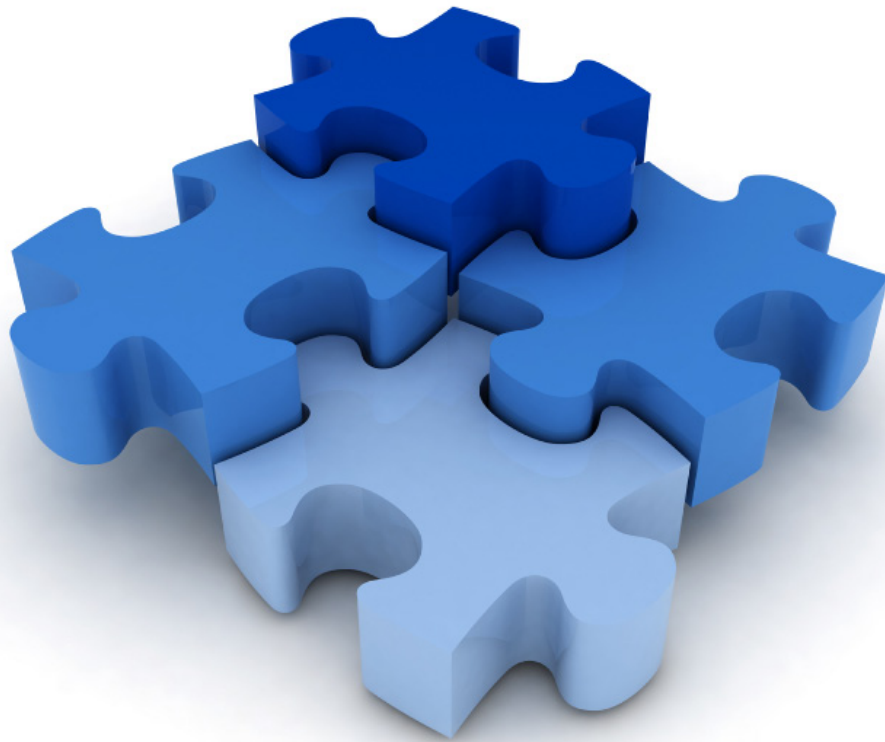


A Fund Governance Framework for Not-for-Profit Superannuation Funds

Inaugural edition - March 2011



A joint document produced by



Industry Funds Forum



Australian Institute of Superannuation Trustees

About AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

In 2011, AIST underwent a vast overhaul, elevating its status as a professional institute to further benefit its members. AIST has introduced a new department – Trustee Governance and Professional Standards – responsible for implementing industry policies and developing a comprehensive framework for the not-for-profit sector.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

About IFF

The Industry Funds Forum (IFF) is a non-profit, non-political, national incorporated association whose members are the chief executive officers of 28 of Australia's largest industry superannuation funds (Industry Funds). These funds include multi-industry and industry-specialist, national and state funds.

The purpose of this Forum of industry fund CEOs is to share information, ideas, views and challenges, as a trusted exchange, to benefit industry funds and their members.

IFF develops and influences relevant policy; develops and promotes collaborative strategies and seeks to improve product and service delivery, for the benefit of industry funds and their members.

Where appropriate, this work is done in partnership with like-minded organisations working in support of industry funds and their members.

CONTENTS

	<i>Page</i>
INTRODUCTION	5
THIS GOVERNANCE FRAMEWORK	5
PART A: GOVERNANCE OVERVIEW	6
1. WHY GOOD GOVERNANCE MATTERS	6
2. ADVANCING GOOD GOVERNANCE	6
3. GOOD GOVERNANCE PRINCIPLES	7
4. UNIQUE GOVERNANCE PRINCIPLES IN THE SUPERANNUATION INDUSTRY	7
4.1 Overarching duty to members	7
4.2 Influence of institutional investors	8
4.3 Representative boards	8
PART B: LEGISLATIVE AND REGULATORY REQUIREMENTS	9
5. LEGAL AND REGULATORY COMPLIANCE	9
5.1 Duties of a trustee director	9
5.2 Regulatory oversight	10
PART C: BEYOND COMPLIANCE	11
6. TRUSTEE BOARD RESPONSIBILITIES	11
6.1 General oversight responsibilities	11
6.2 Specific board responsibilities	11
6.3 Delegation and outsourcing	12
6.4 Familiarity and capacity to oversee corporate operations	13
7. RISK MANAGEMENT	13
7.1 Environmental, social and corporate governance policies risks	14
PART D: BOARD STRUCTURE AND PROCESSES	15
8. BOARD STRUCTURE	15
8.1 Gender balance on boards	15
8.2 Independence of directors	16
9. NOMINATING BODIES	16
10. DISCLOSING AND MANAGING CONFLICTS OF INTEREST	16
10.1 Gifts	17
10.2 Multiple directorships	17
10.3 Related-party transactions	18
11. BOARD MEETINGS	18
12. CHAIRS	18
12.1 Chairperson responsibilities	18
12.2 Separation of chairperson role from CEO or executive director	19

13.	BOARD COMMITTEES	19
13.1	General overview	19
13.2	Audit & compliance committee	20
13.3	Investment committee	21
13.4	Remuneration committee	21
14.	INDEMNITY OF TRUSTEE DIRECTORS	22
15.	RIGHTS OF TRUSTEE DIRECTORS	22
16.	EVALUATION OF BOARD PERFORMANCE	22
	PART E: THE BOARD AND FUND EXECUTIVES	23
17.	CEO, FUND SECRETARY, AND COMPANY SECRETARY ROLES	23
17.1	CEO responsibilities	23
17.2	Performance of the CEO	23
17.3	Company Secretary	23
18.	REMUNERATION	23
18.1	Background to remuneration	23
18.2	Remuneration practices	24
18.3	Termination payments	24
18.4	Performance conditions for short-term incentive schemes	25
18.5	Trustee director remuneration	25
19.	TRUSTEE DIRECTOR COMPETENCY AND TRAINING	25
19.1	Core competencies	25
19.2	Collective competencies	26
19.3	Education	26
	PART F: DISCLOSURE	27
20.	DISCLOSURE AND MEMBER COMMUNICATION	27
21.	DISCLOSURE OF BOARD INFORMATION	27
	PART G: FINANCIAL INTEGRITY	28
22.	THE FUND'S FINANCIAL INTEGRITY	28
23.	RELATIONSHIP WITH THE AUDITOR	28
23.1	External auditors	28
23.2	Provision of non-auditing services	28
23.3	Auditor familiarity	29
23.4	Auditor to provide statements of independence	29
	PART H: BREACHES OF GOOD GOVERNANCE	30
24.	RSE LICENCE IMPLICATIONS	30
25.	RISK-BASED REGULATION	30
	PART I: CONCLUSION	30

INTRODUCTION

Measured as a proportion of GDP, the assets of Australia's superannuation industry are now the largest in the world. Along with almost universal workforce coverage resulting from the Superannuation Guarantee, superannuation plays a crucial part in the economic and social life of the nation. Fund trustees occupy an increasingly important and visible role managing these assets.

AIST and IFF believe representative trustees offer the best governance model for Australian superannuation funds through their independence from profit-making financial institutions, their diversity and investor representation, and a unique culture of commitment and innovation.

THE GOVERNANCE FRAMEWORK

Superannuation fund trustees operate under a comprehensive legal framework. In addition to the various legislative regimes, both APRA and ASIC provide guidance on interpretation of the relevant laws. These guidelines should be read alongside any guidance or practice notes published by the regulators.

These guidelines are designed to complement trustees' obligations under law, and are designed specifically for representative trustees.

The guidelines aim to develop the professionalism and integrity of the trustee community, while maintaining the important roles that diversity and representation play in fund governance.

This framework provides a set of guidelines on a variety of governance issues that boards should consider and determine the appropriateness of implementing individual principles within their funds. We acknowledge that many superannuation funds already have comprehensive governance frameworks in place. We also acknowledge that all funds are different. We encourage all not-for-profit super fund boards to consider the guidelines set out in this framework with reference to the particular configuration of their funds. Fund boards should then make appropriate determinations in relation to the governance principles and how they may, or may not, be relevant for their governance practices. As a guide, this framework is aspirational in its targets for good governance practices.

This document will be updated as required for relevancy as well as any changes to industry practice or government policy. The framework will also be supplemented with more detailed policies and professional standards over the coming months.

PART A: GOVERNANCE OVERVIEW

1. WHY GOOD GOVERNANCE MATTERS

As the funds under management held by superannuation funds continue to grow and the need for consumer confidence continues to be of paramount importance, we have identified the need to provide guidelines for our members to ensure funds are optimising opportunities to embed good governance principles at all levels of their business. The impact of corporate collapses on the global economy and the returns of superannuation funds have focused the attention of the superannuation industry and the government on the need for continued vigorous governance practices.

High standards of trustee governance amount to more than mere compliance with legislative and regulatory requirements and prudent fiscal management. An effective governance framework begins with clearly defined powers and roles of trustees, chief executive officers (CEOs) and superannuation fund management. It includes articulated systems and relationships that underpin supervision, responsibility and accountability arrangements within the fund's administration and operation. It also incorporates robust risk management systems that identify, monitor and mitigate potential risks. Good governance policies and practices should permeate the fund's entire operations and all levels within the fund's management structure forming an essential part of the fund's culture. It should also be specific to the particular fund, taking into account size, scale, membership, and unique qualities of the fund as set out in their trust deed and governing documents.

Strong trustee governance practices reduce the potential risks faced by a superannuation fund with flow-on effects for the fund's enduring stability, sustainability and profitability. Good governance also ensures there is clear role definition and differentiation, allowing the board and executive team to operate optimally and with confidence. Expectations and accountability are clear and transparent, and fund members' interests are protected and front-of-mind at all times. A beyond-compliance approach of entrenched good governance practices adds value to the fund's business, its stability and pertinence.

2. ADVANCING GOOD GOVERNANCE

Superannuation fund members expect trustee boards to formulate and apply high standards of governance behaviour. Global issues and media speculation have increased consumer awareness and expectations of corporate entities, their boards and management. The same is true for superannuation funds. Our members, with their representative boards and not-for-profit backdrop, have achieved strong returns for their members over many years. It is our aim to link these results with the good governance practices inherent in not-for-profit fund structures, build on the standards applied, and share best practice processes and outcomes with the industry.

It is our aim to advance good governance practices within the superannuation industry, highlight the benefits such practices offer and continually improve the standards as new issues emerge in the sector.

When funds take governance matters seriously within their own operations, it allows them to impose expectations of similarly high governance standards in the organisations that they invest in or associate with. A commitment to achieving good governance by superannuation funds advances good governance practices within the industry more broadly and has the potential to expand the practices of corporate entities outside of the sector as well.

3. GOOD GOVERNANCE PRINCIPLES

By fund governance, we refer to the systems and the relationships that underpin the framework of supervision, accountability and responsibility by those parties who administer and operate the superannuation fund. Good governance creates a framework for making ethical and informed decisions on a consistent basis.

A board should ensure that they have clearly defined and documented statements of responsibility for boards and senior management for dealing with governance issues in both the short- and long-term.

A board should articulate the fund's commitment to good governance by developing a publicly disclosed charter or code on governance conduct and ethics. This should be underpinned by a set of agreed values and should stipulate the behaviour expected not only of trustee directors, but also executive staff, other employees and service providers.

Such a statement should confirm trustee commitment to complying with relevant corporations and superannuation laws and regulations, regulator guidance and rulings, and generally accepted accounting practices and standards. The statement should also articulate the trustees' commitment to relevant environmental and social standards and any additional standards it pledges to uphold in the interests of strengthening the robust nature of the fund and its commitment to tackling challenges both professionally and ethically.

The board should establish a process to ensure that governance risks are properly and regularly evaluated and managed by the board, and that they appropriately direct staff and any outsourced operations levels accordingly. The board should also promote improved governance in the fund's investment portfolio and investee companies.

4. UNIQUE GOVERNANCE PRINCIPLES IN THE SUPERANNUATION INDUSTRY

4.1 Overarching duty to members

Superannuation fund trustees are required to ensure their fund is maintained solely for the provision of benefits to members.¹ They must also exercise their powers in the best interests of members of the fund.²

This means, that in addition to the ordinary duties and responsibilities of trustees and directors, trustee directors of superannuation funds have an overarching duty to the members of the fund. This additional level of responsibility means that a trustee director's decisions cannot be driven by the trustee entity, their nominating body or another's wishes.

A trustee director is required to discharge their overriding duty to the members of the fund even if that duty comes into conflict with their obligations to their nominating body or someone else.

The superannuation trustee director's duty to members of the fund is supplemented by the trustee director's duty to the proper administration of people's retirement funds.

¹ Section 62 Sole Purpose Test: Superannuation Industry (Supervision) Act 1993 (SIS Act)

² Referred to as 'beneficiaries' in the legislation: Section 52 SIS Act 1993

4.2 Influence of institutional investors

Over the past couple of decades there has been significant growth of institutional investment in listed companies, both in Australia and overseas. As institutional investors, with significant funds invested, Australian superannuation funds have the power to influence corporate governance in the assets they invest in, by exercising the rights attached to their shareholding. Arguably, trustees have a responsibility to influence the standards of governance practices in those companies and help to bring about improvements by exercising their voting rights in a positive manner. In endeavouring to influence the corporate behaviour of others, however, funds face the challenge of needing to have their own governance practices in order.

4.3 Representative boards

Not-for-profit superannuation funds, with their representative board structures, have a unique governance configuration rarely seen on other boards. The mix of member and employer representation on trustee boards ensures that a fund has the benefit of a diversity of views, skills and experience. Representative directors have an important role to play, bringing their unique understanding of social, political, environmental and industry-specific issues into the decision-making process. Some funds also appoint independent directors to their boards. This dynamic creates a different layer of perspective for boards and can also bring specialised skills.

The diversity offered by representative boards has allowed not-for-profit super funds to approach their investments, member communications and service delivery in unique ways, resulting in superior returns for their members.

Opportunities exist in the representative model for a greater understanding of how diversity impacts on improved business operations, member satisfaction and financial performance.

PART B: LEGISLATIVE AND REGULATORY REQUIREMENTS

5. LEGAL AND REGULATORY COMPLIANCE

These guidelines are not intended to be a comprehensive statement of the law as it applies to superannuation funds and their trustees. Compliance with legislation and regulatory guidance is mandatory and therefore the minimum professional standard expected of all superannuation funds. We therefore assume that trustees are aware of their obligations in this regard and these guidelines will only briefly touch on the legal responsibilities of funds and trustees in so far as they relate to governance matters.

Superannuation trustees are subject to Australian corporations legislation, financial services law, trust law, as well as legislation specific to the superannuation industry, such as the SIS Act and its regulations. They must ensure they exercise their powers in accordance with the covenants found in the SIS legislation and accompanying regulations, which includes acting in the best interests of members of the fund.³ They must also comply with their own governing rules and trust deed. Where appropriate, trustees must also ensure they hold valid Registrable Superannuation Entity (RSE) and Australian Financial Services (AFS) licences and at all times remain compliant with their licence terms as required under the SIS and Corporations Acts.

So, in addition to the ordinary responsibilities of company directors and trustees, superannuation fund trustees are subject to additional legal obligations.

The Corporations Act 2001 (Cth) requires that directors and senior executives of companies must exercise their powers and discharge their duties in good faith, in the best interests of the company and for a proper purpose at all times. The SIS Act requires a superannuation fund's responsible officers to comply with the fit and proper operating standard.⁴ Responsible officers include directors (including alternate trustee directors), company secretaries and executive officers.⁵

All responsible officers must comply with fit and proper requirements, both as a collective group and as individuals. RSE licensees are subject to a number of operating standards including standards about risk management, outsourcing arrangements, capital requirements and adequacy of resources (human resources, technological and financial).

Responsible officers should also be aware of the whistleblower protections offered in Part 29A of the SIS Act, what qualifies as a protected disclosure and what actions and behaviours are prohibited by the legislation.

5.1 Duties of a trustee director

Trustee directors play an important role in the Australian superannuation system and it should be noted that this role is separate and distinct from that of a company director. We believe that trustee directors must perform the following duties:⁶

- a) To act solely in the best interests of members, specifically:
 - i. To avoid putting themselves in a position where their interests conflict with those of their members.
 - ii. To give priority to their duty to members, regardless of whether this conflicts with their duty to the trustee company, its shareholders or others.
 - iii. To avoid putting themselves in a position where their duty to their members is compromised by a conflict of interest.
 - iv. To avoid putting themselves in a position where their duty to others (excluding members) conflicts with their duty to the trustee company.

³ Section 52 SIS Act 1993

⁴ Indicated within the scope of section 126H SIS Act 1993

⁵ Section 10(1) SIS Act 1993

⁶ Some of these duties are prescribed in law, or are being considered as part of the Cooper Review: Super System Review process.

- v. Not to obtain any unauthorised benefits as a result of holding the position of trustee director.
 - vi. Not to enter contracts or undertake activities that prevent or hinder the trustee properly discharging their duties.
- b) To act honestly.
 - c) To exercise independent judgement.
 - d) To exercise the degree of care, skill and diligence that an ordinary, prudent business person would exercise in dealing with the property of another for whom the person felt morally bound to provide.
 - e) To have regard for the long-term consequences of decisions, including consideration of potential impacts on the community and the environment and on the entity's reputation.

Trustees are solely responsible and directly accountable under the SIS Act for the prudential management of their members' monies. They are also responsible for ensuring that the fund's responsible officers all meet the fitness and propriety standards.

5.2 Regulatory oversight

Regulatory oversight of the superannuation industry is divided among a number of bodies including the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO). These three regulators are responsible for administering various aspects of the SIS Act and Corporations Act and the Income Tax Assessment Act.⁷

These guidelines are not intended to provide trustees with a comprehensive statement of the regulatory environment in which their funds operate; however, we recognise these regulatory bodies as having the most relevant powers over superannuation funds and their compliance with good governance requirements.

The operation and management of superannuation funds are reviewed by regulators mainly through the annual and/or quarterly returns lodged, any auditors' reports or notifications as well as any direct reviews or audits that may be carried out from time-to-time by the various regulators.

The regulators have extensive regulatory and investigative powers. We recommend adherence to any practice guides or directions that are issued by these regulators from time-to-time. Even though these are mostly not enforceable at law, being the regulators' interpretation of legislation, they provide a good guide to how a fund can discharge its obligations. The regulator has the power to suspend or remove trustees in certain circumstances. Penalties under the SIS Act however, can only be imposed by the courts.

⁷ Additional regulators also have powers over the superannuation industry, including the Australian Competition and Consumer Commission, the Australian Transaction Reports and Analysis Centre, and the Office of the Australian Information Commissioner.

PART C: BEYOND COMPLIANCE

6. TRUSTEE BOARD RESPONSIBILITIES

The essential ingredient of a sound governance culture within a fund is an ethical and competent trustee board. Such a board should promote a healthy management culture at all levels throughout the fund's operations.

We believe rules and regulations alone are insufficient to instil high standards of corporate conduct that deliver the best protection to superannuation fund members.

Trustee directors need to develop and support cultures fostering accountability, commitment to long-term member returns, business integrity, creativity, transparency and relevant and effective disclosure and communication. They should question strategy, performance and risk management controls.

Trustee directors must have the requisite skills, capacity, ethics, and 'independence of mind' to provide effective leadership and stewardship of their fund's assets and their members' benefits.

6.1 General oversight responsibilities

The primary responsibility of the board is to determine, review, ratify, and oversee the implementation of the fund's strategies.

Such a responsibility requires boards to:

- Ensure that the trustee company and the fund comply with all applicable laws
- Act in the best interests of the beneficiaries, and act impartially between beneficiaries of the same class
- Use their powers for proper purposes
- Not limit their discretionary powers
- Appropriately manage the delegation and outsourcing of activities, and
- Manage actual and potential conflicts of interest.

The board must also oversee the performance of the CEO (or similar role) and take responsibility for the management and direction of a fund. The responsibility for managing the fund is usually delegated to the CEO and the board does not actively supervise or manage day-to-day operations of the fund.

6.2 Specific board responsibilities

The board is entrusted to govern the fund's investments and operations and to formulate, in conjunction with management, policies and strategies to achieve these goals. A board must therefore ensure it is adequately informed of key investment and economic issues and is properly equipped to encourage management and service providers to strive for the best possible performance.

The board is responsible for governing the fund and can delegate functions, subject to proper oversight.

Key responsibilities of a board include:

- i. Exercising independent judgement over the trustee's business strategy, performance, resources and standards of conduct and ethics.
- ii. Determining appropriate delegations and outsourcing of fund activities and monitoring these against stated performance criteria.

- iii. The selection, appointment and performance management of the CEO, and overseeing the selection, appointment and performance management of other principal senior executives, and key outsourced service providers.
- iv. Determining appropriate remuneration arrangements for the CEO and relevant executives, and overseeing appropriate contractual arrangements for major service providers.
- v. Determining appropriate authorities of the CEO and relevant executives.
- vi. Developing and maintaining an appropriate insurance strategy which considers the demographics of fund members, the types of insurance to be provided and the value for money provided to members.
- vii. Developing, maintaining and approving CEO succession plans.
- viii. Properly reviewing the fund's and trustee company's accounts and certifying that they comply with relevant accounting standards, and represent a true and fair view of the affairs of the fund and/or trustee.
- ix. Ensuring the maintenance of financial integrity, including the approval of budgets.
- x. Setting the trustee's commitment to environmental, social and governance standards.
- xi. Establishing and reviewing key financial performance benchmarks.
- xii. Overseeing the fund's system of internal control and disclosure.
- xiii. Ensuring that proper accountability and systems are in place so that members and other stakeholders are informed in accordance with legislated disclosure obligations.
- xiv. Reviewing and assessing the board's and each individual trustee director's performance (can be via self-assessment).
- xv. Maintaining functional, effective relationships with any bodies entitled to nominate directors to the board; and
- xvi. Ensuring continuity of corporate learning, renewal, evolution and succession.

The scope of the board's responsibilities should be documented in writing, in a board charter and shared with the management of the fund. Ideally a fund has policy documents to inform the board and others of their responsibilities, including, but not limited to:

- A board responsibility and expectations policy
- A trustee charter and code of conduct
- Fitness and propriety standards
- A conflicts of interest policy
- Induction and ongoing training policies
- Delegation and outsourcing policies
- Board performance evaluation policy
- Committee terms of reference
- A whistleblowing policy

6.3 Delegation and outsourcing

Trustee directors should ensure that any functions it delegates or outsources are within their powers under the trust deed and other governing documents. They should be sure that any service provider or person to whom they delegate is competent, reliable and acting in accordance with the fund's code of conduct and any other relevant standards and policies the fund ascribes to.

All delegated functions should be carefully documented, monitored and evaluated by the board on a regular basis to ensure compliance with fund policies. A register of delegated functions is recommended for keeping track of responsibilities. Trustee directors should remember that the ultimate responsibility for the fund rests with them, and despite their delegation to others, they remain liable in the event of loss or damage. The SIS Act covenants set out at section 52 (2) continue to apply to trustees regardless of whether or not others were engaged by the fund to conduct a particular function.

6.4 Familiarity and capacity to oversee corporate operations

Directors should ensure that they are each familiar with the fund's operations as well as broader issues in economics and investments. Directors should not rely exclusively on information provided to them by executive management and/or their advisers, and are required to make their own enquiries, where necessary and appropriate, to ensure they discharge their duties as directors of the fund.

Boards should convey to prospective and current directors their general expectations about the workload associated with a directorship on the board. Each director should be able, and prepared, to devote sufficient time and effort to their duties as a director.

Conversely, prospective or current directors should inform the board of their external commitments which may impact on their capacity to properly fulfil board responsibilities. This includes full- and part-time employment or other directorships.⁸ Such disclosures will assist the board in making an appropriate judgement on the director's suitability to serve on the particular board as well as their fitness and propriety. Such disclosures should be regularly reviewed so that boards have the best information possible in order to make decisions about an individual's ongoing suitability to serve as a director of the fund.

7. RISK MANAGEMENT

APRA regards risk management as a critical responsibility of trustee directors, and risk management policies and practices are an integral part of RSE licensing law. Trustee directors should pursue a comprehensive approach to risk management.

Board responsibilities in this regard include (but are not limited to):

- Establishing the fund's risk management plan and risk management strategy (RMP/RMS)
- Overseeing the development of the fund's RMP/RMS, and the internal controls that put the plan into effect
- Monitoring the effectiveness of the RMP/RMS and internal control systems
- Making changes to the RMP/RMS and internal control systems as required
- Ensuring there are clear lines of responsibility and accountability for risk management throughout the trustee, its staff, and external outsourced providers, and
- Ensuring there is appropriate risk management oversight by the CEO and senior management.

When establishing their RMP/RMS, trustee directors should assess their risks and controls using legal obligations and APRA's practice guides as a minimum standard. Trustee directors should adopt a broad and long-term perspective on risk incorporating environmental, social and corporate governance issues.

Boards should ensure that the fund has adequate systems for the reporting of unethical or risky behaviour, and should have effective systems for responding to such failures, with a view to prevention in the future.

⁸ See also 10.2 in this paper.

7.1 Environmental, social and corporate governance risks

Environmental, social and corporate governance (ESG) risks are important risks for trustees to consider as part of their investment processes. None of these risks, of course, should be considered in isolation, but rather, integrated with financial risk considerations.

Trustees need to consider the environmental and social impacts of their own operational activities and perceptions of their own fund governance practices. Disclosure of the trustee's approach to ESG risks, both through its investment portfolio, and through its own operations, should demonstrate that trustees have a comprehensive approach to addressing ESG factors.

We encourage funds to disclose to members:

- Relevant environmental, social and corporate governance policies incorporated in the fund's investment policies; and
- The governance framework and strategies for managing corporate governance, environmental and social issues at the trustee level.

Trustee directors should consider independent third party assurance of ESG reports once they have developed their approach to environmental, social and corporate governance matters.

PART D: BOARD STRUCTURE AND PROCESSES

8. BOARD STRUCTURE

The board should be comprised of individuals who are able to work together effectively to lead a viable, well-performing, and efficient fund. Board members should have diverse backgrounds (e.g. age, core experience) and have a high degree of competency, integrity, skill, capacity, experience, and commitment to discharge their duties and responsibilities. Trustee directors must comply with the fit and proper requirements under RSE licensing law. This requires funds to fully disclose each director's expertise and experience to APRA.

The board should have in place a succession planning policy to ensure that the replacement of directors occurs in an orderly and timely manner, is transparent, and is fully compliant with the fund's trust deed, SIS law and the fit and proper requirements. Fund boards should have set terms for their trustee directors. Trustee director terms should also be staggered to ensure that corporate knowledge is preserved. The fund's policy should also address alternate directors.

We do not believe in imposing tenure restrictions on directors. Provided directors are significantly contributing to the board and the functions of the fund, and are appropriately representing the members' interests effectively, their length of service should not be a determinant to their suitability to serve on the board. Boards are to actively think about succession planning as a part of their board composition and turn-over and engage with their nominating bodies in relation to the identification of future potential directors. Issues of continuity should also factor into director succession decisions. We firmly believe in the need to evaluate and report on individual director performance and the application of high standards when considering reappointment, rather than the arbitrary measurement of time served.

8.1 Gender balance on boards

Funds should develop a policy for their fund on gender balance and disclose it to their members. Strategies to identify, train and otherwise equip potential directors to work towards a fund's improved gender balance goals should be implemented.

In consultation with nominating bodies, the board should actively strive to achieve a gender balance, with a minimum of 40 percent of directors of each gender, noting the particular industries serviced by a fund and their corresponding access to directors of each gender.

The 40 per cent gender balance goal is recommended in the Cooper Review as being consistent with international best practice. The Cooper Review says, "As superannuation fulfils many social policy objectives and as superannuation covers almost all Australian workers, the Panel believes that it is important that the Code of Trustee Governance include a principle so as to ensure that gender equality is pursued on trustee boards with reasonable haste."⁹

As of 1 January 2011, ASX-listed entities are required to comply with the amended ASX Corporate Governance Council's Corporate Governance Principles and Recommendations including (at Principle 3) disclosure in their annual report of the board's achievement against its measurable gender objectives as well as the proportion of women on their board, in senior management positions, and employed throughout the company. We believe superannuation funds should also adopt these reporting requirements and strive to improve gender balance on their boards and within their operations.

⁹ Super System Review: Final Report: Part Two: Recommendation Packages, p.64.

8.2 Independence of directors

All Directors, irrespective of who nominates them are required to exercise a high degree of 'independence of mind' when discharging their duties as directors. Therefore, in the context of the representative trustee model, director independence is a concept relevant to all trustee directors.

The practise of an independent director sitting on the board should be differentiated from the abovementioned principle that all directors should exercise an independence of mind. A person needs to address specific legal requirements to participate as an "independent director" in a representative trustee model.

It should be noted that the practise for boards to appoint an independent director is usually to supplement a specified skill requirement on a board. i.e. investments, compliance.

9. NOMINATING BODIES

The role of nominating bodies is crucial to effective superannuation fund governance. Boards should ensure that nominating bodies are fully aware, and fully supportive, of the role of the board in providing benefits to the membership of the fund.

Boards should encourage nominating bodies to ensure their nominees have appropriate skills and resources to discharge their duties as a trustee. Where trustee directors are full-time employees of their nominating body, boards should encourage the nominating body to provide relief from their normal duties to undertake their trustee role properly. This not only includes time for board meeting attendance and preparation, but also for participating in appropriate training.

While individual trustee directors must ensure their actions as trustees are independent of the interests of their nominating bodies, the board as a whole should maintain an active and effective relationship with each nominating body.

Boards should be clear in advising nominating bodies of their agreed requirements for appointments of people to the board, the fund's fitness and propriety standards, the expectations of board members, the desired skill matrix as well as expectations regarding time commitments for service and continuity of tenure.

Nominating bodies should also be aware of the circumstances under which a nomination for a trustee director position may be declined, or under which a trustee director can be removed from the board, so that this can be considered.

10. DISCLOSING AND MANAGING CONFLICTS OF INTEREST

Trustee directors should meet their legal obligations in relation to avoiding conflicts of interest and formulate an internal policy that demonstrates the board's commitment to managing potential conflict situations.

Any potential conflicts of interest needs to be considered as part of the fitness and propriety test. Boards need to balance the risk arising from a candidate's potential conflicts with the skills and experience that candidates can bring to the board.

Perceptions are important in conflict situations and transparency is vital in managing perceptions of conflict. The decisions of a board can be tainted if there is a reasonable perception that a director or officer, their family or close associates could benefit personally from decisions of the board.

Where a trustee director has a material personal interest in a matter that relates to the affairs of the fund which could create a potential conflict of interest, then:

- (a) The director should fully disclose and give details of the nature and extent of the material personal interest that raises the potential conflict of interest with respect to a director's duties. The relationship of the interest to the affairs of the fund should also be disclosed at a board meeting as soon as practicable after the director becomes aware of their interest in the matter.
- (b) The obligation for the director to disclose an interest is predicated on their honesty and ethics to present all relevant information to the board so that an informed decision can be made by the board on the matter. If a director is in doubt about whether they are in a position of conflict of interest they may seek guidance from the Chair.
- (c) It is important that a director must not be present at a meeting of the board or a committee of the board while the matter is being considered. With any known conflicts, it may also be inappropriate for the trustee director to receive the papers relevant to the material conflict. They must not be present and vote on the matter unless the directors who do not have a material personal interest in the matter have resolved that the board is satisfied that the interest specified in the resolution should not disqualify the director from being present or being present and voting. In these circumstances, the fund board may proceed with any transaction that relates to the interest and the director may participate in the execution of any relevant document by or on behalf of the fund.
- (d) In the context of this policy, a material personal interest arises where a director or officer's personal interests may be affected by a board's decision on the matter. Material personal interests are not limited to financial or pecuniary interests and can be an indirect or direct interest.

In the circumstance where funds invest their members' monies with asset managers owned or controlled by the same entity, the fund needs to have a clear, articulated policy on how investment decisions are made, and how the best interests of the members are being served. Similarly, when the fund uses a service provider who is also a nominating body, sponsor organisation or in some other way tied to the fund, additional measures to control conflicts and risk should be adopted and transparency is paramount in any such relationship.

A director should assume they have a conflict of duty wherever there is a real, perceived or potential conflict between their duty to the fund and their duty to another organisation such as their sponsoring organisation, or the fund's interests and the director's interests.

Boards should maintain an affected-decision register and provide the register to APRA for consideration as part of the prudential review process.

10.1 Gifts

Boards should have a clear policy on the acceptance of gifts, such as attendance at corporate sporting events and the like. A gift register is an appropriate vehicle for keeping track of hospitality enjoyed by trustee directors and executive staff. The policy should be disclosed to members and boards should consider disclosing any material gifts received throughout the course of the year.

10.2 Multiple directorships

Within the context of representative boards it is not the norm for there to be directors on multiple boards. However, the knowledge and experience that these individuals can bring to a board can be highly beneficial to the organisation of which they are a director. It should be noted however, that directors with an obligation to two or more organisations may face potential conflicts.

The appropriateness of appointing a trustee director with other board responsibilities, should be the decision of the fund's board and sponsoring organisations.

The continued service of the director appointed to multiple boards should be regularly reviewed by the board, noting the role of sponsoring organisations in the appointment process, to ensure that the appointment remains in the best interests of members and that any conflicts that may arise are managed appropriately.

10.3 Related-party transactions

The board should disclose its policy for managing potential related-party transactions, any actual related-party transactions, and how those transactions are managed by the board. The board should also disclose the means by which the relevant director or directors managed any conflict(s) of interest during the board's consideration. A related party includes:

- i. A director's spouse, de facto spouse, parent, child or a spouse or de facto spouse of that person;
- ii. An entity controlled by one or more of the above persons;
- iii. An entity that the director controls;
- iv. A standard employer sponsor¹⁰ or an associate of a standard employer sponsor¹¹;
- v. A person who acts in concert with anyone referred to above; and
- vi. A person who was a related party in the previous six months.

Any board decisions on related-party transactions should be made at arms-length and the resolution regarding the decision should be clearly documented and disclosed.

11. BOARD MEETINGS

Board meetings should be conducted on a regular basis to ensure that appropriate attention is given to governing the fund. Prior to each board meeting, directors should be provided with appropriately detailed and accurate information, preferably at least a week in advance of the scheduled meeting. Directors should also be entitled to raise any matter for inclusion in the agenda for discussion at board meetings, in consultation with the Chair.

Directors should strive to attend all board meetings. Boards should disclose directors' attendance in the annual report to members. Boards should not accept a director's renomination if they attend fewer than 75 per cent of board and board committee meetings for two consecutive years, unless there are compelling reasons. In addition, directors are expected to participate in a meaningful manner and attend meetings in their entirety, except where leave of absence is granted.

The board should also be able to discuss matters at regular meetings without the CEO or staff being present in order to effectively discharge their responsibilities, as and when required.

Boards should assess how board meetings are conducted and the agenda items that are discussed, as well as the time devoted to different priorities, to ensure that it continually meets appropriate governance standards for optimal fund performance.

12. CHAIRS

12.1 Chairperson responsibilities

The chairperson must ensure the board functions effectively and provide leadership to oversee the operation of the fund. A chairperson should ensure appropriate board procedures and structures are in place, so that all relevant issues are considered by the board.

A chairperson is responsible for a number of key functions, including;

- Ensuring the agenda for board meetings addresses all relevant matters;
- Ensuring that a sufficient number of board meetings occur to facilitate effective decision making;

¹⁰ As defined at section 16 (2) SIS Act 1993.

¹¹ Associates of standard employer sponsors have the same meaning as 'associates' under sections 70B, 70C or 70D SIS Act 1993.

- Ensuring sufficient time is allowed at each board meeting to adequately deal with each agenda item;
- Ensuring that the board is provided with adequate information;
- Leading the board in monitoring the management of the fund, assessing the fund's financial position and performance, and establishing a culture that encourages directors to openly discuss risks or any material adverse developments.

The chairperson performs a critical role in:

- Managing the relationship between the board members;
- Managing the relationship between the board and the CEO and key senior executives as well as leading the performance evaluation of the CEO, and if required, senior executives;
- Mentoring the CEO;
- Working closely with the company secretary or the executive who is the principal source of information on legal, compliance and administrative matters.

The board should have a clear idea about the characteristics they seek in a chairperson. The board should be sure to have succession plans in place to manage the turnover of the chairperson as well as the unplanned vacancy of the chairperson role due to unforeseen circumstances.

12.2 Separation of chairperson role from CEO or executive director

The roles of chairperson and CEO should be separate. Combining the roles of chairperson and CEO, or another executive role diminishes the degree of accountability that would usually result from a separation of the two roles. Combining the roles removes a vital check on senior management's activities and vests unwarranted power in a single individual.

If the board believes that special circumstances exist that require the roles of Chair and CEO to be performed by the same person, they should clearly explain their reasons and also disclose these to the members.

Separating the two roles and articulating a clear division of responsibility between the two functions ensures greater accountability.

13. BOARD COMMITTEES

13.1 General overview

Subcommittees of the board are important in providing the capacity for trustee directors to work on more detailed matters in close consultation with executives and consultants. As appropriate, funds may wish to consider establishing committees delegated to deal with:

- Audit & compliance
- Investment
- Remuneration

Such committees should be established by the board as standing committees. There may be reasons to establish other committees for other purposes, for example, a claims committee to assist with consideration of insurance claims and death benefit distribution or administration/member services committee.

A committee should have equal representation and should be of a reasonable size. Boards should develop terms of reference or charters outlining the scope and responsibilities of these committees. This might include, for instance, a policy regarding board expectations about the number of meetings that should occur in the year and include details of any delegated powers. The document should be clear about what is being delegated to the committee, including any relevant decision-making power, and what reporting expectations the board has of the committee. This information should also be disclosed, for example in annual reports or the fund's website. In addition, board committees should be provided with adequate staffing and the ability to obtain external advice where necessary, to facilitate committees delivering outcomes. All committees should maintain a record of their proceedings, and report these to the board regularly.

Having a committee of the board around a specific area does not absolve the board or individual trustees from responsibility. They are required to make independent decisions regarding delegated powers, and make appropriate enquires as and when necessary. Boards should vet any appointment of service providers or advisers made by a committee under delegation from the board.

The members of the committees must be appointed by the board. Committees should appoint chairpersons if the board does not do so. A chairperson has similar responsibilities in relation to the committee as the chairperson for the board.

13.2 Audit & compliance committee

The audit & compliance committee assists the board to discharge its responsibilities in connection with the financial management, financial performance and financial reporting of the fund. The audit committee may also be responsible for risk management and compliance. This includes overseeing RMS/RMPs and monitoring compliance with them; reviewing the fund's and trustee company's financial statements; and ensuring the independence of the fund's auditor and the quality of its audit.

An audit committee should review and assess the external reporting of the fund. Reporting to the board on the performance of internal and external auditors and reviewing internal control mechanisms are fundamental functions of the audit & compliance committee.

The audit & compliance committee should have sufficient technical expertise to discharge its mandate effectively.

An effective audit & compliance committee should:

- Be comprised of trustee directors with the required mix of skills, experience and relevant knowledge of the fund's investments and operations. Members of the audit committee should be financially literate, and at least one member of the committee should have experience in both financial reporting and risk management. A member of the committee should be familiar with the fund's investment strategy. Where this skill set is unavailable from existing directors, the board may engage outside experts to strengthen the committee.
- Have the appropriate powers to review the effectiveness of the external and internal auditors, to make recommendations to appoint, rotate or dismiss the auditors and to establish the scope of the audit. It should set the ongoing competency requirements that the auditor must meet.
- Be able to engage and dismiss internal auditors.
- Facilitate members of the audit committee liaising with fund executives for effective implementation of the committee's objectives.
- Receive a report from the auditor outlining the provision of non-audit work by the audit firm or any related entity.
- Be able to discuss matters with the external and internal auditors in the absence of management and external advisers.

13.3 Investment committee

The investment committee is responsible for development of the board's investment strategies and their implementation. A fund's investment strategy should have regard for the whole circumstances of the entity including:

- i. Consideration of the risks associated with the potential investments given the entity's objectives and expected cash flow requirements.
- ii. The composition of the entity's investments in terms of appropriate levels of diversification for risk management purposes.
- iii. Cash flow requirements, liabilities and liquidity position.
- iv. The expected costs of the strategy and the tax consequences, given the entity's situation.

Where an investment committee appoints investment managers, it shall be done with the specific delegation of the board.

The investment committee may recommend changes to the fund's investment strategy but the power to change investment strategy must rest with the full board.

The investment committee may undertake such duties as reviewing managers as part of the investment manager selection process, performing strategic reviews of the fund's investment policies, and monitoring investment performance against benchmarks, investment objectives, and peer funds. The committee should make recommendations to the board resulting from these activities.

The investment committee is responsible to the board for developing, implementing and monitoring the valuation process for unlisted investments. The committee should also monitor the fund's processes under which crediting rates and unit prices are determined.

However, investment responsibility ultimately rests with the board. The fact that the board delegates responsibility to an investment committee does not mean that it absolves itself of investment responsibility.

An effective investment committee should be comprised of trustee directors with an appropriate mix of skills, experience and relevant knowledge of the fund's investments strategy. Members of the investment committee should be financially literate, and at least one member of the committee should have investment governance experience. Where this skill set is unavailable from existing directors, the board may engage outside experts to strengthen the committee.

13.4 Remuneration committee

The remuneration committee is responsible for developing, reviewing and recommending for approval by the board the remuneration of senior executives and trustee directors. It should also be responsible to the board for succession planning and the operation of the fund's fit and proper policy.

The committee will advise the board as to whether remuneration, in the case of directors, realistically reflects the responsibilities and risks involved in being an effective director. This advice should take note of relevant market surveys of director remuneration.

In the case of senior executive remuneration arrangements, the remuneration committee will ensure the design and implementation of remuneration packages are linked to the fund's key performance objectives. No executive should be a member of the remuneration committee. However, a fund's company secretary (or CEO if the fund does not have a separate entity) can attend committee meetings to provide appropriate minuting and secretarial support.

The committee assists the board in the evaluation of the performance of the CEO against the various performance measures which underlie his or her remuneration package.

The board has overall responsibility for all aspects of chief executive remuneration, contract provisions, and retention and termination agreements, and is responsible for the appointment of remuneration consultants. The committee will formulate recommendations for the board on such matters.

The remuneration committee is responsible for preparing the remuneration disclosure report, which should be signed off by the board and included in the annual report for the information of members.

In addition, the committee should consider and provide recommendations to the board on the process of director succession.

14. INDEMNITY OF TRUSTEE DIRECTORS

The trustee company should indemnify directors for liability they incur while acting as directors to the extent permitted under law. An indemnity may be granted if the liability of the director is to a third party and does not arise out of a failure by the director to act in good faith.

A board should ensure that appropriate insurance cover is in place to cover any indemnities extended to the directors.

15. RIGHTS OF TRUSTEE DIRECTORS

Before their appointment the fund should provide trustee directors with an outline of their rights and obligations according to the fund's governing rules, the SIS Act, the Corporations Act and other relevant instruments.

Directors should have access to training from independent sources to provide them with a clear understanding of directors' responsibilities and liabilities.

Directors should have reasonable access to the fund's employees, information and resources. The board should formulate a policy under which directors are able to obtain independent professional or other advice at reasonable cost to the fund in order to assist them in carrying out their duties. The need for such advice should be discussed with the Chair as required.

16. EVALUATION OF BOARD PERFORMANCE

The board should be clear about the performance standards it expects and this should be clearly articulated in writing and distributed to potential trustee directors and existing board members. It is against these standards that the board should hold itself accountable as a collective group and as individual contributors. The board should have mechanisms to evaluate and improve its performance in governing the fund. These mechanisms should involve assessment of performance by an external source.

The purpose of board evaluation is to review the performance and competence of the board. It should also identify gaps in skills, experience and expertise that would need to be filled in order to promote board effectiveness and satisfy fitness requirements.

The board should have a policy detailing the process for managing non-performing directors and should act on it when required.

PART E: THE BOARD AND FUND EXECUTIVES

17. CEO, FUND SECRETARY, AND COMPANY SECRETARY ROLES

The primary responsibility for executive actions usually lies with the CEO of the fund. Where trustee resources permit, the fund may maintain a separate company secretary, with responsibility for corporate administration, who will act as the statutory officer for the fund. The company secretary role can be combined with the role of a senior (but subordinate to CEO) role such as the chief financial officer, or company counsel.

Where fund resources do not permit the separation of CEO and company secretary roles, both roles can be combined.

17.1 CEO responsibilities

The CEO is responsible for managing the organisation in accordance with the strategic objectives that have been endorsed by the board, by harnessing appropriate human, financial, technical and administrative resources.

Whilst forming part of the management team, the CEO role is distinct from the management team which generally encompasses senior management positions such as the finance manager, general manager etc. The CEO should utilise the management team as a tool for achieving the objectives set by the board.

17.2 Performance of the CEO

The continuity of strong fund leadership is a primary and exclusive responsibility of the board. Monitoring and evaluating the performance of the CEO is therefore an integral part of discharging this duty.

It is essential that there be a clear understanding between the CEO and the board regarding the expected performance requirements of the CEO and how that performance will be measured. Boards should evaluate the performance of the CEO at least annually.

17.2 Company Secretary

The board should permit the company secretary free access to the chairperson, and should ensure that the CEO respects the company secretary's independence in relation to his or her corporate responsibilities.

18. REMUNERATION

18.1 Background to remuneration

Boards of superannuation funds have a primary role in establishing remuneration policies in order to attract, retain and motivate highly competent executives. These remuneration arrangements should reflect the complexity of the fund's operational and investment challenges.

Many funds remunerate directors for their service on the board and sometimes any additional time, energy and commitment that individuals dedicate to committees or chairperson roles to further the good governance of the fund. These arrangements should reflect the complexity of the task, the demands on the time of directors and the level of liability directors face in the proper discharge of their duties as trustees. A remuneration committee should be empowered to consider these issues.

The key issues that trustee directors should be concerned with when making determinations on remuneration include:

- Transparency
- Remuneration linked to performance and fund success
- The process of determining appropriate remuneration
- Termination payments

Careful consideration of these issues should alleviate any fund member concerns regarding remuneration of the fund's key personnel and trustee directors, and how this is in the best interests of the fund's members.

18.2 Remuneration practices

A board should have a remuneration policy which clearly states the objectives it is trying to achieve in its remuneration practices for trustee directors and executives. This policy should be disclosed to the members of the fund to promote accountability and awareness.

In seeking to establish appropriate remuneration arrangements for executives and for trustee directors in line with its articulated policy, the board should delegate the task to the remuneration committee.

Remuneration is a key factor in attracting, retaining and motivating appropriately skilled people to fill job vacancies with a fund. Remuneration should be regarded as a key tool to motivate executives and employees and harness their support for the long-term success of the fund. Incentives for executives in contributing to the long-term, above-average performance of the fund are an appropriate remuneration consideration for funds to consider.

In broad terms, a properly structured remuneration scheme for executives should:

- Be reasonable in remunerating executives in a way that is aligned with fund members' long-term interests and the fund's remuneration policy;
- Be market-oriented and measurable against key corporate performance indicators while giving consideration to the fund's founding principle of 'profits to members';
- Be reported annually to members.

We recommend funds disclose in their annual report the total remuneration paid to the top five executives of the fund. This disclosure should be in 'bands'. We recommend that bands of \$50,000 should be used. A fund's policies for remuneration of executives should also be disclosed, including its relationship to the fund's performance.

Remuneration of directors should also be disclosed to members. Each individual director's remuneration should be disclosed including reference to any additional committee or chairperson fees paid.

18.3 Termination payments

We do not recommend the insertion of termination payment clauses in executive contracts. However, where these do exist, we recommend the highest levels of transparency and recommend that funds aim to meet the standards set in ASX Listing Rule 3.1 for listed companies. A fund should disclose its policy on termination payments in executive remuneration arrangements. This includes reference to contractual compensation provisions that are applicable upon the termination of an executive's employment, including the potential value of any such payment. The relevant 'triggers' for termination that arise should also be disclosed. If any accrued entitlements are material in this regard, they should also be disclosed in the fund's financial statements.

Boards should be discouraged from paying out excessive and unreasonable termination payments in circumstances where the termination is a consequence of poor and inadequate performance and should be wary of how such payments are perceived. Termination payments¹² should never equate to more than 12 months' salary.

Not-for-profit superannuation funds should ensure they consider their founding principle of 'profits to members', particularly in relation to the suitability of termination payments.

¹² Not including accrued statutory entitlements such as annual leave, long service leave, etc.

18.4 Performance conditions for short-term incentive schemes

Any annual bonuses paid to fund executives should be linked to clear key performance requirements and predetermined targets. Such requirements should generally be disclosed in the fund's remuneration report.

In the superannuation industry however, it is important to remember that long-term performance is what counts. Any short-term incentives should therefore be reasonable and explicable in terms of value compared with the executive's base remuneration, and should relate to very clear and relevant performance criteria relevant to the particular period in question.

18.5 Trustee director remuneration

Director remuneration should reflect the level of commitment and time invested by directors to the good governance of the fund. The level of director remuneration should be developed through a fund's remuneration committee and be adopted by the full board of the fund.

The remuneration committee is encouraged to examine professionally-conducted surveys of director fees in making its recommendation to the board, and to bear in mind their commitment to a philosophy of 'profits to members'.

We believe that all members of a board should be remunerated equally, excepting additional responsibilities such as chairperson roles and committee appointments. We also support the practice of paying additional remuneration to directors who take on additional responsibility to act as chairperson of the board or chairpersons of board committees. Directors recruited as independent directors, that is, persons appointed by the board who are not a member of a sponsoring organisation, should be appropriately remunerated. It is up to individual boards to decide whether to remunerate committee chairs or members.

Although the SIS Act currently precludes independent members of boards belonging to a fund, we support directors of fund trustee companies being members of the fund they govern. Being a member of the not-for-profit fund in no way makes a director less competent in performing their role. Boards should expect that superannuation guarantee contributions payable by the company in relation to the directors' fees (other than for independent directors) be paid to the fund.

19. TRUSTEE DIRECTOR COMPETENCY AND TRAINING

RSE licensees are required to implement a fit and proper policy, which deals with, among other matters, the fitness of trustee directors to discharge their duties. While the legal requirements for the content of the policy do not provide detailed prescription, we believe that all trustees should meet minimum levels of competence, and boards should institute formal training plans for their directors.

19.1 Core competencies

APRA has indicated that responsible officers, individually, require competencies in the following areas (core competencies):

- a) Financial literacy – the ability to make informed judgements and take effective decisions about the use and management of money, including a working knowledge of accounting and auditing as well as basic investment knowledge.
- b) Superannuation law – understanding of legislation relating to the governance of superannuation funds, including (but not limited to) the SIS Act and regulations and licensing requirements under that Act, the Corporations Act and regulations, the Superannuation Guarantee Act, the Family Law Act, the Anti-Money Laundering and Counter-Terrorism Financing Act, taxation legislation, trust law and privacy provisions.
Responsible officers

should also be able to demonstrate an understanding of and an ability to effectively implement the covenants outlined in section 52 of the SIS Act.

- c) Governance and trusteeship – understanding the role of the trustee as outlined in the fund’s trust deed and trustee’s constitution as well as understanding the respective roles of the board and management. It should also include being able to understand and interpret technical advice on a range of subjects, being able to make decisions in a group setting on the basis of expert advice, being aware of areas where expert advice should be sought and being able to work effectively and cooperatively with others, while maintaining independence of judgement.

19.2 Collective competencies

In addition to core competencies, boards need to meet higher level competencies as a collective group. While the actual competencies required will depend to some extent on the specific circumstances of the fund, we believe collective competencies need to address at least the following areas:

- Investments
- Relevant areas of the law
- Accounting
- Marketing and communications
- Risk management
- Member advocacy
- Information technology systems
- Dispute resolution

19.3 Education

Boards should formulate and document a thorough training plan for trustee directors. The plan should identify the key competencies required of each individual director, and those required on the board overall, and provide the means to demonstrate that directors and the board meet their required standards. The standards should relate to the fit and proper standard requirements as set out by APRA.

Boards should consider engaging an independent, appropriately qualified professional to conduct individual assessments of directors to develop personalised training plans. Boards will typically have directors at varying phases of their acquired knowledge and accordingly their training needs will be different. A specialised professional can recommend training courses and programs that address different skill levels and knowledge areas.

The training plan should ensure that directors undertake ongoing training to maintain their competencies as well as addressing any gaps. Thirty hours of training and professional development, comprising a mixture of formal training and a range of other professional development activities, should be an appropriate annual target for each director. It’s possible that an individual assessment might indicate that greater training requirements are appropriate, it is also possible that due to a trustee directors role outside of the superfund, and the experience, training and professional activities undertaken through this role, that less training requirements are appropriate. Boards should ensure that any skills and knowledge gaps identified in an individual assessment are addressed with appropriate training in a timely manner.

All new directors should undertake an introduction to superannuation training course that includes trustee directors’ duties and responsibilities, and an introduction to investments course, within the first six months of becoming a director. Exceptions can be made where a director brings particular expertise and experience – i.e. they may be an experienced director. Any introductory training should be provided by a registered training organisation. A comprehensive training manual should also be provided to all new trustee directors and this should be regularly reviewed and updated.

A register of courses undertaken in each current financial year by each director should be maintained and presented at six-monthly intervals, at a board meeting.

PART F: DISCLOSURE

20. DISCLOSURE AND MEMBER COMMUNICATION

Funds should ensure they have the appropriate processes and structures in place to effectively meet legislated disclosure requirements. Trustees should, however, aim to move beyond merely disclosing information toward genuinely communicating and engaging with members.

All information provided to members should be truthful and plainly presented, accepting that some members have relatively low levels of understanding of complex financial issues.

The trustee should prominently and clearly disclose, in a separate section of its annual report, its approach to fund governance. A summary of the fund's governance policies, covering trustee director and executive remuneration, board and committee meeting attendance, and related-party transactions should be included on fund websites and in annual reports to all members similar to that required of companies under the Corporations Act.

21. DISCLOSURE OF BOARD INFORMATION

Disclosure of information about the trustee directors and the board is important in enabling members and other stakeholders to form a proper judgement about the effectiveness of the board.

In addition to existing disclosure requirements under the Corporations Act and accounting standards, we believe the disclosure of the following matters to members significantly improves the transparency of the operation of the board:

- The cycle of board and committee meetings
- Full, audited accounts made available on fund websites
- The availability of the terms of reference for the board and its committees
- Directors' attendance records at board and committee meetings
- Procedures and responsibilities in place to appraise the performance of the board, committees and individual directors
- Responsibilities and procedures for succession planning
- Biographies of all directors, including dates of appointment, the organisation they represent and some background on the individual¹³
- The board's commitment to ESG matters
- Remuneration of directors and the top five key executives in bands
- Any regulatory or statutory breaches of professional conduct.

¹³ Published biographies should be mindful of privacy and potential identity theft concerns.

PART G: FINANCIAL INTEGRITY

22. THE FUND'S FINANCIAL INTEGRITY

It is of critical importance that a fund's system of financial reporting provides an accurate and true representation of its financial position. This can then be relied upon to reassure and inform all those with a financial interest in the fund.

The board and auditors should undertake sufficiently detailed analysis and enquiries into the fund's accounts to ensure that all Australian accounting standards have been met.

A fund's CEO should certify to the board that all relevant financial information has been presented to the board and that this provides a true and fair view of the fund's financial position.

23. RELATIONSHIP WITH THE AUDITOR

23.1 External auditors

Members and other stakeholders are entitled to have high levels of confidence in the financial statements of a fund. These statements should provide an accurate and detailed account of the fund's financial position.

In this regard, external auditors play a key role in verifying the accuracy of financial statements for the benefit of all stakeholders. An important obligation of auditors is to certify that the fund's accounts represent a true and fair view of the affairs of the fund. Auditors should discharge their duties and responsibilities without being influenced by factors that could impede their independence.

23.2 Provision of non-auditing services

We consider that an audit firm can provide a limited range of non-auditing services, provided the fees paid for non-audit work and the level and nature of non-auditing work performed is disclosed in the financial reports of the fund and/or trustee.

The following services should not be provided by the same audit firm performing the audit for the fund, as they may be perceived to be materially in conflict with the role of the auditor:

- Preparing accounting records and financial statements
- Internal audit services
- IT system services
- Broker or dealer services
- Investment advice
- Actuarial services
- Legal services
- Taxation advice, or
- Valuation services¹⁴

¹⁴ There are some areas where this may be unavoidable, for example, complex infrastructure asset valuations. Protections will need to be put in place in such events and funds should ensure that different partners or different divisions of the audit firm are then used to mitigate as much as possible, any conflict situations. This should also be disclosed and explained to members.

23.3 Auditor familiarity

Where the law permits, the partners signing off on the audit should be rotated every five to seven years. The audit committee should be involved in an ongoing review of the audit firm and its services, with active consideration given to rotating the audit firm at least every ten to twelve years. Where the audit firm is rotated, the personnel who assume responsibility for conducting the audit should not be the same personnel so that if an audit partner moves firms he or she cannot continue to be responsible for auditing the fund.

23.4 Auditor to provide statements of independence

We support the auditor providing an annual statement that no circumstance has existed during the year that has affected the independence of the audit engagement team or audit firm. This statement should be included in the financial reports of the company.

PART H: BREACHES OF GOOD GOVERNANCE

24. RSE LICENCE IMPLICATIONS

Failure to continually comply with the fitness and propriety test can impact the fund's ongoing entitlement to an RSE licence. APRA needs to be satisfied that the licensee can, on an ongoing basis, meet the requisite standard.

Where a body corporate is the RSE licensee, and that body corporate is a disqualified person pursuant to section 120(2) of the SIS Act, APRA is empowered to cancel the licence.

25. RISK-BASED REGULATION

Regulators have extensive powers within the current legal framework that are enforceable in a variety of different ways. Civil and criminal penalties can also flow from a court's consideration of trustee director breaches and failures.

We recommend that boards have effective systems for responding to any breaches as well as preventing reoccurrence.

PART I: CONCLUSION

In developing this Governance Framework we encourage all superannuation funds operating within the not-for-profit sector to benchmark their governance practices against these guidelines to ensure that they are operating amongst the highest possible standards.

This document is an evolving document, and will be updated to embrace member feedback and changes brought about through legal, regulatory or other changes.



Industry Funds Forum

PO Box 34
Broadway NSW 2007
Phone: Helen Hewett 0417 341 235
Email: helenhew@bigpond.net.au
Web: www.industryfunds.org.au
ABN 49 671 396 102



Australian Institute of Superannuation Trustees

Ground Floor, 215 Spring Street
Melbourne VIC 3000
Phone: +61 3 8677 3800
Fax: +61 3 8677 3801
Email: info@aist.asn.au
Web: www.aist.asn.au
ABN 19 123 284 275