



BOC Superannuation Pty Ltd
ABN 83 080 598 821
Trustee of the BOC Gases Superannuation Fund
10 Julius Avenue, North Ryde NSW 2113
P. O. Box 288, Chatswood NSW 2057
Tel: +61 2 8874-4400

13 October 2015

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

By email to: economics.sen@aph.gov.au

Dear Ms Matulick

Superannuation Legislation Amendment (Trustee Governance) Bill 2015

Thank you for your invitation to provide a submission to the Senate Economics Legislation Committee on this Bill, the implications of which are of considerable concern to the BOC Super Trustee board and to the sponsoring employer, BOC Limited.

The BOC Gases Superannuation Fund ("BOC Super") was established in 1937 to provide retirement benefits to employees of BOC Limited (previously CIG). The fund is relatively small, with \$650m in assets and 3,700 members, about half of whom are current BOC Limited employees. In spite of its size, the fund has provided excellent investment returns and service facilities at low cost and with a very high level of engagement with its members.

Further detailed information about BOC Super and BOC Limited are provided in Appendix A to enable the body of this submission to be kept brief and to the point.

The government is proposing significant governance changes to apply to the Trustee boards of all superannuation funds, including a requirement for 1/3 of all directors to be "independent", including an independent Chair. This proposal is strongly opposed due to the likely adverse impact on smaller funds.

Thesis

On behalf of the Trustee of BOC Super, I submit that the proposed changes:

- are not consistent with the recommendations of the Financial Services Inquiry (FSI) report
- will impose an unreasonable cost burden on smaller funds
- will complicate the important relationship between the Trustee and the sponsoring employer in Corporate Funds without providing any obvious governance benefit
- will stifle diversity and competition

Some essential definitions

Superannuation is riddled with jargon and a clear understanding of some terms is essential. A fuller list is provided at [Appendix B](#) but clarity on the following terms is essential.

Corporate Fund	A fund established by a particular employer to provide retirement benefits for employees. There is a significant involvement from the employer sponsor which often subsidises operations and may bear much of the investment risk through “defined benefit” obligations.
Public Offer (and Non-Public Offer)	This refers to super funds open to membership for any person. Membership of non-public offer funds is restricted to persons in a particular group, such as employees of the employer sponsor. Almost all Retail and Industry funds are Public Offer.
Defined Benefit (“DB”) Fund	A retirement or similar benefit entitlement which is calculating using a formula such as salary x years x service factor. The sponsoring employer provides a guarantee to fund the formula benefit, thus taking on the investment risk.
Sponsoring Employer	The Company which funds the scheme. In a Defined Contribution schemes the Company pays at least the minimum required under legislation but will often pay more and may provide other subsidies. In Defined Benefit schemes the Company guarantees to fund the formula benefit, thus taking on the investment risk. Other subsidies will often also apply.

What the FSI report said.

The FSI report considered superannuation governance and made a number of recommendations. Importantly, it also differentiated between the types of superannuation funds, which the government’s proposals ignore. Details from the FSI report are provided at [Appendix C](#) but there are two main points:

1. The FSI report recommended that independent directors be required on the boards of *public offer* funds.

By highlighted the differences between Public Offer funds and other funds, The FSI report recognised that schemes which do not compete publicly operate differently.

2. The FSI report advocated the continuation of the equal representation model for single employer non-public offer funds as being “*appropriate and consistent with the governance models of defined benefit pension funds internationally*”.

As Corporate Funds with defined benefit arrangements operate differently, the FSI report states that the current equal representation rules remain appropriate for such funds, particularly because the employer bears the financial risk from the Trustee board’s decisions.

The Bill currently before the Senate ignores both of these issues, proposing a single governance model for all funds regardless of size, reason for existence, complexity or design. This appears to be driven by a desire to have standard requirements across the industry. This may simplify aspects of regulation but disregards the defining and different characteristics of many schemes, particularly non-public offer schemes. The current arrangements may require refinement but the proposals will reduce both diversity and competition and may lead to worse outcomes for members of Corporate Funds.

Defined Benefit (DB) and Corporate Funds

DB schemes provide generous super arrangements put in place by employers, generally long before compulsory super, to provide retirement benefits for employees. The employers provide the benefits (some of which are now covered by Superannuation Guarantee legislation requirements). The Company has a significant financial stake in the fund (as it is required to ensure adequate funding and often subsidises fund operations) as well as a major investment in the employee benefits it provides and the consequent employee engagement delivery.

The relationship between the sponsoring employer and the Trustee board of a Corporate Fund is important.

Good management of the Corporate Fund is very much in the Company's interests, as well as the interest of the members, for reputational as well as financial reasons. Employer sponsors generally make available highly qualified, experienced senior employees, one of whom would typically act as Chair. The presence of these Company appointees on the Trustee board ensures straightforward communications with the Company.

Imposition of an independent Chair will necessarily make the relationship more distant, bringing complexity without necessarily providing additional skills nor improving governance.

There are not similar Trustee/Company relationships in Industry Funds where multiple employer arrangements necessarily bring distance and a more formal and general relationship. There is also nothing similar in Retail Funds, where the sponsoring organisation which appoints the Trustee board is seeking to directly profit from fund. In the past 20 years, many DB Corporate Funds have merged into "master trust" type arrangements with either Retail or Industry schemes. This outsources the Trustee role and fundamentally changes the Company's role in relation to the Trustee board, so the relationship in these funds is not a significant issue.

In the case of BOC Super, the Company and Trustee board recognise the independence and fiduciary responsibilities of all BOC Super directors and that they must be, and be seen to be independent. The Company has always ensured it has respected this independence.

Of a board of six directors, the three BOC Limited appointees are all senior (two are directors on the Company board) and all bring strong management experience as well as specific legal, financial, tax and marketing skills. Although these appointees are directly involved in Company management and provide a close and influential relationship with the Company, there have never ever been instances of undeclared conflicts and Trustee directors have demonstrated rigorous independence necessary to discharge their duties as directors on the Trustee board.

In summary, there is a clear understanding within Company management of the governance standards required of each Company appointed director of the Fund, whilst strengthening the depth of understanding and credibility necessary to ensure the Company can understand, support and where needed, invest in Trustee Board recommendations and strategies in the best interests of all Fund members.

A recent example of this is the decision to adopt a MySuper option. After careful consideration, the Trustee board committed significant board and secretarial resources and persuaded the Company to make a further important investment into the BOC Fund to enable participation in the MySuper regime. BOC Super was one of the first funds to offer a MySuper product. It is difficult to accept that an independent Chair and one third independent directors will ensure better governance or improve effective communications with the sponsoring employer.

Cost of implementation

Professional management is essential but funds have for many years operated without paid board members.

People working on boards of charitable organisations generally do so without remuneration and many of those on boards of Corporate Funds also continue to do so. The expectation is that the Company will appoint individuals with expertise to ensure good management; such appointments are generally without any additional remuneration. Equal representation in a Corporate Fund generally means that an equal number of Trustee directors are elected directly by the membership to serve, without remuneration, the membership.

Why do people work on Trustee boards without remuneration? There will be many reasons, including personal kudos and/or a desire to gain board experience as a stepping stone to paid board positions. For most, however, the drivers are primarily altruistic. Such people often have a desire to learn more about a complex area in which they do, after all, have a direct stake. Sometimes there will be a view to making sure that the members are actually being looked after. But there is also usually a desire to “give back”, to make a contribution to help others.

The “equal representation” rules have served the community well – but there are two different methodologies operating within this concept. For Industry Funds, equal representation is generally achieved by appointment of member and employee representatives from union and employer associations. Directors are often appointed by virtue of the position that they hold within the union or employer body and the fund pays for their work on the Trustee board (often direct to the body who appointed them). The government clearly has concerns about the operation of some such boards where there is obvious potential for union versus employer divisions, although this is presently tempered by the 2/3 majority rule for Trustee decisions.

Equal representation operates quite differently in Corporate Funds, where half of the board is directly elected by the membership. Such elected directors work beside the fund members each day and there is a strong accountability for service and protection of member interests.

In some superannuation Trustee boards, both Corporate and Industry, additional directors have been appointed to fill particular skills gaps or to provide an independent and unbiased voice. In many funds this may be appropriate – but the current proposals to require 1/3 independent directors, including an independent Chair, on all boards will place an unreasonable financial burden on Corporate Funds and complicate the relationship between the Trustee board and the sponsoring employer.

Again looking to the case of BOC Super, five of the six current Trustee directors are employed by BOC Limited and are not paid for their work on the Trustee board. The sixth director is not a current employee (he was formerly employed by the Company) but is one of the three directors elected by the members. As he is not already paid by the Company, a modest retainer is provided, currently \$16,000 p.a.

For the BOC Fund, it is anticipated that appointment of independent directors as foreshadowed would increase the operations cost base by between 10% and 25%¹. Especially considering that operations costs for current employee members are paid wholly by the Company, it is clear that, without significant change, it would be the Company which is

¹ 2014 financial statements: General administration expenses \$1.532m. Independent chair cost estimate \$100k; independent Director cost estimate \$50k; additional committee fees likely to apply. Estimate of 10% assumes that no remuneration is provided to the Company-appointed and Member-elected board members and that the current six director board size is retained.

expected to bear this additional cost². There is no doubt that such a significant cost increase would threaten the continued viability of this fund.

It is hard to argue that there would not be a governance improvement of some sort generally – but I strongly dispute the assertion that these proposals will “substantially strengthen governance arrangements” for smaller funds; there will be minimal clear benefit.

The problem the government is trying to solve.

Superannuation now represents a huge amount of money held beneficially for members. Management of that money requires high governance standards. The government’s view, supported (mostly) by the FSI, is that that an “independent” presence on Trustee boards will bring an alternative perspective, which will in turn improve governance of funds.

There are forceful arguments being mounted by some sections of the superannuation industry about whether or not any changes should be made to the current equal representation arrangements.

Under the existing arrangements, well managed boards already actively encourage independent thought and will challenge on issues and proposals but it remains hard to argue that independent directors would not bring a governance improvement of some sort generally. However, we strongly dispute the government’s statement that these proposals will “substantially strengthen governance arrangements” for smaller funds; there will be minimal clear benefit and significant cost.

The government also suggests that appointment of independent directors will enable a broader mix of skills and facilitate closure of any skills gaps.

No board can be expected to have a high level of skill in all aspects of operations – regardless of whether it is a Trustee board or an ASX listed Company – and boards import expertise as needed. If the skills base of a Trustee board is inadequate, there is ample opportunity for APRA to persuade a board to change under the current arrangements.

In the BOC Super case, all six of the directors are highly qualified and committed to working in the best interests of the members. Expert advice is sought where needed but the board remains responsible and understands clearly its obligation to independently scrutinise all external advice thoroughly ahead of adopting a course of action. There is no empirical evidence that appointment of independent directors onto the BOC Fund’s Trustee board would strengthen governance in any way.

BOC Super’s directors are very conscious of their duties to be independent, to undertake on-going investment in skills and knowledge; they are wholly accountable to the membership. At the same time these directors are truly representative and have “skin in the game” as active members of the fund.

To use the FSI report’s words, these Trustee directors are skilled, accountable and representative – precisely what is envisaged in the equal representation model.

² Fund members who are not current BOC employees are charged administration fees, although the Company continues to meet some of the costs.

A reasonable alternative.

Regulation of the superannuation industry currently differentiates between fund types and this should continue with respect to the composition of Trustee boards.

The government's minimum requirement for independent directors on Trustee boards should be limited to public offer funds, as recommended by the FSI.

The cost impact on smaller funds will be very significant and is likely to drive high performing funds to close. Non-public offer funds should be excluded from this change.

At a minimum, Corporate Funds operating under the equal representation rules should be excluded from the independent director requirements. (The regulator already has sufficient powers to ensure that the Trustee board will continue to meet high governance standards as they continue to develop further over time.)

Proposal

1. That the proposed minimum 1/3 independent director standard (including an independent Chair) should not apply to non-public offer funds.
2. At a minimum, the proposed standard should not apply to equal representation Corporate Funds with defined benefit arrangements.

I would be pleased to provide further information if needed.

Yours faithfully,

ALLAN MURPHY
Secretary
On behalf of the Trustee board

Appendix A

About BOC Limited

Operations in Australia since 1935 (formerly as CIG). A member of The Linde Group.

BOC supplies over 400,000 customers across the South Pacific region through 40 production facilities, 90 Gas & Gear stores and more than 1000 Gas Agents and Equipment Partners.

BOC operates in every Australian capital city and many regional areas, employing approximately 2,400 current staff in Australia and recording over \$1.66 billion in revenue during 2014

About BOC Super

Fund Name:	BOC Gases Superannuation Fund	
ABN:	49 620 344 668	
Fund type:	Corporate Fund; Not-for-profit	
Established:	1937	
Trustee:	BOC Superannuation Pty Ltd	
Trustee ABN:	83 080 598 821	
Trustee RSE Licence:	L0000710	
Trustee AFS Licence:	287131	
MySuper Authorisation:	49620344668116	
Membership (31 March 2015):	Active Defined Benefit Employees	109
	Active Accumulation Employees	1756
	Retained Members (ex-employees)	1533
	Pensioners & others	<u>271</u>
	Total	<u>3669</u>
Assets (30 June 2015):	\$670m	
Benefit Structure:	13% Company Contributions Death and Disability costs met by Company for employees Competitive Death and Disability costs for other members	
Investments:	8 diversified investment options Investment returns above median for most options over most time periods. Default option (High Growth) return, after fees and tax, to 31/6/2015:	
	1 year:	9.2% (9.3% median fund)
	3 years	13.9% p.a. (12.3% median fund)
Website:	www.bocsuper.com.au	

Appendix B

Superannuation definitions:

Corporate Trustee	Superannuation funds used to be managed by a board of individual trustees. The 1995 SIS act encouraged establishment of Trustee Company under the Corporations Act to provide act as a Trustee (of a superannuation fund). Directors of the Company may be referred to as Trustee directors.
Corporate Fund	A fund established by a particular employer to provide retirement benefits for employees. There is a significant involvement from the employer sponsor which often subsidises operations and may bear much of the investment risk through “defined benefit” obligations.
Defined Benefit (“DB”) Fund	A retirement or similar benefit entitlement which is calculating using a formula such as salary x years x service factor. The sponsoring employer provides a guarantee to fund the formula benefit, thus taking on the investment risk. (Insurance benefits may also apply.)
Defined Contribution (“DC”) or Accumulation Fund	A scheme which provides a benefit equal to the accumulated account balances, accrued from contributions and investment earnings, for that member. Members bear the investment risk. (Insurance benefits may also apply.)
Industry Fund	A not-for-profit super fund set up to provide for members of a particular industry. Following many mergers, these are now generally very large, public offer funds.
Public Offer / Non-Public Offer	This refers to super funds open to membership by any person. Membership of non-public offer funds is restricted to persons in a particular group, such as employees of the employer sponsor. Almost all Retail and Industry funds are Public Offer.
Public Sector Fund	A super fund set up by government for public sector employees
Retail Fund	A super fund operated by a profit-oriented organisation, such as a bank or other financial institution.
Sponsoring Employer	The Company which funds the scheme. In a DC scheme the Company pays at least the minimum required under legislation but will often pay more and may provide other subsidies. In DB scheme the Company guarantees to fund the formula benefit, thus taking on the investment risk. Other subsidies will often also apply.

Appendix C

FSI Report recommendation

<http://fsi.gov.au/publications/final-report/chapter-2/super-governance/>

The Financial Services Inquiry report recommended that independent Directors be required on the boards of public offer funds:

Governance of superannuation funds

Recommendation 13

*“Mandate a majority of independent directors on the board of corporate trustees of **public offer** superannuation funds, including an independent chair; align the director penalty regime with managed investment schemes; and strengthen the conflict of interest requirements.”*

* Emphasis added

The Financial Services Inquiry’s report advocated the continuation of the equal representation model for single employer *non-public offer* funds as being “appropriate and consistent with the governance models of defined benefit pension funds internationally”.

“The Super System Review recommended that at least one-third of board members should be independent on those boards with equal representation (with the remainder of positions equally split between employer and employee representatives), and a majority should be independent on all other boards.⁹⁸ This would improve the current standards, but if independent directors are to have an effective influence on board decisions, all superannuation funds need a majority of independent directors.

In defined benefit schemes sponsored by a single employer, equal representation of employees and employers is appropriate and consistent with the governance models of defined benefit pension funds internationally. *These funds would continue to operate using the structure for which equal representation was designed, with the employer bearing the financial risk from the board’s decisions.*

The equal representation model has less relevance in the current superannuation system, which predominantly consists of public offer DC funds and funds less focused on a single employer. As more fund members exercise choice, directors appointed by employer and employee groups are less likely to represent the broader membership of public offer funds (see Recommendation 12: Choice of fund). Given the diversity of fund membership, it is more important for directors to be independent, skilled and accountable than representative.”

* Emphasis added