

12 February 2014

Manager
Superannuation Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

I write to you in response to the discussion paper 'Better Regulation and Governance, Enhanced Transparency and Improved Competition in Superannuation'.

Executive Summary

Business SA supports appropriate changes to improve governance in the superannuation sector, particularly given the size of funds under management is forecast to grow substantially over time. Considering that the superannuation sector predominantly evolved from what was known as 'Occupational Superannuation' in industrial awards, logically governance structures were established to suit the nature of size of funds at that time. Now that the superannuation sector is so large and sophisticated, it is only reasonable that the industry takes appropriate steps towards ensuring governance is on par with similar size entities within the economy such as listed companies and banks.

However, it is also important to ensure that superannuation funds retain a degree of flexibility to act in their members best interests and that regulation is not introduced which may inhibit their ability to do so. Furthermore, increased regulation may result in further costs being absorbed by members at the expense of investment returns.

Notwithstanding there is no substantive reason for the Fair Work Commission (FWC) to continue selection of superannuation default funds for Modern Awards, Business SA accepts that the most practicable change to make at this point in time is to ensure there is increased expertise and independence within the FWC for making such decisions.

Background

Business SA represents thousands of small businesses responsible for managing employee superannuation contributions and is also a founding shareholder of Statewide Superannuation.

Business SA's views are representative of our membership at large and what is in the overall best interest of the business community and economy, not the superannuation industry:

1. Superannuation fund boards should be moving towards a higher proportion of independent directors but a mandate is not necessarily the most efficient way in which to achieve this. Given the number of APRA regulated superannuation funds, any move to enforce a mandate of independent directors could lead to a shortage of suitable candidates, and to funds appointing directors with less than adequate skills and experience.

2. There is a potential risk to board effectiveness without measures in place to replace directors at least every 10 years. Although there is a need to ensure superannuation fund boards are appropriately renewed, there are already prudential standards in place on this subject. Furthermore, Business SA does not support a mandated approach to director appointment terms on the basis that superannuation funds should have the flexibility to manage issues of board continuity without being restricted by arbitrary appointment terms.

Business SA agrees that for the most part, directors should be replaced to ensure invigorated and independent thinking on superannuation fund boards. However, there will still be instances peculiar to particular board members where their skill set, experience or approach is still valuable to the board after a lengthy term and a superannuation fund should not be forced to replace such directors.

3. Business SA supports the prudential standard already in place to ensure the regular performance appraisal of individual directors. It is important for superannuation funds to appropriately manage the performance of directors and ensure they are working towards delivering the best outcomes for members.
4. Concomitant with the enactment of the *Superannuation Guarantee (Administration) Act 1992*, awards ceased to be the primary regulatory mechanism for the provision of superannuation. Instead awards came to complement legislation, including by prescribing the fund or funds to which contributions were to be made by employers. The enactment of the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* further reduced the role of awards in relation to superannuation by giving most employees the right to choose the fund to which their employer must make contributions.

Business SA's primary position is that superannuation should be removed from Modern Awards. This would require an amendment to the *Fair Work Act 2009*, by deleting sub clause 139(1) (i).

Superannuation is a mechanism for funding retirement and not an industrial relations matter.

Given the extensive regulation of superannuation through the Australian Prudential and Regulation Agency (APRA) and through the laws and guidance provided from rulings of the Australian Taxation Office, it is neither necessary, nor appropriate for the FWC to continue to create legally enforceable obligations in relation to superannuation beyond the requirements of the *Superannuation Guarantee (Administration) Act 1992*. Multiple sources of regulation create uncertainty, lack of clarity and ultimately result in higher administrative costs which are ultimately borne by superannuation fund members and taxpayers, including businesses.

As the removal of superannuation requires legislative change, Business SA acknowledges that that may take some time, and in the interim we would support appropriate changes to the FWC framework for selecting default superannuation funds in line with those recently recommended by the Productivity Commission.

A Default Superannuation Fund Panel should be established within the FWC which comprises of the President and an equal number of FWC and expert members from finance and investment sectors. Such a panel would bring a greater degree of integrity and independence to the selection of default superannuation funds for Modern Awards and act as a bridging step to ultimately reducing regulation in relation to default superannuation funds.

5. Business SA does not support APRA being charged with selecting default superannuation funds given its principle role in regulating the superannuation industry. There needs to be an appropriate degree of separation between APRA and any government regulation relating to the selection of default superannuation funds to prevent institutional conflict of interest.

However, a role could exist for APRA to provide easily interpreted information to employers to help them select a default superannuation fund but such a service would need to include information on all regulated superannuation funds, not just a defined number as per the Modern Awards. Allowing employers to utilise any fund that offers a MySuper product as a default fund would significantly increase competition.

6. If the FWC is to continue selecting default superannuation funds, there needs to be a review of the number of allowable funds for each Modern Award to ensure there is a competitive balance between large industry & bank backed funds and smaller funds. Furthermore, the process by which a fund is selected should be structured such that smaller funds with fewer resources are not unfairly disadvantaged against their larger and better resourced competitors.

Who We Are

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Our submission should be read in conjunction with the submission made by the Australian Chamber of Commerce and Industry (ACCI) of which Business SA is a member.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA on (08) 8300 0060 or rickc@business-sa.com.

Yours sincerely



Nigel McBride
Chief Executive Officer