints) Act 1993 and Superannuation (Resolution of Complaints) Regulations 1994</i>
<ul style="list-style-type: none"> Establishes a scheme for resolution of complaints of members and beneficiaries of regulated superannuation funds, approved deposit funds and holders of RSAs
<i>Superannuation Guarantee (Administration) Act 1992 and Superannuation Guarantee (Administration) Regulations 1993</i>
<ul style="list-style-type: none"> Requires employers to pay superannuation or pay the superannuation guarantee charge Contains choice of fund requirements, such as which funds can be eligible choice funds
<i>Income Tax Assessment Act 1997 and Income Tax Assessment Regulations 1997</i>
<ul style="list-style-type: none"> Taxation of superannuation entities Taxation of member benefits, including death benefits, paid by superannuation funds Early release
<i>ASIC Derivative Transaction Rules (Reporting) 2013</i>
<ul style="list-style-type: none"> Contains requirements for counterparties to report derivative transaction and position information to derivative trade repositories
<i>Privacy Act 1988</i>
<ul style="list-style-type: none"> Provisions operate to ensure trustees collect, store and use personal information of members appropriately
<i>Australian Accounting Standard AASB 1056</i>
<ul style="list-style-type: none"> Specifies requirements for superannuation entities 'general purpose financial statements' to provide users with information useful for decision making in a superannuation entity context
<i>Financial Sector (Collection of Data) Act 2001</i>
<ul style="list-style-type: none"> Enables APRA to collect information for the purpose of assisting it in performance of its functions, publish information, support other agencies and to assist the Minister to formulate financial policy APRA can set reporting standards and impose requirements to provide documents Fund reporting requirements

<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Rules</i>
<ul style="list-style-type: none">• Imposes obligations on reporting entities (funds), including: registration with AUSTRAC, identification of members and other due diligence procedures, internal record keeping, establishment of an AML/CTF program and reporting to AUSTRAC
<i>Competition and Consumer Act 2010 and Competition and Consumer Regulations 2010</i>
<ul style="list-style-type: none">• Provisions promote competition and fair trading within Australian markets and provide for significant consumer protection• Establishes the ACCC• Prevents restrictive trade practices such as price-fixing, restricting outputs in the production and supply chains, allocating customers, and bid rigging by competitors• Prevents misleading and deceptive conduct• Provides for enforcement mechanisms and avenues for remedy
<i>Taxation Administration Act 1953 and Taxation Administration Regulations 1976</i>
<ul style="list-style-type: none">• Taxation of benefits• Requirements to provide information following specified events