

23 October 2015

Mr Pat Brennan
General Manager
Policy Development
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

By email: superannuation.policy@apra.gov.au

Dear Mr Brennan

Consultation Package – Governance arrangements for superannuation trustees

This submission has been prepared by the Law Council of Australia's Superannuation Committee, which is a committee of the Legal Practice Section of the Law Council (Superannuation Committee). The objectives of the Superannuation Committee are to ensure that the law relating to superannuation in Australia is sound, equitable and clear, by providing submissions and comments on the legal aspects of proposed legislation, circulars, policy papers and other regulatory instruments which affect superannuation funds.

This letter contains the Superannuation Committee's submissions on the Australian Prudential Regulation Authority's (APRA's) consultation package on *Governance Arrangements for Superannuation Trustees*, including the [Discussion Paper](#), draft Prudential Standards [SPS 510](#) and [SPS 512](#), and draft Prudential Practice Guides [SPG 510](#) and [SPG 512](#).

Board Remuneration Committee

In its Discussion Paper, APRA has signalled that its approach will be to harmonise governance obligations for Registrable Superannuation Entity licensees (RSE licensees) with those applying to other APRA regulated entities, where appropriate.

In the context of the requirement for a Board Remuneration Committee under draft SPS 510, paragraph 47 recognises that the Board may use a group Board Remuneration Committee, consistent with other APRA regulated entities.

However, the practical impact of new paragraphs 42 and 43 of draft SPS 510 is that paragraph 47 would never be capable of application. This is because paragraph 42 requires that the chair of the Board Remuneration Committee must be an independent director of the RSE licensee and paragraph 43 requires that at least one-third of the members of the Board Remuneration Committee must be independent.

Under section [87\(1\)\(c\)](#) of the *Superannuation Legislation Amendment (Trustee Governance) Bill* a person who is a director of a body corporate, or has been within the previous 3 years, that is related to the RSE licensee is not independent from the RSE licensee. As such, the members of a group Board Remuneration Committee, even though they may be non-executive directors of the head of the group, will not qualify as independent directors for the purposes of paragraphs 42 and 43.

A suggestion to overcome this problem would be for APRA to qualify paragraphs 42 and 43 in the final version of SPS 510 by deeming a non-executive director of the head of the group to be independent for the purposes of these paragraphs.

Composition of Committees

APRA proposes that one third of the members of the Board Remuneration Committee and the Board Audit Committee shall be independent directors. While the Superannuation Committee appreciates that APRA has reduced this number from the original proposal for a majority of independent directors, we note that even a requirement for one third of these Committees to be comprised of independent directors may inhibit the most qualified directors being appointed to particular board committees, particularly for smaller boards.

Governance Issues

In draft SPS 510, at paragraph 18, APRA lists the minimum requirements for a governance framework. In our experience a governance framework would also include committee charters and any delegations conferred by the Board on committees (or management). In the final version of SPS 510, APRA could consider including instruments of delegation and committee charters as part of the governance framework.

At paragraph 9(c) of draft Prudential [Practice Guide](#) SPG 510, APRA suggests that the functions of a Nominations Committee might include overseeing remuneration and performance assessment policies and procedures. This function seems to overlap with the functions of a Remuneration Committee. We therefore query whether, in the final version of SPG 510, paragraph 9(c) should be deleted.

Transition Issues

At paragraph 6 of draft SPS 512, for the purpose of an RSE licensee notifying its preliminary assessment to APRA, APRA defines a 'complying RSE licensee' as one who complies with the new governance requirements. We assume that 'compliance' in this context is confined to compliance with the minimum independent director requirements, since it is highly unlikely that any RSE licensees would have all of the new governance requirements under draft SPS 510 in place by 1 July 2016. It may therefore be worthwhile for APRA to clarify the concept of 'compliance' in the final version of SPG 512.

If you have any questions about our submission, please contact the Chair of the Superannuation Committee's Legislation and Policy Sub-committee, Tony Nemec, on 02 8864 6974 or the Chair of the Superannuation Committee, Michelle Levy, on 02 9230 5170.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael Brett Young". The signature is stylized with a large, sweeping loop at the end.

Michael Brett Young

CHIEF EXECUTIVE OFFICER