

30 July 2015

Mr Pat Brennan  
General Manager  
Policy Development  
Australian Prudential Regulation Authority  
GPO Box 9836  
SYDNEY NSW 2001

By Email to: [superannuation.policy@apra.gov.au](mailto:superannuation.policy@apra.gov.au)

Dear Mr Brennan,

**CSF Pty Limited, the RSE licensee of Catholic Super (“Catholic Super”) – Submission by Catholic Super to the proposed amendments to the Governance requirements for RSE Licensees**

Please find attached Catholic Super’s Submission to the proposed changes to the Governance requirements for RSE licensees.

If you have any queries or wish to discuss, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "Frank Pegan", with a long horizontal line extending to the right.

Frank Pegan  
Chief Executive Officer

## **Catholic Super's Submission to the proposed amendments to the Governance requirements for RSE licensees**

### **Reforms to Superannuation Governance**

The Government has recently released for consultation proposed changes to the Superannuation Industry (Supervision) Act 1993 ("SIS Act"), the Corporations Regulations 2001 and the Superannuation Industry (Supervision) Regulations 1994 (collectively referred to as the "draft legislation") in which it sets out minimum independence requirements for boards of a registrable superannuation entity (RSE) licensees ("RSE licensees"). The changes include:

1. A requirement for all RSE licensees to have at least one third independent directors and an independent chair;
2. A new definition of 'independent' which includes persons who do not have a substantial holding in the RSE Licensee or do not have (or have not had within the last three years) a material relationship with the RSE Licensee, including through their employer;
3. The alignment of SPS 510 with CPS 510;
4. The provision for a three year transition period to current RSE licensees to put in place a board containing at least one –third independent directors and an independent chair.

### **SUMMARY OF RESPONSE**

**Catholic Super supports the general tenet of the changes contained in the draft legislation and the changes to SPS 510 and looks forward to the alignment of the requirements for independence for RSE Licensees of APRA regulated superannuation funds with those that presently apply to ASX listed companies and with the provisions of the Corporations Act. Catholic Super also supports the efforts the Government is making in its attempt to achieve a consistent application of these important principles to both ASX listed companies and RSE Licensees of APRA regulated superannuation funds.**

**Catholic Super believes it complies with the "independence" provisions outlined both in the Exposure Draft Legislation and with the proposed changes to SPS 510 and as such, considers that each of its trustee directors to be independent. Further, it believes its**

**selection process and the director eligibility rules Catholic Super applies to the appointment of trustee directors ensures the ongoing independence of the trustee directors as defined in the Exposure Draft Bill and the proposed changes to SPS 510. Catholic Super also looks forward to commensurate changes proposed in the new Part 9 of the SIS Act.**

## **RESPONSE TO KEY PROVISIONS**

### **1. Minimum of three independent directors**

The Government rightly considers independent directors of RSE licensees as a way of strengthening the current superannuation system because it believes independent directors are more likely to provide a greater degree of dispassionate discernment and conflict-free governance. Catholic Super supports this view - accepting the logical premise upon which the draft legislation is based. It also explains why a superannuation fund must be governed by a board that is free of any relationship that could materially interfere with or influence its judgement.

Catholic Super also believes that the Exposure Draft Bill is consistent with the ASX corporate governance principles and therefore appropriate that APRA amends SPS 510 to supplement the proposed new definition of independence in the SIS Act - substantially aligning it with the requirements that apply to the banking and insurance industries which in turn would broadly align with the ASX corporate governance principles.

Catholic Super contends that independence is more than being 'non-aligned'. It is about individual actions and a preparedness to act honestly in all deliberations. It is also about disclosure of any potential conflict and being prepared to act in the best interest of members, "free from direction or control". However, Catholic Super also contends that being "free from direction and control" can be achieved by either appointed directors or by those directly elected. The quality and effectiveness of a Board will be enhanced by a director whose position is a result of a clear nomination process and the board's ability to attract the right skill sets.

Catholic Super member directors are elected by the entire membership of the Fund and employer directors are elected by all participating employers. The term of office for a director is five years with a maximum period of three terms. Two director positions (one employee and one employer) are declared vacant and elections are held each year. This process clearly allows for continual renewal while experience is not lost. The Chair and Deputy are elected by the Directors for a term of three years. Employees (including Executives) of the Fund are not eligible for election until they have left the Fund's employment for five years. Suppliers of services to the Fund are also deemed ineligible.

Catholic Super agrees with this consistent principled approach for consideration of independence. Under the ASX Principles, independence is explained as *"a non-executive director who is not a member of the management and who is free of any business or other relationship that could materially interfere with or could reasonably be perceived to materially interfere with – the independent exercise of their judgement."* Catholic Super believes this should be consistently applied with respect to directorships of superannuation boards.

Catholic Super argues that Directors elected by the employers or members of the Fund should not be precluded as being considered independent if they are elected or appointed (by a nomination committee of the Board) in an open and transparent process. Catholic Super also believes (and practices) that directors' fees should be paid to the individual director not to the sponsoring organisations' such as a unions or an employer association. This rightly reinforces the individual director's fiduciary responsibilities.

The ASX principles explicitly list the factors that preclude directors from being considered independent. As with the ASX principles which enable independent directorship to be readily determined for publicly listed companies, the Government's proposal properly aligns these conditions for superannuation funds.

With like changes to the SIS Act, superannuation funds will be brought in line with all other commercial entities. (For example, the proposed removal of the stipulation that a person is deemed ineligible to be considered independent if they are a member of the superannuation fund for which they seek to be a director). Catholic Super argues that exclusion of a member from directorship makes no logic sense nor does it impact on a

director's capability to be or even perceived to be 'independent'. A director of an ASX listed company can have shares in the company and still be regarded as independent as long as the shareholding is not substantial (as defined in section 9 of the Corporations Act). Therefore, the definition of independence to be used for superannuation fund should be the same as currently set out in the ASX principles.

## **2. Directors not to have a material relationship**

The proposed new section 87(1) of the Superannuation Legislation Amendment (Governance) Bill 2015 states that a director is deemed to be "independent" if they do not have a substantial holding in the RSE Licensee or related entities; are not directly associated with a person who has such a substantial holding; does not have a material relationship with the trustee, (including through their employer) and has not in the last three years been an executive or director of a body that has a material relationship with the RSE Licensee. Catholic Super supports these conditions of independence.

Catholic Super believes its RSE Licensee director election process satisfies the governance arrangements for regulated superannuation funds contained in the proposed new Part 9 of the SIS Act which relates to the definition of "independent director" in the context of equal representation. Catholic Super's directors' election process is based upon two elector divisions; one for members and the other for the employers of the fund, providing equal representation and therefore satisfies the proposed SIS Act amendments.

Catholic Super meets the requirements as outlined in the exposure draft legislation, ASX principles and hopefully with the proposed amendments to SPS 510. In Catholic Super's case, members and employers carry only one vote and therefore cannot exert control over their election. This prevents unions or sponsoring employers from controlling or appointing directors. Therefore for Catholic Super, the Directors are in every sense independent by virtue of their election (free from direction and control) and therefore we believe satisfies the definition of independence as outlined in the exposure draft legislation. This would also be the case if the Directors were appointed via a nomination committee of the Board.

Most shares held by industry RSE licensee are held by the sponsoring organisations (unions, employers association) and usually the sponsoring organisation appoints or elects the

Directors to the Board. This could be considered as not being independent. However, in Catholic Super's case, the shares in the RSE licensee are held by the Chair on behalf of the members of Catholic Super not the sponsoring organisations (unions, employers' associations) who currently elect onto the RSE Licensee the Directors.

In Catholic Super's case, there is no perceived conflict with the sponsoring organization or stakeholders as Directors are not appointed but elected by members and employers rather than by any sponsoring organisation. This could be considered to fit easily within the spirit underlying the new SIS definition of independence and align with the ASX principles and the amended SPS 510.

In summary, Catholic Super Directors:

- Are free from "direction or control" due to the fact that each is elected to the Board of the RSE Licensee;
- Are not appointed by a sponsoring organisation or union. Each go through a nomination process that is scheduled into a ballot program and then face open election;
- Do not hold a substantial holding in the RSE Licensee;
- Are not either executives or directors with bodies that have a material relationship with the RSE Licensee.

### **3. Alignment of SPS 510 with CPS 510**

Catholic Super supports this alignment.

### **4. Three year transition to the new requirements**

Catholic Super supports this transition period.