



**Submission to Senate Economics References Committee**

**Inquiry into the 2017 superannuation bills:**

**Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill  
2017**

**Treasury Laws Amendment (Improving Accountability and Member  
Outcomes in Superannuation Measures No. 1) Bill 2017**

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## **Submission to Objective of Superannuation**

This submission is being made on behalf of The National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations, including the National Women's Alliances Equality Rights Alliance and economic Security 4 Women. These organisations include those committed to increasing support for women in Australia as well as those with a special interest in women's history.

NFAW is concerned about the financial security of women, and the role of superannuation in achieving that security. To that end we have made a number of submissions to previous Parliamentary and Treasury enquiries into the superannuation system and to the Senate Inquiry into the Financial Security of Women in Retirement.

### **Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017**

As noted in the Explanatory memorandum for these Bills, the superannuation system has changed significantly since the Superannuation Industry Supervision Act (SISA) was introduced in 1993. At the time that the SISA was introduced, superannuation funds were still conceptualised as a joint arrangement between employees and employers; which resulted in the inclusion of the joint representation rules in Part 9 of the SISA. Portability of benefits, choice of fund rules and the increase in accumulation funds relative to defined benefit funds have changed this underlying dynamic of the superannuation system.

The proposed Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 replaces the current provisions in Part 9 of the SISA with the requirement that at least one third of trustees are independent trustees.

We note that this provision will apply to all RSE licensees, and will override existing provisions in the trust deeds of registered superannuation entities. However the effect is will be greater in the not-for-profit sector. Notably, the June 2016 APRA Annual Statistics show that of the 44 RSE Trustees that are not required to have equal representation, only two are classified as not for profit licensees. Conversely, of the 36 that require equal representation under the governing rules and the 45 that are required to have equal representation under the legislation only one in each category is a for profit licensee<sup>1</sup>. For profit funds are more likely to have independent directors than not for profit RSEs by virtue of the relevant FSI and ASX requirements.

Both the Cooper Review<sup>2</sup> and the Murray Inquiry<sup>3</sup> recommended that the structure of RSE licensees should require independent directors. Cooper recommended one third of directors be independent, and Murray recommended that a majority of directors should be independent. We note, however that the Murray inquiry acknowledged that the joint representation model continues to be appropriate for defined benefit schemes with a single employer sponsor<sup>4</sup>.

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<sup>1</sup> APRA (2017) *Annual Fund-Level Superannuation Statistics* June 2016, Table 1; Commonwealth of Australia <http://www.apra.gov.au/Super/Publications/Pages/superannuation-fund-level-publications.aspx>

<sup>2</sup> Cooper et al (2010) *Super System Review: Final Report* 2010, Commonwealth of Australia <https://treasury.gov.au/publication/super-system-review-final-report/>

<sup>3</sup> Murray et al (2014); *Financial System Inquiry* Dec 2014 <http://fsi.gov.au/publications/final-report/>

<sup>4</sup> Murray, above n 3 at p 135

In contrast to these reviews, the Fraser Review<sup>5</sup> found that there was insufficient evidence to substantiate the view that increasing the number of independent directors would improve the governance of not for profit RSEs. Fraser noted that the not-for-profit sector has consistently provided higher returns to members<sup>6</sup>

However both reviews also recommended that the requirements to address potential conflicts of interest should be strengthened, with the Cooper Review recommending a “fit and proper person” test and mandatory on-going educational requirements. We note that APRA has issued prudential standards in respect these matters, however they fall some way short of mandatory requirements. Prudential Standard on Governance, SPS 510,<sup>7</sup> which took effect from 1 July 2017, does not establish any requirements regarding the independence of directors. Prudential standards SPS 520<sup>8</sup> and SPS 521<sup>9</sup> require the Board to establish processes to ensure that the person is a fit and proper person, including holding relevant qualifications and experience; and to ensure that appropriate processes are in place to manage potential conflicts of interest.

Currently around 30% of directors of RSE trustees are female<sup>10</sup>. The APRA data does not identify the number of directors by gender on not for profit and other RSEs, however the Fraser Review<sup>11</sup> estimates that the number of female directors on not-for-profit RSEs is higher than corporate RSEs, although it could be better.

In 2012 AIST undertook an analysis of the representation of women on superannuation boards<sup>12</sup>, including the means of their appointment. It found that 34% of women on boards were nominated by a sponsoring body, 25% being on industry funds and 6% on corporate funds. Appointments recommended through a professional contact made up a further 51% of female appointments, of which 33% were in industry funds, and 6% in corporate funds. The remaining 15% of female appointments were elected by members. AIST has established a target of 40% of female representation on Boards by the end of 2017.

However more recent data provided by Women on Boards, which includes retail funds in the analysis, shows that women make up 35% of board members on retail funds which is higher than industry funds at 26%.

Comments made by women about barriers to their appointment included a perception that the industry was a “boys club”, and that the appointment process was a barrier to appointment<sup>13</sup>.

The proposed technical requirements for independence appear to be adequate, being based on

- a 5% interest in the share capital of the RSE; or

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<sup>5</sup> Fraser, B; (2016) *Board Governance of Not for Profit Superannuation Funds* 16 Feb 2017, Industry Super Australia <http://www.industrysuperaustralia.com/assets/Reports/Board-Governance-of-NFP-Superannuation-Funds.pdf>

<sup>6</sup> Fraser, above note 5, Table 3

<sup>7</sup> Superannuation (prudential standard) determination No. 1 of 2016 Prudential Standard SPS 510 Governance

<sup>8</sup> Superannuation (prudential standard) determination No. 4 of 2013 Prudential Standard SPS 520 Fit and Proper

<sup>9</sup> Superannuation (prudential standard) determination No. 7 of 2012 Prudential Standard SPS 521 Conflicts of Interest

<sup>10</sup> APRA, above n 1, Table 2.

<sup>11</sup> Fraser, above n 5, page 31

<sup>12</sup> Demasi, R (2012) *Women on Super Boards: The Inside Story* September 2012, AIST, <http://www.aist.asn.au/governance/women-on-super-boards.aspx>

<sup>13</sup> Demasi, above n 12 at p18

- being a director or executive office of a large employer-sponsor (500 or more employees); employer sponsor organisation or a member organisation with representation under the deed.

Although the criteria are reasonable, the effect of the criteria can only be determined by examination of the deed for each affected RSE licensee. To the extent that several member or employer organisations may be represented on the board of a superannuation fund, the effect of the exclusions could significantly limit the field of independent directors, and reduce the limited pool of individuals currently qualified to act as independent directors. In June 2016 of the 1,071 RSE directors, there were 74 directors recorded as independent. There were also 69 directors with multiple directorships, although there were no data reported on whether these directors are classified as independent directors<sup>14</sup>. These numbers have been stable over the three years since 2014.

### **Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017**

One of the matters raised in the Fraser Report<sup>15</sup> is the need for funds to communicate clearly with members. To the extent that this Bill improves the flow of information, the Bill should be supported.

MySuper is a growth segment of the superannuation market. By virtue of the default status of these funds, it is appropriate that MySuper funds are monitored closely. However, there is a balance that must be struck between monitoring the performance of MySuper funds and overregulation, particularly when the cost of further regulation will add to fees.

We note that many superannuation funds already implement measures similar to those that are required in this Bill, including internal monitoring and benchmarking of the performance of MySuper funds.

Accordingly:

1. We are not convinced that requiring independent directors on the Boards of superannuation funds will improve accountability and returns to members.
2. It would be a more effective accountability measure to require mandatory educational and conflict of interest measures to improve the skills of directors of RSEs.
3. The independent director requirements could reduce the pool of directors eligible to serve on RSE Boards.
4. Measures that require superannuation funds to communicate more effectively with members should be supported
5. Increasing the level of regulation of MySuper funds should take account of the likelihood that additional costs will be passed on through increased fees.



*Prepared by Associate Professor Helen Hodgson  
For the NFAW Social Policy Committee  
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<sup>14</sup> APRA (2017) *Statistics: Annual Superannuation Bulletin* June 2016  
<http://www.apra.gov.au/Super/Publications/Pages/annual-superannuation-publication.aspx>

<sup>15</sup> Fraser, above n 5