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T: +61 2 8248 6600
F: +61 2 8248 6633
E: contact@aicd.com.au

Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Sir/ Madam

Governance arrangements for APRA regulated superannuation funds

The Australian Institute of Company Directors (AICD) welcomes the opportunity to make this submission with respect to the *Superannuation Legislation Amendment (Trustee Governance) Bill 2015* (the Bill).

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. We have a significant and diverse membership of more than 37,000 from across a wide range of industries, commerce, government, the professions, private and not-for-profit sectors.

As noted in our previous submission to Treasury the exposure draft *Superannuation Legislation Amendment (Governance) Bill 2015*¹, it is our long held view that:

- Greater independence on the boards of superannuation trustee companies should be encouraged, consistent with internationally recognised principles of good governance;
- To the extent possible, all APRA-regulated entities (including superannuation funds) should be held to the same standards of governance;
- Given the current composition of the boards of most industry superannuation fund trustees, the proposal under the Exposure Draft to introduce a requirement that at least one-third of the board be independent and allowing a three year transition period to comply is supported; and
- We endorse changes to introduce an “if not, why not” disclosure of whether there is at least a majority of independent directors on the trustee board and that the requirement that the Chair of a superannuation trustee company’s board be independent.

Our submission recommended that a broader definition of “independent” be adopted under the *Superannuation Industry (Supervision) Act 1993* (SIS Act) for directors of superannuation trustee companies, similar to the one that is used for the purposes of Principle 2 under the ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations (Principles and Recommendations), namely:

“An independent director is a non-executive director who is not a member of 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 judgment.”

¹ AICD submission to Treasury dated 23 July 2015.

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Specific examples of relationships that APRA considers will indicate that a director is not independent should be included in the relevant prudential standard and not in the SIS Act itself.

We note that this recommendation has not been adopted and that, instead, an even more prescriptive approach has been taken to defining what an “independent director” is for the purposes of the Bill.

We would again ask that consideration be given to including a broader definition in the Bill and that specific examples of the relationships that will be considered by APRA to impact on a director’s independence be included in the relevant Prudential Standard. Not only would this approach be consistent with the approach taken for all other financial entities regulated by APRA, including the detail in the Prudential Standard will mean that they can be more easily changed as corporate governance practice evolves, as opposed to legislation.

With respect to the types of relationships that have been included in the Bill, again this should follow the approach taken for other APRA regulated entities under Prudential Standard CPS 510, but with appropriate changes made to recognise the unique relationship between some directors of superannuation fund trustees and employer or employee groups. However, we note that the more prescriptive definition of “independent director” adopted in section 87 of the Bill differs from the one used in Prudential Standard CPS 510 in a number of respects.

For consistency with the definition that applies to other APRA regulated entities under CPS 510, we suggest incorporating the same wording into section 87(1) (or preferably, for the reasons set out above, incorporating it into the relevant Prudential Standard) but with the additional reference to representatives of employer or employee groups. The amended wording would be along the lines of the following:

- (1) *A director is not independent from an RSE licensee of a registrable superannuation entity if the director:*
- (a) *if the RSE licensee is a body corporate that has share capital – is a substantial shareholder of the RSE licensee or an officer of, or otherwise associated directly with, a substantial shareholder of the RSE licensee;*
 - (b) *if the RSE licensee is a body corporate – is employed, or has previously been employed in an executive capacity by the RSE licensee or another member of the group, and there has not been a period of at least three years between ceasing such employment and serving on the board of the RSE licensee;*
 - (c) *has within the last three years been a principal of a material professional adviser or a material consultant to:*
 - a. *the RSE licensee;*
 - b. *another member of the RSE licensee’s group; or*
 - c. *if the RSE licensee is a group of individual trustees – with any of the trustees,**or an employee materially associated with the service provided;*
 - (d) *is a material supplier or customer of:*
 - a. *the RSE licensee;*
 - b. *another member of the RSE licensee’s group; or*
 - c. *if the RSE licensee is a group of individual trustees – with any of the trustees,**or an officer of or otherwise associated directly or indirectly with a material supplier or customer;*
 - (e) *has a material contractual relationship with*
 - a. *the RSE licensee;*
 - b. *another member of the RSE licensee’s group; or*
 - c. *if the RSE licensee is a group of individual trustees – with any of the trustees,**other than as a director;*

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- (f) *if the RSE is trustee of a regulated superannuation fund – has within the last three years been a director or employed in an executive capacity of:*
 - a. *an employer-sponsor of the fund who is a large employer in relation to the fund within the meaning of section 29TB;*
 - b. *an organization representing the interests of one or more employer-sponsors of the fund that has the right to appoint, or nominate for appointment, directors or trustees of the RSE licensee; or*
 - c. *an organization representing the interests of members of the fund that has the right to appoint, or nominate for appointment, directors or trustees of the RSE licensee; or*
- (g) *is a person to whom circumstances of the prescribed by regulations made for the purposes of this paragraph apply.*

We hope that our comments will be of assistance to the Committee. Please do not hesitate to contact Senior Policy Advisor, Gemma Morgan on _____ if you would like to discuss.

Yours sincerely

JOHN BROGDEN

Managing Director & Chief Executive Officer