

ASFA Position 3.1 –

Trustee boards must consider the appointment of a number of independent board members (ideally at least two).

The SIS Act must be amended to allow trustee boards to appoint more than one independent board member.

- This position is too vague in terms of how it affects public offer boards that do not comply with equal representation rules, compared to how it affects equal representation boards. This position needs to consider both circumstances for it to have any meaning in terms of implementation.
- The proposed position is too instructive in its tone in using terms like “must be amended” in relation to legislative amendment.
- It is concerning that a discussion paper says that “ASFA is considering the Coalition’s position” and that it will “consult members separately on this issue”. This issue appears to be at the heart of this discussion paper, and should be included in it in order for ASFA members to consider this issue as a whole and at the same time they are asked about all the other governance issues for independent directors.
- The traffic light approach is not supported for this requirement – it is an inappropriate consumer messaging tool for such nuanced corporate governance proposals.

ASFA Position 3.2

An individual is taken to be ‘independent’ in the context of a superannuation fund trustee board if he/she has not, in any capacity within the last three years, been employed by the fund, an employer-sponsor of the fund, a sponsoring organisation, a material service provider/consult/professional adviser to the fund or any organisation representing the interest of one or more members or employer-sponsors of the fund (nor an associate of any such entities, as defined in section 10 of the SIS Act).

For the avoidance of doubt, a sponsoring organisation includes a financial institution operating a public offer fund.

- We are supportive of this proposal; however, the final sentence requires further clarification as to what is actually covered.

ASFA Position 3.3

The SIS Act must be amended such that an independent trustee board member has the ability to have the casting vote if necessary.

- The proposed position is too instructive in its tone in terms of amending legislation.
- The Discussion Paper has not outlined sufficiently any policy or governance benefits being derived from having an independent director have a casting vote when two thirds majority is already required from representative trustee directors.
- We note that the original policy rationale for having equal representation was to ensure that employer representatives and employee representatives have the same power – ASFA would need to explain why this is no longer appropriate if it seeks to change this for its members.
- Position 3.1 also talks about having two independent directors – how would it be determined which one will have a casting vote as described here? The two proposed positions are not reconciled with each other and require review.

ASFA Position 4.1

The trustee board must document the duties of the Chair and establish appropriate appointment procedures, including a mechanism for succession planning.

- The Paper needs to demonstrate why it is necessary to apply such a requirement over and above the existing new prudential standards and prudential guidance that are relevant to this area – what is new that is being asked of here?

ASFA Position 4.2

The Chair must have the ability to vote and have the casting vote if necessary.

- This position is interlinked with Position 3.3 and by implication means that ASFA's position is that a Chair must be independent – but this is not spelt out.

ASFA Position 4.3

The roles of the Chair and Chief Executive Officer must not be exercised by the same individual.

- This position is supported as it shows good governance.

ASFA Position 5.1

Trustees boards need the flexibility to be able to create a structure that is most effective for their fund and its particular circumstances. In order to do so, trustee boards need discretion on their size

- This position is supported. It is premature to prescribe numbers until we see how the new regulatory requirements are performing for funds.
- The traffic light approach which is then suggested is somewhat incongruous and contradicting the previous conclusion – it is not supported for this requirement.

ASFA Position 5.2

Investing the assets of the superannuation fund is a major part of a trustee board's responsibilities. As such, a trustee board needs to ensure that it has a sufficient number of board members with investment knowledge/expertise to ensure the board can have a proper debate about investment matters and make informed investment decisions, without the need to not rely solely on the advice of external investment managers or internal investment personnel.

In addition to investments, ASFA's view is that there are certain areas in which all trustee boards must collectively have sufficient levels of expertise or prior experience. These include:

- *Insurance*
- *Audit/Risk/Compliance*
- *Legal*
- *Defined Benefits (for DB funds)*
- This proposed position is couched in a double negative (“the need to not”) which makes the requirement confusing.
- We note that a lot of what is suggested here is already covered by funds in their ‘skills metric’ which is outlined in their fit and proper policy.
- The commentary should also seek to highlight that trustees have a duty to seek advice and why this is not enough in some circumstance.

ASFA Position 5.3

Trustee boards must have formalised and well developed processes to identify and assess the competencies of its board members, both individually and as a collective.

Trustee boards must undertake regular (ie at least annual) analysis of the trustee board's collective skills/expertise to identify any gaps that may exist. Where gaps are identified, these must be rectified as soon as possible – ie through training and up-skilling of current board members and/or as part of the trustee board's renewal process.

- The proposed position is supported.
- Please note and highlight also that under the APRA Governance Standard this board assessment is already required.

ASFA Position 6.1

Trustee boards should conduct an objective assessment of their composition in line with the revised ASX Corporate Governance Principles and Recommendations on diversity, including gender diversity. In particular, trustee boards should set a medium-to-long term goal with respect to female representation – for example, achieving 40 per cent female representation on their board over a period of, say, 7 years – and disclose annually to members how they are tracking against that goal or if that goal has changed for any reason.

In addition, if they do not have any women directors, trustee boards should disclose to members why this is the case.

- This proposed position is supported.

ASFA Position 7.1

It is essential that performance is measured objectively by a trustee board review process and that any imbalance or underperformance is promptly detected and remedied. To enable this, there must be a periodic (ie at least annual) review of performance at an individual and collective level. Trustee boards must have a process of assessing an individual member's performance as well as the performance of the trustee board as a whole.

To assist in achieving this, it is imperative that trustee boards:

- Have the ability to remove non-performing members, whether for health issues, conflicts, lack of engagement due to time constraints, or other reasons;*
- Have the ability to appoint independent directors and experts; and*
- Consider having a limit on the number of directors that is appropriate for the fund, including their term/period of tenure.*

- This proposed position is not supported. Directors should only be removed for failing the fit and proper test, as required under current regulatory requirements (which are not highlighted in this discussion paper).
- This proposed position mentions "individual **member's** performance' where it should read as 'directors'.
- Also, it is preferable to focus on underperformance rather than behaviour or physical condition that *may or may not* lead to underperformance. We do not want to see board members removed if they have an illness but are not underperforming in their roles.
- The proposal in (b) regarding independent directors is already covered in a previous position.
- The proposal in (b) for the board to appoint experts is unclear in the context of this proposed position and requires further explanation.
- The proposal in (c) is already covered by a previous position as well.

ASFA Position 8.1

Trustee boards must maintain a documented Remuneration Policy that meets all the requirements of the Superannuation Prudential Standard SPS 510 Governance (SPS 510) and covers all persons or classes of persons required under paragraph 27 of SPS 510.

Trustee boards must undertake a review of their Remuneration Policy at least every three years.

- This proposed position is supported as it is already a requirement contained in a Prudential Standard.
- What additional requirements does ASFA think necessary in this regard?

ASFA Position 8.2

The nature and amount of remuneration paid to trustee board members must be disclosed on the fund's website and annually in the fund's annual report. The disclosure must be consistent with the requirements of the regulations and should cover both cash and non-cash benefits and show amounts paid to trustee board members by the fund and amounts paid by other for services to the fund.

- This proposed position is supported as it is already a requirement.
- What additional requirements does ASFA think necessary in this regard?

ASFA Position 9.1

Trustee boards must have a policy dealing with tenure. They need to consider whether it would be appropriate, in their particular circumstances, to implement a maximum tenure period and, potentially, a maximum age for their trustee board members.

A trustee board's tenure policy needs to recognise that, unlike shareholders of a company, members of a superannuation fund do not have the capacity to remove trustee board members.

- The proposal to have a policy on tenure is supported – it is already a regulatory requirement.

- The first paragraph in Section 9 on tenure is too emotive and should be deleted. We do not think it is an appropriate characterisation of superannuation trusteeship for a public document.
- We do not support a policy that must limit directors based on a maximum age. It must go to capability to do the role only, otherwise is it potentially discriminatory. Age by itself is not a measurement of capability, nor is it an indicator that a director has been on a board for an inappropriately long period of time.
- The paragraph on page 24 referring to maximum tenure leading to experienced trustees moving from one trustee board to another is not supported by quoted evidence.

ASFA Position 10.1

Trustee boards must formulate and document their conflicts management policy, including procedures for identifying, assessing and effectively managing actual and potential conflicts of interest or duty. This conflicts management policy needs to comply with the requirements of SPS 521 Conflicts of Interest and be comprehensively reviewed at least every three years.

- This proposed position is supported noting it is already a requirement.
- What additional requirements does ASFA think necessary in this regard?
- This section of the discussion paper needs to outline the new legislative requirements under the enhanced trustee obligations that deal with conflicts and the new duty of priority. These legislative changes should precede discussion of any prudential standards and of common law as currently shown in the draft Discussion Paper.

ASFA Position 10.2

In appointing an individual onto a trustee board, the board needs to consider a number of factors including: whether the individual meets the definition of 'independence' (if relevant), the structure of the board (including any limits on size), the skills/experience of the individual, whether further training is needed in order for the individual to comply with the trustee board's Fit and Proper Policy, their gender and the trustee board's target on gender diversity, whether the individual currently serves on the trustee board of another APRA-regulated superannuation fund or is associated with a services provider used by the fund.

In addition, the board needs to ensure that, within the last three years, the individual being appointed has not been employed by a material service provider/consultant/professional adviser to the fund.

- This position does not clearly outlay any new requirements, but rather combines a number of proposed ASFA positions into one. This should be deleted as the multiple proposed positions are dealt with in separate positions in this Paper on which ASFA is seeking views.

ASFA Position 10.3

With the exception of closed defined benefit corporate funds, an individual must not be allowed to be a trustee or director on more than one APRA-regulated superannuation fund trustee board.

- This proposed position is not supported.
- The superannuation industry has just had the standard applying to trustees increased by the imposition of increased requirements (legislative and prudential standards) in relation to management of conflicts and the duty of priority. These legal requirements are required to be observed by all trustees, both the board as a whole, and the individual director, making a proposed ban on multiple trusteeship redundant.
- Further, this proposed ban seems to have been hastily developed, and does not seem to have considered the following key issues:
 - The professional trustee business model (where one corporate trustee operates a number of APRA regulated funds, including small APRA funds and large APRA funds).
 - It does not appear to consider the potential for multiple trusteeships where APRA appoints a replacement trustee due to enforcement action.
 - Indeed, it does not appear to consider multiple trusteeships where funds do not compete against each other.
 - It is the role of trustees to manage actual and potential conflicts – this proposed ban makes no relevant distinction between these two or to acknowledge that the trustee must make this call.
 - The proposed ban does not appear to consider that the conflicts requirements apply to both individuals as well as the trustee boards as a whole.

ASFA Position 10.4

Where related party dealings are permitted, the dealings must be on a commercial, arm's length basis and details of the related party dealings must be disclosed to members in the fund's annual report.

- This proposed position is supported noting it is already a requirement.

ASFA Position 11.1

Trustee boards must consider ESG issues as part of their board consideration of investment/risk management issues when exercising their duty to formulate and give effect to appropriate investment strategies under section 52 of the SIS Act.

- This proposed position is not supported as ESG consideration is not a mandatory consideration for a trust fiduciary in superannuation.
- Suggest that the proposed position be that ESG consideration is *recommended* as part of a trustee's broader consideration of investment/risk management issues.
- The opening three paragraphs of commentary under section 11 of the paper contain statements that are unsupported by evidence – unless further explanation is provided in relation to these claims they should simply be removed from the paper, eg. 'superannuation funds are increasingly realising that they should be considering EGS factors in their investment decisions where appropriate...many superannuation trustees boards have realised'etc.
- The opening paragraph needs to consciously link the role of trustees as beneficial owners of companies (ie. shareholders), with their fiduciary role as trustees of superannuation funds.

ASFA Position 12.1

All registrable superannuation entities (RSEs) must develop a proxy voting policy and publish this policy to members on their websites and in the fund's annual report. In addition, trustee boards must publish details of how and when they exercised their voting rights in the previous financial year in relation to shares held in listed companies.

- This proposed position largely reflects the requirements that have been passed in the MySuper Regulations, so it is not needed. Perhaps the paper should highlight that this is a legal requirement now.

The Part 2 Summary should be amended to reflect changes to the actual proposed positions accordingly.