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Dear Committee Secretariat

Re: Superannuation Legislation Amendment (Trustee Governance) Bill 2015

Improving superannuation governance is critical in maximising the retirement benefits of older Australians. We therefore welcome the opportunity to comment on this Bill. With around 200,000 individual fee-paying members, National Seniors is Australia's independent consumer lobby for the over-50s. It is from the consumer and fund member perspective that the following observations are made.

A general observation - prescriptiveness

National Seniors acknowledges the significant reviews and reports undertaken over the past decade into aspects of superannuation governance and associated arrangements. The broader corporate and regulatory environment has also continued to evolve and change. Significant in the area of superannuation have been the Cooper Review and the Financial Systems Inquiry. The reports provide a sound foundation for a continuous reform process.

Across the broader regulatory environment there has also been a continuing emphasis on reform, driven increasingly by a theme of less regulation.

Against this background we raise concerns about whether the proposed reforms strike the appropriate regulatory balance. Our view is that the emphasis is clearly prescriptive and in some cases it would appear excessively so. We would urge caution in the use of excessive prescription – it is likely to create further problems, be difficult to implement and inevitably impose additional cost.

Minimum one third of independent directors

National Seniors supports the move to require all APRA regulated superannuation funds to have a minimum of one-third independent directors on their trustee board. This requirement is consistent with outcomes of the Financial System Inquiry Final Report and the Cooper Review.

We recognise that increasing independence in the board composition is important in improving accountability of fund management to members. The nature of these funds is that accountability is limited and the addition of independent directors will enhance accountability and protection of member interests.

Greater diversity in the board structure can also have a positive influence on performance. It is also noted that a significant number of funds have already provided for the addition of independent directors.

Independent chair

We are very cautious about the requirement for an independent chair. National Seniors believes that the board of trustees is best placed to decide who has the appropriate skills and capacity to fulfill the role of the chair. Effective chairmanship goes to the heart of a board fully and properly fulfilling its role.

In our view the proposed change is one of the prescriptive measures that is simply unhelpful. The chair needs to be the best person for the job as decided by the board – ‘independent’ or otherwise. It needs to be the best person for that role.

Further, the requirement to report on an ‘if not, why not’ basis where the majority of directors or the chair is not independent will provide sufficient impetus to ensure board members are fit and proper and that boards have an appropriate skill mix.

APRA determinations on independence

The proposed determination of ‘independence’ is of concern from two perspectives.

The proposed definitions are excessively prescriptive and will inevitably lead to problems of implementation, likely create further problems and impose additional costs.

In addition National Seniors is concerned about the amendment to allow APRA to make determinations about the independence of directors. There is no precedent in any other APRA-regulated sector where APRA decides on the independence of directors.

National Seniors believes that APRA’s powers for regulated superannuation funds should be consistent with the powers it has for regulating entities in the deposit-taking, general insurance, life insurance and private health insurance industries. APRA is regarded as having been effective in this area and we would take some confidence from a role consistent with their existing approach.

Superannuation fund boards should be responsible for deciding on the independence of directors. As indicated above, greater clarity should be provided for in the statutory definition of independence.

Member representation

The Bill will remove the legislative requirement for equal representation for employers and members in boards of industry funds. This change has the potential to have a significant impact on the culture of industry funds.

As is widely acknowledged industry funds have performed consistently well for members. They have also not been tarnished by the financial advice failings of retail and other funds

and advisers. It is also noted that many industry funds are already moving to include independent directors on their own accord.

We recommend that there be a clear acknowledgement that funds will remain able to choose, if they wish, to retain some form of equal representative governance arrangements (including independent directors). For example, this could be provided for within the board charter or the mission of the organisation. It would not prevent a change at any point but such would require the board to fully communicate with its members.

This would mean an industry fund committing to a model that provides for the balance of employer and employee trustees, enhanced by the addition of independent directors and the improved accountability to members that their presence can provide.

If you have any questions regarding this feedback, please contact Ms Sarah Saunders, general manager public affairs, on

Yours faithfully,

Michael O'Neill
Chief Executive