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31 July 2015

Mr Pat Brennan
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Australian Prudential Regulation Authority GPO Box 9836
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Email: superannuation.policy@apra.gov.au.

Dear Mr Brennan

Re: Governance requirements for RSE licensees: proposed amendment

I refer to your letter of 26th June 2015, inviting submissions on proposed changes to SPS 510 *Governance* and new SPS 512 *Governance transition*. Industry Super Australia appreciates the opportunity to provide feedback to APRA.

Industry Super Australia has serious concerns about both the approach and the architecture of the draft *Superannuation Legislation Amendment (Governance) Bill 2015: Governance arrangements for APRA regulated superannuation funds* (the Bill) and associated regulations.

These concerns are set out in our submission to the Assistant Treasurer and are not repeated in detail here, except to reiterate that:

- ISA opposes in the strongest terms the abolition of the guaranteed voice for members and employers in the governance of superannuation funds; and
- ISA is deeply concerned about the "one size fits all" approach in the draft Bill.
- ISA opposes the imposition of an obligation on a Trustee to structure its board to meet an artificial quota of directors who have (or rather lack) certain attributes, without regard to the different contexts within which RSE licensees go about constituting a board that is the best fit having regard to all of its needs.

At the heart of our concerns is the failure or refusal to recognise that good governance is fundamentally about culture not structure. A report released by the Group of Thirty (G30) found:

> *"regulators should carefully consider the limited effectiveness of promulgating rules on values and conduct…. Culture is about behaviors. Behaviors in general are not amenable to legislation or regulation. Getting behaviors aligned with established values and codes of conduct is properly the preserve of firms. More rules could prove counterproductive. Instead, sustainable cultures need to arise from, and be embedded in, banks' DNA. Proper embedding led by the banks themselves is a more effective way to restore trust in the industry".*[1]

[1] The Group of Thirty, Banking Conduct and Culture: A Call for Sustained and Comprehensive Reform, July 2015 http://www.group30.org/

These concerns flavour all of our comments regarding the prudential standards and any other subordinate regulation that would underpin the amendments to the SIS Act.
Ideally, in drafting any prudential standards, APRA would adopt a principles-based approach that was cognisant of the different corporate structures, business models and governance challenges that exist within superannuation.

Ideally APRA would ensure that its focus in the development of standards was clearly on prudential risk rather than tick-a-box compliance.

Unfortunately, in this instance, ISA believes no amount of flexibility in the subordinate regulation will be sufficient to remedy the fundamental flaws in the legislation.

Further, we urge APRA to exercise restraint when considering new regulation. The recently introduced prudential standards enliven a robust regulatory regime that should be given time to prove itself.

The current standards require funds to undertake annual board evaluations, conduct regular reviews of individual directors' skills as well as the board's collective skills, and establish formal board renewal policies. Governance risk must be embedded into risk management frameworks and funds must have robust policies and practices to identify and manage conflicts of interest and duty.

We firmly believe that these standards provide APRA with a sound regulatory framework to address the stated policy objectives of the government – to manage conflicts, ensure boards are appropriately remote from management and to drive diversity in board composition. As such, the reform package and proposed additional APRA powers and standards are unnecessary.

Proposed prudential requirements

1. Definition of independence

In your letter you say:

APRA intends to amend SPS 510 to supplement the proposed definition of independence in the SIS Act by substantially aligning SPS 510 with the requirements applying to the banking and insurance industries in Prudential Standard CPS 510 Governance (CPS 510).

ISA Comment: As a general principle, regulation should be directed at achieving policy outcomes. Alignment of the regulatory regime across the insurance, banking and superannuation should not be an end in itself. At a practical level, the architecture of the two regulatory regimes are quite different, and do not allow for alignment. Key differences between the banking and insurance regime and that proposed for the superannuation sector are set out at Attachment A, and include the location of the quota for independent directors; the test to be applied by the supervised entity; and the trigger for APRA review of a person's independence.

Substantial shareholders

The Bill defines a person as independent if the person is not a substantial shareholder, or directly associated with substantial shareholder of the RSE licensee.

This provision presumes that a shareholder has an economic interest in the RSE and replicates provisions in the ASX Guidelines designed to protect minority economic interests. While this may be appropriate in the retail sector, it misunderstands the not for profit sector within superannuation where there is no conflict between member and shareholder interests.

We also draw your attention to corporate structures within the nor for profit sectors where directors hold the shares in the RSE licensee. It would be farcical if was the act of becoming a director that disqualified the director from serving as an independent director.

Direct associates of substantial shareholders

The Bill confers power on APRA to define whether a person is "directly associated" with a material shareholder. This definition has the potential to substantially expand the scope of excluded directors, and it is important for funds to have a clear understanding of the likely scope of the exclusion, particularly given the proposed timetable for implementation of the reforms. It would be extremely unsatisfactory for fund to plan for a transition only to find that the ground has shifted beneath them.

Definition of 'material relationship'

In your letter you say:

…APRA proposes to include material professional advisors, consultants or suppliers as examples of material relationships. … material relationships are likely to include relationships between the RSE licensee and standard employer sponsors, parent companies and bodies with the right to nominate potential directors.

ISA Comment: Proposed section 87(1)(b) would exclude a director who has a material relationship with the licensee, or is an employee of an entity that has a "material relationship" with an RSE.

It appears from your letter that the mere fact of a relationship will be sufficient to disqualify a person from acting as a director, regardless of whether that relationship has any impact on the person's ability to act in the best interest of members. This appears to be the case for standard employer sponsors, parent companies and bodies with the right to nominate potential directors.

So, where an entity has a relationship with the RSE that meets the definition of a "material relationship" then the directors, executives and employees of that entity will be ineligible to serve as an independent director. There is no further requirement to have regard to the materiality of the relationship between the entity and the RSE, and has no regard to the role that the person plays within the entity. It is the fact of the relationship alone that disqualifies a person from serving as an independent director.

This approach combines two separate considerations into one concept. The first consideration is whether the relationship with an entity or organisation might give rise to a conflict or otherwise compromise the director's ability to perform their role. The second concept is the materiality of that relationship.

The effect is to exclude a large number of potential directors from acting as independent director where the is no interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect his or her capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the members of the fund[2].

We consider this to be an unresolvable flaw in the legislative package, incapable of remedy through flexible drafting of the prudential standards.

Ideally of course, any regulation directed at identifying relationships that might compromise a person's ability to act in the best interest of members should

- act only to alert a fund of the need to examine whether the relationship does give rise to a conflict or otherwise compromise the director's ability to act in the best interest of members;
- allow for the trustee to consider the materiality of the relationship having regard to all of the circumstances; and
- allow for the possibility that the benefits to the fund beneficiaries in having the person serve on the board outweigh the risk that might arise from the existence of the relationship.

We note that this is consistent with the approach adopted in the ASX Guidelines[3].

Employees of entities that have material relationships

ISA comment: In drafting its standards, APRA should be cognisant that the Bill extends the scope of the exclusion to all employees of an entity that has a material, and hence disqualifying relationship, regardless of the role the employee plays within the firm that enjoys the relationship with the RSE.

On the one hand, this constitutes a significant limitation on the pool of potential directors. Unless the standards are sufficiently flexible to accommodate employees whose employment does not give rise to a material conflict, the pool of potential independent directors will be skewed towards the self-employed or retirees.

On the other hand, it is not clear to ISA how the package captures employees of the RSE itself. It would be incongruous if a reform package ostensibly aimed at ensuring an appropriate separation of board and management does not identify employment by the RSE as a relationship that is likely to undermine a director's capacity to perform their role in members' best interest.

[2] From Recommendation 1.2 ASX Corporate Governance Council, Corporate Governance Principles and Recommendations , 3rd Edition

[3] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* , 3rd Edition

Material professional advisors, consultants or suppliers

ISA Comment: APRA proposes that material professional advisors, consultants and suppliers and their employees will have a material relationship with the RSE[4] that will disqualify them from acting as independent directors.

Once again, ISA opposes any rigid application of this proposal. The extent to which these relationships give rise to an unmanageable conflict will depend on the circumstances, and the materiality of the relationship will be a matter of degree. While it is clear that the auditor cannot sit on a board of an entity that he or she audit, it is less clear what harm would arise from a fund appointing to its board a structural engineer who works for the same firm that provides occasional actuarial advice to the fund. This is not to say that a conflict would not arise from time to time, but that the conflict would be readily manageable.

This measure would give rise to practical problems for industry funds, where our not for profit status gives rise to very different governance considerations. A conflict that arises where parties have competing pecuniary interests does not exist where there is no profit orientation.

Wholly owned subsidiary service providers

In some instances, trustees have established wholly owned subsidiaries to provide services to the fund. Examples include Cbus Property and UniSuper Management Ltd.[5] ISA understands that all the assets and earnings of these entities, after costs, belong to members of the respective funds, ensuring an absolute alignment of the interests between the fund beneficiaries and the wholly owned subsidiaries.

Traditionally fund trustees have appointed some or all of the directors of the trustee to the board of the subsidiary service provider. ISA would be concerned if the new standard rendered a director no longer independent simply by virtue of being appointed to the board of a wholly owned service provider where all profits of the service provider are retained within the fund. Funds should be free to appoint the most qualified director to these boards, free from concern that the mere fact of appointment would remove a director's independence on the fund board.

Collectively owned entities

Industry funds also collectively own a number of entities that were established to provide services to the funds. The constitutions of some of these collectively owned entities confer a right on the funds to appoint directors to the board of the collective entities, and this role is traditionally performed by one of the directors of the fund. Industry Super Property Trust and Frontier Advisors are examples.

Fund directors appointed to the boards of these entities provide a crucial link between the funds and the collectively owned service providers, and an element of control by the fund trustee over the quality and

[4] We note that unlike the other disqualifying relationships APRA intends to have regard to materiality in determining whether or not these types of relationships are "material" relationships.

[5] , Cbus Property is a wholly owned subsidiary of United Super Pty Ltd as trustee for Cbus. UniSuper Management Pty Ltd is a wholly owned subsidiary of UniSuper Limited as Trustee.

pricing of the services provided to it by the service provider. This is not to argue that these arrangements do not give rise to a conflict, but rather that the conflicts are readily manageable and there is no justification for a blanket rule. Indeed, the alignment of these entities to the objectives of the funds that own them, and the members of these funds, is a product of their governance.

In fact, research by APRA confirmed that on average not-for-profit funds relying on these related party service providers paid around market rates for the services provided, indicating that this arrangement has been beneficial for fund members. This is in stark contrast to the for-profit sector, where APRA found that some retail trustees were paying significantly higher fees to related party service providers.[6]

Again, ISA would be concerned if the new standard rendered a director no longer independent simply by virtue of being appointed to the board of the service provider.

In our view, there are material differences in the governance issues that arise around this issue in not-for-profit and for-profit funds. Where a not-for-profit fund has established a related party to provide services to it, either alone or as a joint venture, and appoints a fund director to the board of the service provider the service provider is akin to a business unit within the fund whose sole purpose is to support the objectives of the fund. This compares with the governance issues that arise when a person associated with a commercial venture is appointed as a director of a fund. In that case, their duty to promote the commercial success of the service provider is in conflict with the interests of the beneficiaries.

Standard employer-sponsors

ISA comment: ISA understands that this proposal would mean that any employee of any standard employer-sponsor of the fund would not qualify as independent, regardless of the position the person holds within a standard employer-sponsor, the materiality of the standard employer-sponsor relative to the total membership of the fund or the extent to which the employees of the standard employer-sponsor have exercised choice of fund.

As a matter of principle, the mere fact that a person is a standard employer-sponsor, or an employee of a standard employer-sponsor does not undermine his or her ability to act in members' best interests.

This is not to say that conflicts of interest might not arise from time to time, for example, where the trustee is considering the services it supplies to employers. However a number of factors combine to suggest that in most instances this will be an immaterial conflict. Instances where it is not should be able to be managed through conflicts of interest policies rather than a blanket prohibition upon service as an independent director.

There are also a number of practical problems.

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6 APRA Working paper Australian superannuation outsourcing – fees, related parties and concentrated markets

Kevin Liu and Bruce R Arnold – 12 July 2010

The scope of the exclusion is too wide and would exclude millions of employees. For example, 210,000 employers, or around a quarter of all employing businesses in Australia,[7] contribute to AustralianSuper. The overwhelming majority of these are standard employer-sponsors, and this provision would include every employee of these employers. This problem is not confined to large multi-industry funds. The same issue arises in large funds with smaller numbers of participating employers. For example, every state public sector worker in NSW would be ineligible to serve as an independent director of First State Super.

Taken to its extreme, a person's status as an independent director could change from week to week depending on labour turnover within their employer's firm, the choice of fund of their co-workers, and whether business rules of the firm in relation to the processing of contributions enliven a standard employer-sponsor relationship.

Parent companies

ISA comment: Including parent companies in the definition of a material relationship is also problematic.

As we argued in our submission to Treasury, in the not-for-profit sector the mere fact of being a parent company does not enliven a conflict or otherwise undermine a person's capacity to act in the interests of members. Shareholders are not entitled to dividends. Indeed, where the only demand made by shareholders is that the trustee performs its responsibilities as the trustee of the fund, there is an absolute alignment of interests.

The same arguments apply in respect to APRA's proposal to include parent companies within the definition of material relationship, and we reiterate our concerns that APRAs proposed definition of a material relationship appears to have been made with little regard to the not for profit sector.

We assume that APRA's proposal to include a parent company within the definition of a material relationship is designed to:

- capture parent companies that are not captured by proposed section 87(1), such as companies limited by guarantee;
- broaden the scope of the exclusion to include all employees of parent entities; and
- extend the 3 year look back to directors and executives of parent companies.

Given the Bill also addresses the scope of the exclusion that should apply to shareholders in the RSE licensee, there is a risk that standards dealing with the same subject matter could impose inconsistent obligations on trustees.

Bodies with rights to nominate potential directors

ISA comment: ISA opposes the inclusion of bodies with rights to nominate potential directors as a material, and hence disqualifying, relationship. The mere fact of having the right to nominate a director does not enliven a conflict with the interests of the fund beneficiaries or otherwise undermine the ability of a person

[7] ABS, 8165.0 *Counts of Australian Businesses, including Entries and Exits, Jun 2010 to Jun 2014*

to act in members' interests. In our experience, bodies with such rights – normally unions and employer associations - generally have duties to their members that are aligned with the interest of the fund beneficiaries.

That is not to say that such bodies do not have other relationships with RSE licensees that may enliven a conflict. Where these bodies supply services to the fund, conflicts arise that need to be disclosed, avoided or managed. ISA has proposed additional disclosure of related party arrangements, and these arrangements would be captured by this regime.

At an absolute minimum, APRA should make clear that the mere fact that a person is nominated by a body does not create a disqualifying relationship.

At a practical level, it is hard to understand how this would apply to funds where the board of the RSE itself has the right to nominate directors or where the members have the right to elect directors.

The three year look back rule for executives and directors

ISA comment: Proposed section 87(1)(c) would exclude current and former executives, advisors and service providers from qualifying as independent directors. This is consistent with the governance theory that suggests that such "insiders" are unable to objectively monitor or review their own work, and are conflicted in decisions regarding their appointment, termination and remuneration.

Subject to our general concern regarding the need to ensure that the scope of the service provider exclusion is properly cast, we consider that an exclusion period of three years is reasonable, given that the desire to preserve their reputations could otherwise stifle former executives' appetite to probe their past actions.

(b) Independence in conglomerate groups

In your letter you say:

…the proposed definition will result in some independent directors on entities within a conglomerate group being prevented from also serving as an independent director on the RSE licensee board. This will particularly be the case where a group independent director is director of an entity that has a material relationship with the RSE licensee; in that situation, that director could not be considered independent for the purposes of the RSE licensee board.

Where, however, a group independent director meets both the proposed legislative definition and the requirements of SPS 510, APRA's view is that this director may be able to be considered independent on the board of the RSE licensee.

ISA comment: ISA understands that APRA intends to regulate to ensure that a person may serve as an independent director on the boards of more than one entity within a corporate group provided that the relationship between the RSE and the other entity within the group is not one of the disqualifying relationships (ie a substantial shareholder, a service provider, a parent company).

However we struggle to reconcile this understanding with the extract from CPS 510 contained in your letter, stating:

> *"… independent directors on the Board of the parent company or its other subsidiaries may also sit as independent directors on the Board of the institution."*

This extract appears to contradict the proposal that having a relationship with a parent is always a material, and hence disqualifying relationship.

For the same reasons that ISA opposes a blanket rule disqualifying any person who is a director, executive or employee of the parent companies or who is a director, executive or employee of a related party service provider, we would also oppose a blanket carve-out for conglomerate groups. We urge APRA to make very clear that this is not its intention.

In your letter you say:

Note that regardless of whether a group independent director can be considered independent for the purposes of the RSE licensee board, the existing requirements relating to conflicts of interest (in both the SIS Act and in Prudential Standard SPS 521 Conflicts of Interest) must continue to be complied with.

ISA believes that the conflicts of interest regime is a more appropriate regime to address the governance issues that arise in superannuation. To that end, ISA supports both an increase in public reporting on conflicts of interests, related party transactions and all direct and indirect profits. We also call for a requirement that all related party transactions must be conducted on terms no more favourable to the related party than would be reasonable if the fund were dealing at arm's length, and that related party transactions must be disclosed.[8]

(c) Independence on board committees

In your letter you say:

APRA proposes to amend SPS 510 to:

- *require that a majority of both the Board Audit Committee and Board Remuneration Committee be independent directors;*
- *require the chair of the Board Audit Committee and Board Remuneration Committee to be independent;*
- *permit the chair of the board to also be the chair of the Board Remuneration Committee;*
- *remove the existing provision which allows the chair of the board to also chair the Board Audit Committee where the chair is the only independent director on the board.*

[8] Industry Super Australia, Governance and Disclosure Proposal, 2012, http://www.industrysuperaustralia.com/assets/Reports/3915-ISF-Governance-Booklet-FA3-LR.pdf

ISA comment: ISA opposes these proposals. As a matter of principle, boards should be free to determine the composition of their committees, including where necessary by appointing external (or non director) committee members.

Presumably the objective is to align superannuation funds to banks and insurers, which in turn are aligned to the ASX Guidelines, which are directed at ensuring that the majority of members of audit and remuneration committees are non-executive directors. This is despite the significant body of research suggesting that the introduction of independent directors to remuneration committees has been ineffective in improving remuneration structures.[9] ISA would not oppose a proposal simply directed at diluting the influence of executive directors on remuneration and audit committees.

However, requiring that the majority of these committees be independent using the proposed definition is not warranted and may in fact weaken rather than strengthen the prudent management of a fund.

This not only raises workload issues, it undermines the ability of boards to allocate work according to the skills of the particular directors. It would be counter-productive if, for example, an independent director recruited because of his or her investment expertise was unable for workload reasons to serve on an investment committee.

The proposed standard would also remove the ability of Trustees to maintain a balance of employer and employee representation on all board committees.[10] For example, it is conceivable that all of the directors who meet the test of independence on a fund board were nominated by the body able to nominate member representatives. The effect of this proposal would be to ensure the committee is dominated by member representatives.

It would also indirectly pressure funds to have more independent directors, further diluting the voice of employers and members on fund boards.

(d) Director appointment and removal processes

In your letter you say:

The draft legislation includes a provision which makes clear that RSE licensees must comply with requirements in the prudential standards relating to the appointment and removal of independent directors.

ISA Comment: As a matter of principle, industry super funds oppose any dilution of the rights of nominating bodies to nominate and appoint directors. RSE licensees should retain the ability to best determine how to

[9] Capezio, A, Shields, J & O'Donnell, M 2011, 'Too Good to be True: Board Structural Independence as a Moderator of CEO Pay-for-Firm-Performance', *Journal of Management Studies*, vol. 48, no. 3, pp. 487-513. For a comprehensive survey see Kercher, K., *A Study of Board Remuneration Committees: Structure and Effectiveness*, Bond University, 2013 p 54-85

[10] As ISA understands the draft legislation this is possible because a director who is nominated by a member or employer organisation may also count towards the minimum quota of independent directors.

identify suitable candidates, consistent with their obligations in relation to fitness and propriety, management of conflicts, and board renewal policies.

Further, if the objective of this provision is to support the introduction of the quota, it is redundant. The strict obligation to meet the quota is sufficient. If however, as we suspect, the objective of the provision is to introduce via the standards a range of other prerequisites that a director may need to satisfy to meet the definition of independent, then we would argue that these should be identified and subject to public scrutiny.
For these reasons ISA opposes amendment to the current prudential standard on board renewal.
In your letter you say:

APRA intends to expand these requirements to set out other aspects to be addressed as part of the RSE licensee's appointment and removal processes. This is expected to include provisions relating to the process by which candidate directors are nominated for board positions and the framework used to assess the suitability of those candidates for appointment. APRA also expects to support these provisions with guidance.

(e) Regular assessment of independence

Because a person's independence can be affected by the passage of time or changes in their individual circumstances, APRA proposes to require each RSE licensee board to undertake regular assessments of the independence of each director.

ISA Comment: Trustees need to know with certainty whether they are complying with the law.

Appointing and removing directors is a serious matter and changes to board composition need to balance a complex interaction of skills, industry knowledge and connection, continuity, fresh thinking and diversity. It would be extremely problematic if frequent board reshuffles were triggered because funds become non-compliant from week to week as circumstances change. As we have noted above, a director's independence may change from week to week depending on whether any of his or her co-workers contribute to the fund under a standard employer sponsorship with the fund.

(f) Capacity for APRA to determine a director independent or not independent

In your letter you say:

The draft Bill proposes that APRA be given the power to determine whether an individual director can or cannot be considered independent.

ISA Comment: ISA opposes the broad powers conferred upon APRA to determine, of its own motion, that a director is unlikely to be able to independently act a trustee. Our concerns can be summarised as follows:

- The test applied in the SIS Act is a test of structural independence, whereas the test to be applied by APRA is a test of functional independence. This means a person can meet the statutory test yet be deemed not independent.

- The test can be applied at any time, meaning trustees cannot have certainty that they are compliant with the law.
- There are no obligations upon APRA to apply procedural fairness in determining applications. In particular it appears that APRA may determine that a person is not independent without giving the person the right to be heard.
- There is a presumption of non-independence (see proposed section 89(6)).

In the event that the government proceeds with such flawed legislation, ISA would expect APRA to take steps to embed procedural fairness into its processes for determining applications.

(g) Updates to guidance

In your letter you say:

APRA intends to review and, in some cases, extend the existing guidance in SPG 510 to ensure that it aligns with the new requirements in SPS 510 and the SIS Act and continues to support sound governance by RSE licensees. This revised guidance will particularly address APRA's view of good practice in areas such as:

- *the size of RSE licensee boards;*
- *renewal and appointment processes;*
- *setting director tenure limits;*
- *the management of conflicts of interest, particularly where multiple directorships are held; and*
- *the role of board committees, in particular nomination and risk committees.*

ISA Comment: Industry super funds generally support the existing prudential guidance in relation to these matters. Trustees have only recently devoted considerable resources to reviewing policies and practices to ensure that they meet these standards, and they should be given time to work before any further changes are contemplated. APRA has sufficient power to address any concerns at fund level.

2. Transition requirements

(a) Ongoing board effectiveness

Draft SPS 512 will make clear that each RSE licensee must ensure ongoing compliance with governance requirements in SPS 510 at all times throughout the transition period.

ISA Comment: ISA is convinced that three years will provide insufficient time to manage the transition to a new board, while continuing to comply with all other governance standards.

The obligation to appoint directors is certain to disrupt existing succession plans and may require boards to set aside plans to recruit for particular sets of skills. ISA estimates that the draft Bill would require the appointment of 295 trustee directors to the trustees of not-for-profit funds in additional to their usual turnover rate.

(b) Minimum requirements for transition plans

Draft SPS 512 will, therefore, require a transition plan to be prepared and approved by the board no later than 1 July 2016, in line with the commencement of the legislation, with the plan to be submitted to APRA.

Matters that are proposed to be included in transition plans include, at the highest level, an assessment of the status of each current director on the RSE licensee board, what changes are needed to board membership to meet the new requirements and the steps that the board will take to achieve full compliance with the legislative obligations by the end of the transition period.

ISA Comment: The time available to develop transition plans is too short. Final legislation and prudential standards will not be available until October at the earliest, and potentially much later. Funds will then need to obtain advice, consider board and committee composition, liaise with shareholders and other stakeholders, consider from where to source new directors and so forth.

Where a board does need to make wholesale changes to meet the quota, including a change of the chairman, it would be prudent to at least identify candidates for chairman before identifying which directors would step down and be replaced. This is important if funds are to simultaneously manage their obligations in relation to board renewal and skills.

Second, that the uncertainty that attaches to whether a person is independent at any given time undermines the ability of a trustee to plan with certainty to meet its compliance obligations within the transition period.

Conclusion

It is clear from our response that ISA believes that the regulatory package is fundamentally flawed. We make this submission, not because we oppose good governance, but because we are committed to strong and effective governance, transparency and disclosure, and effective regulation that is directed at securing boards that are properly motivated, accountable, and effective in single-minded pursuit of members' best interest.

It fails to recognise the difference between for profit and not for profit superannuation funds and the very different governance issues that arise. It confers remarkable powers on APRA without justification or evidence, and it would remove the equal representation model from our laws.

In developing the subordinate regulation to underpin the package APRA's proposals would compound rather than ameliorate these problems. We are particularly concerned that APRA proposes to disqualify a director as independent because they are a director, executive or employee of an employer sponsor, a parent company or a body with the right to nominate directors to the board of a fund.

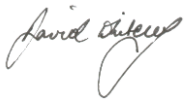
We oppose further regulation of the nomination and removal processes, and interference in the ability of boards to best determine the composition of the audit and remuneration committees.

The recently introduced prudential standards enliven a robust regulatory regime, providing APRA with a sound regulatory framework to address the stated policy objectives of the government – to manage

conflicts, ensure boards are appropriately remote from management and to drive diversity in board composition.

Please feel free to contact me at ISA, or Cath Bowtell at cbowtell@industrysuper.com

Yours sincerely



David Whiteley
Chief Executive