

Q&A: Implementation of the AIST Governance Code

Question: *Given the constraints that COVID19 has placed on funds, will the AIST consider requests from funds for additional time to finalise the 2020 Report?*

Answer: A poll was taken with funds on 18 June 2020 to assess how many funds would be able to meet the 2020 reporting timeframe given COVID-19 disruptions. Of the 29 funds that voted, 62% indicated that they could meet the 30 September timeline; a further 21% of funds indicated that they would need up to 2 extra weeks and 17% indicated that they may need more than two weeks extra to submit the report.

It was agreed to keep the due date as 30 September but to allow funds to seek an extension if required. Please contact [Holly Lindsay](mailto:holly.lindsay@aist.asn.au) or send email to govcode@aist.asn.au.

Q&As from June 2020 Session between Funds and the Governance Code Monitoring Panel

Question: *As a result of COVID19, our fund has not been able to hold face to face interactions between fund members, senior executives and the board that we would have otherwise had. How will the Panel view this in light of Requirement 5.1 (which says that funds must have a stakeholder engagement program where direct questions can be asked of directors and senior management)?*

Answer: The Panel appreciates that COVID-19 may play havoc with a range of fund activities. In the case of stakeholder engagement and requirement 5.1, there may be other options to engage stakeholders – via on-line or virtual communication. This might not work for members who do not have access to the internet.

The Panel notes that ASIC indicated in March 2020 that it will take no action for 31 December year end entities if their AGMs did not occur until the end of July (eg a 2 month period of grace) and that it supports the holding of AGMs using ‘appropriate technology’.

Working from basis of commitment to principles and member first culture, the Panel would expect a short description on what was planned, how COVID 19 has disrupted these plans, any consideration for potential alternatives and if alternatives are considered then the timeline for being able to implement.

Question: *What is new regarding reporting in 2020?*

Answer: The reporting template has been updated and is on the AIST website. The helpful hints document is being updated as well.

Key things new in 2020:

- For funds that reported in 2019 that they had planned improvement activities for 2020, the Panel would like to understand what progress may have been made in 2020.
- If funds have undertaken other governance improvement activities these should be included in the 2020 report. AIST may employ governance improvement data in a de-identified way for advocacy and policy research and engagement.

Question: Do new legislative member outcome requirements mean some components of the Governance Code are duplicative or redundant?

Answer: The Code explicitly asks funds address risk factors that may erode the fund's members-first culture. Whilst this may be covered in aspects of legislation, the Code is intended to be complementary in terms of encouraging governance frameworks to promote member first culture. Member outcomes assessments may make it easier to explain how member first culture is brought to the fore.

Question: Does the diversity requirement only apply to gender diversity?

Answer: The Code Guidance document states that boards should actively strive for a minimum 40% of each gender at board level (but it does not specify a figure at the management level). Gender is a starting point for diversity and inclusion. The Code Guidance document describes other types of diversity that funds might consider which would add value such as age, cultural and occupational diversity.

BACKGROUND QUESTIONS FOR FIRST TIME REPORTERS

1. What does 'if not, why not' mean in practice?

'If not, why not' means that to comply with the Code, funds must report in clear terms how, in practice, each standard is met or why it cannot be met. The approach recognises that differences exist in the structure, size, complexity and operating parameters of funds.

'If not, why not' also recognises that there may be a good reason why a fund is not compliant with a requirement of the Code, and that its governance may nevertheless be consistent with the eight overarching principles of the Code.

2. What is expected in the explanations provided by funds?

Where a fund believes it has complied with a Code requirement, it should clearly explain how compliance has been achieved. If compliance is not possible, or a Code requirement is deemed to be not in the best interests of the fund's beneficiaries, it is expected that the fund clearly explains why this is the case.

There may be several reasons why compliance against a requirement is not possible, such as:

- The fund cannot legally comply – there may be various regulatory impediments to compliance. For example, public sector superannuation schemes exempt from regulation under the SIS Act are regulated by state-based legislation that can present legislative barriers to compliance.*
- The fund will not comply – the fund has chosen not to comply but has clearly and sufficiently explained the reasons for non-compliance and its alternative approach.*
- The fund is working towards compliance – the fund is not presently able to comply with the requirement but is moving towards complying in the future. The fund should outline its intention in a clear and concise manner.*

3. How will the panel assess the reports?

The Governance Code Monitoring Panel will annually assess how each fund meets the Code Requirements. This will include an examination of the reasonableness of funds' explanations where Code requirements have not been met. Also see answer to Q2.

4. Is an explanation of how a fund meets a requirement enough or will the Panel expect to have a document as evidence of compliance? What if the document is commercial in confidence?

It is not necessary to provide proof of compliance, however funds need to provide a response that indicates how the requirement is met in practice. The Panel does not expect funds to release confidential documents.

PANEL RESPONSIBILITIES

5. What are the roles of the Monitoring Panel?

In addition to assessing compliance reports the Panel will:

- *Provide the AIST Board with a written report on an annual basis detailing:*
 - o *Funds that have met all Code requirements and have provided explanations of how implementation is carried out.*
 - o *Funds that have met most Code requirements (with discussion of implementation) and have provided reasonable explanations for those requirements that have not been met;*
 - o *Funds that did not meet a requirement of the Code and did not provide a reasonable explanation of why the requirement was not met.*
- *Prepare a public report to the extent of AIST member fund compliance. The public report will not identify individual funds.*
- *Provide recommendations to AIST on the development of materials to assist fund compliance.*
- *Engage with individual AIST member funds regarding reporting and compliance.*

To view the full list of the Panel's responsibilities, please click [here](#).

6. What follow-up will occur after funds have reported?

From 1 October 2019, reports will be reviewed and analysed. Where a fund reports that it meets a requirement and a clear statement is not provided on how the requirement is met in practice then the fund may be asked to explain more clearly how the requirement is met.

Where a fund has indicated that it cannot meet a requirement and a clear answer has not been provided, the Panel secretariat may be in contact.

A public report will be issued in March 2020 on FY2019 compliance. Again, no individual funds will be named in report.

7. Public sector funds may not be able to meet all the requirements because of legislation. What is the Panel's position on this?

In the case of public sector funds, state-based legislation may constrain compliance with some requirements. These relate to the appointment of directors being outside the control of the fund because of legislative provisions as well as requirements for:

- *a written agreement with each director and senior executive;*
- *a diversity policy with measurable objectives; and*
- *a committee responsible for board renewal.*

The 'if not, why not' reporting framework allows for all funds, including public sector funds, to fully report against the Governance Code. If a public sector fund is unable to comply with a Code requirement due to legislative or other constraints, it should clearly report this against the relevant requirements in the Code. This would include details of the barrier preventing fund compliance.

Where the explanation is adequate there are no repercussions for funds that cannot comply with one or more Code requirements.

Requirement	Relevant background information for Public Sector Funds
<p>1.1 A profit-to-member superannuation board must conduct all appropriate enquiries to ensure that nominees have the appropriate skills and experience before appointing a person as a trustee director. For the appointment of representative directors this includes engagement with sponsoring organisations.</p>	<p>State or Territory legislation may provide that directors are appointed by a government minister or department and not the board.</p> <p>However, the fund may still have an opportunity to be involved in an indirect manner. This may include outlining the skills, experience, qualifications and characteristics that desirable candidates and the board should have.</p>
<p>1.2 A profit-to-member superannuation fund must have a written agreement with each trustee director and senior executive setting out the terms of their appointment.</p>	<p>A director's term of appointment may be contained in State or Territory legislation, not a separate written agreement.</p> <p>However, funds are encouraged to outline the duties to directors, policies and procedures that they are expected to comply with, including time commitment envisaged; the management of conflicts of interests; trustee obligations; as well as requirements of the code of conduct; insurance; training; and personal development. Senior management of the fund may be employed by a government agency, such as Treasury. As such, the written agreement would be between Treasury and the employee, not the trustee and employee.</p>
<p>1.4 Profit-to-member superannuation funds must have a written diversity policy, appropriate to the circumstances of the fund, which sets out clear and measurable objectives and provides for annual reporting to the board and members. This policy must establish objectives concerning gender balance as a minimum, with other forms of diversity considered by the fund as appropriate. Objectives must relate to processes, which may, but do not necessarily, include targets for participation at board and management levels, to ensure that the fund taps the broadest talent pool and is responsive</p>	<p>A state or territory fund may employ a state government diversity policy.</p>

to the needs of all its members.	
1.6 The board of a profit-to-member superannuation fund must have a documented process for evaluating the performance of the senior management. The fund should disclose whether such a performance evaluation was undertaken during the reporting period.	The evaluation of senior management may be the responsibility of a government department such as Treasury, rather than the trustee. Disclosure of whether an evaluation took place may therefore be a matter for Treasury, not the trustee. There may be scope for the trustee to request Treasury to allow this disclosure.
2.1 The board of a profit-to-member superannuation fund must have a committee responsible for board renewal that has at least three members. The committee must disclose a charter and it should meet at least annually. For each reporting period the fund must disclose the members of the board renewal committee and attendance records for any meetings during that period.	State or Territory legislation may provide that directors are appointed by a Government Minister or Department and not the board. However, the fund may wish to detail their involvement in the appointment process with the Government where appropriate. This may include engaging with the nominating stakeholders including providing: <ul style="list-style-type: none"> • perspective on knowledge/skills/ experience that the Board is seeking; • feedback on the performance of a Trustee being considered for re-appointment; • names of potential candidates; as well as • meeting with potential candidates to discuss the role and responsibilities of a Trustee, the time requirements, the governance arrangements.
2.5 The chair of a profit-to-member superannuation fund board must be appointed by the board, and must satisfy all the requirements of skill and experience identified in the fund's skills matrix for the role of chair	State or Territory legislation may provide that the chair is appointed by a government minister or department and not the board. As per 2.1, the fund can proactively encourage the appointment of a chair that satisfies the requirements of skill and experience in the fund's skills matrix for the role of chair.

8. What resources are available to help assist reporting against the Code?

The AIST website contains a suite of resources to assist Code compliance and reporting. This page will be updated periodically.

AIST members who have questions about reporting can contact [Holly Lindsay](mailto:Holly.Lindsay@aist.asn.au), AIST Senior Manager, Governance on +61 3 3855 8677 or send questions to: govcode@aist.asn.au