

AIST Governance Code Guidance

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AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES



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The Governance Code

PREAMBLE

AIST published its new Governance Code on 12 April 2017 in order to:

- Promote continuously improving governance in the profit-to-member super sector;
- Ensure that the culture of the profits-to-members concept is fully supported by governance structures; and
- Improve accountability and transparency.

This Guidance is provided to support AIST registered funds in implementing the Code, explaining the rationale for various requirements and suggesting measures that funds could take to satisfy them.

ADOPTING THE CODE

It is expected that the Board of an AIST registered fund would formally resolve to adopt the Governance Code. It is open for them to adopt it on a voluntary basis from 1 July 2017. All registered funds are expected to have adopted the Code no later than 1 July 2018. Reporting on Code requirements relate to the financial year in which the fund adopted it, and each subsequent financial year.

EQUAL REPRESENTATION BOARDS

Profit-to-member superannuation funds generally operate under an equal representation governance model with equal numbers of employer and employee representatives appointed or elected to the trustee Board. This direct representation of working people on the Board is designed to ensure that the Board's key strategic decisions are aligned to workers' interests and that trustee directors act solely in the interests of their members.

Equal representation is recognised worldwide with pension funds in the majority of the 22 OECD countries adopting equal representation and another six requiring member representation on the Board.

Under AIST's constitution, AIST registered funds must be representative superannuation funds established solely for the benefit of their members. Representative funds are those with a Board of directors having equal numbers of representatives of employee members of the superannuation fund and of employers, or otherwise adequately representing the interests of both employees and employers, in the opinion of the directors of AIST.

In Australia, profit-to-member funds have significantly and consistently outperformed the retail fund sector since compulsory superannuation was introduced in 1993.¹ The governance model has contributed to that outperformance and has provided members of those funds with better retirement outcomes. These better returns for members are the primary focus of a representative Board in the profit-to-member super sector. The Governance Code therefore requires AIST registered funds to maintain an equal representation governance structure, to facilitate a continued focus on a members-first culture.

In certain circumstances the appointment of non-representative directors may be beneficial. However, at no time should the number of non-representative directors exceed one-third of all directors of an AIST registered fund. This ensures that the interests of members and insights from employers continue to be at the forefront of the fund's strategic decision-making, and all the cohorts remain in balance.

¹ Industry super funds outperformed bank-owned super funds by 2.74% on average in 2016; 2.07% over three years; 2.16% over five years and 2.18% over ten years, SuperRatings, January 2017

ASX CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS

The ASX Corporate Governance Principles are highly regarded by government and commentators alike, and have often been suggested as a model for adoption by Australia’s superannuation system.

The ASX principles are:

1. Lay solid foundations for management and oversight
2. Structure the Board to add value
3. Act ethically and responsibly
4. Safeguard integrity in corporate reporting
5. Make timely and balanced disclosure
6. Respect the rights of security holders
7. Recognise and manage risk
8. Remunerate fairly and responsibly

Together with the principles espoused in some of the global governance codes, the AIST Governance Code adopts an ASX-like framework. The ASX principles are equally applicable to superannuation fund entities as to listed companies except where they conflict with the trust law foundation for super fund structures, and the absence of shareholder or parent company accountability in the profit-to-member sector. The AIST Governance Code does not duplicate the ASX Corporate Governance Principles and Recommendations, but rather adopts its broad corporate governance principles and applies them in a superannuation context, an industry that is structured and regulated differently from listed company entities.

A superannuation specific principle around investment management is also included to reflect the principal activity of superannuation funds.

LEGAL AND REGULATORY FRAMEWORK

The Code does not seek to duplicate existing laws and regulations. The superannuation industry is highly regulated with requirements under APRA’s prudential standards and the provisions of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) setting a higher governance benchmark than what listed companies are required to comply with. Accordingly, where the ASX principles and recommendations duplicate already existing, mandatory requirements for superannuation funds, those recommendations have *not* been included in the Code though they may be referenced in this Guidance.

For the avoidance of doubt, where an AIST registered fund already has in place policies or procedures that satisfy requirements set out in the Governance Code, the materials do not have to be duplicated for the purposes of complying with the requirements of the Code.

DISCLOSURE

A number of requirements in the Code (1.5, 1.6, 2.1, 2.2, 2.3, 3.1 and 4.2) introduce new disclosure obligations for funds. In each instance, the material should be prepared so that most members could understand it, and why the matter being disclosed is important in the context of good governance of the fund. Disclosure materials should be easy for members to find; for example, in the fund’s annual report or in an obvious place on the fund’s website.

A summary of the disclosure requirements, and when they should be met, is as follows:

Requirement	Disclosure Obligation	By When
1.5 Have procedures to evaluate the performance of the Board and individual trustee directors at least annually.	Disclose a summary of those procedures.	No later than the end of the first financial year in which the fund adopts the Code, and continuously from then.
1.6 Have procedures to evaluate the performance of the Board and individual trustee directors at least annually.	Confirm annually that the performance evaluations were undertaken during the reporting period.	Report in relation to each financial year.
1.6. Have a documented process for evaluating the performance of senior management.	Disclose whether such a performance evaluation was undertaken during the reporting period.	Report in relation to each financial year.

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Requirement	Disclosure Obligation	By When
2.1 Have a Committee responsible for Board renewal that has a Committee Charter.	Disclose the Charter.	As soon as practicable after the fund adopts the Code, and continuously from then.
2.1 Have a Board renewal committee.	Disclose the members of the Committee and attendance records for any meetings during the reporting period.	When reporting in respect of the first financial year in which the fund adopts the Code, and annually from then.
2.2 Maintain a Skills Matrix.	Disclose annually a representation of the existing collective skills, experience and diversity of the Board.	When reporting in respect of the first financial year in which the fund adopts the Code, and annually from then.
2.3 Identify directors names, representative status and the name of the nominating body.	In disclosing the names of the directors, disclose whether they are a member representative, employer representative or a non-representative member and the name of their nominating body.	As soon as practicable after the fund adopts the Code, and continuously from then.
3.1 Have a Code of Conduct for the Board, Senior Management and Employees.	Disclose the Code, or a summary of it.	As soon as practicable after the fund adopts the Governance Code, and continuously from then.
4.2 Ensure due process in all transactions with full transparency and disclosure.	Disclose related party transactions.	When reporting in respect of the first financial year in which the fund adopts the Code, and annually from then.

COMPLIANCE WITH THE CODE

A fund's governance practices are a matter for its trustee, which holds legal responsibility for the operation of the fund, including ensuring that the fund has appropriate governance practices. The Code lists 21 requirements. All AIST registered funds must be able to demonstrate how they have fulfilled each requirement set out in the Code, or provide a reasonable explanation as to why it was not possible to comply, or why it would not be in the best interests of members of the fund if they were to comply.

The principles and requirements

PRINCIPLE 1: Lay solid foundations for management and oversight

A profit-for-member superannuation fund must determine the respective roles and necessary skill profile of the Board and management and set these out in writing. They must also determine how the respective performance of the Board and management will be measured and evaluated.

Legal and regulatory context

SPS510 requires superannuation funds to have a formal charter setting out the roles and responsibilities of the Board. SPS510 also requires the Board to clearly define and document delegations of authority.

SPS510 requires superannuation funds to have a formal Board renewal process and to ensure that directors collectively have the necessary skills, knowledge and experience for the effective and prudent operation of the fund. SPS520 requires funds to apply listed criteria in determining whether a person is fit and proper to be a director, including consideration of competence, character, diligence, experience, honesty, integrity, judgment, education and technical knowledge. SPS521 requires superannuation funds to determine whether a person may have a conflict in performing their director duties, and if they do, consider whether this conflict poses a risk of the person failing to perform their duties properly.

SPS520 requires superannuation funds to have a policy relating to the fitness and propriety of its directors and other responsible persons and take all reasonable steps to ensure that the directors and other responsible persons know and understand the provisions of the policy. SPS521 requires superannuation funds to have a conflicts policy and maintain registers of conflicts and duties.

SPS510 requires superannuation fund Boards to ensure that annual assessments of Board performance and the performance of individual directors are carried out.

Sections 52(2) and 52A(2) of the SIS Act require fund Boards and trustee directors to prioritise the interests of members in the event of conflicts.

REQUIREMENT 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 in particular, this includes engagement with sponsoring organisations.

COMMENTARY:

The primary responsibility of the Board is:

- To provide leadership; and
- To determine, review, ratify and oversee the implementation of the fund's strategies and risk management framework.

Trustee Boards need to develop and support:

- A culture fostering accountability;
- Commitment to long-term member returns, business integrity, innovation and transparency; and
- Relevant and effective disclosure and communication.

SPS510 Governance requires that:

The Board must ensure that the directors and the senior management of the RSE licensee, collectively, have the full range of skills needed for the effective and prudent operation of the RSE licensee's business operations, and that each director has skills that allow them to make an effective contribution to Board deliberations and processes. This includes the requirement for directors, collectively, to have the necessary skills, knowledge and experience to understand the risks of the RSE licensee's business operations, including its legal and prudential obligations, and to ensure that the RSE licensee's business operations are managed in an appropriate way taking into account these risks.

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It follows that AIST registered funds should effectively engage with the fund's sponsoring organisations to ensure that the right individual and collective skills and experience are represented on the fund's Board, while also ensuring maintenance of the member-first culture and that there is regard to the Board's diversity objectives.

Funds should ensure that sponsoring bodies are aware and fully supportive of the role of the Board in providing benefits to the membership of the fund. This awareness will be helped by a program of regular engagement between the Board and its sponsoring bodies, rather than engagement only around the time that a forthcoming Board vacancy is identified.

The Board should work closely with sponsoring organisations to help them identify appropriate candidates that meet the criteria of the fund's fit and proper policy, and in particular that:

- Fit the identified skill needs of the Board in implementing its strategy and objectives;
- Meet the fund's identified skills requirements;
- Identify with the fund's values and culture;
- Are consistent with the Board's diversity objectives;
- Are committed to achieving the best outcomes for the fund's members; and
- Can meet the necessary time commitment.

To avoid conflicts of interest, sponsoring bodies should not nominate candidates with authority over decisions that may impact the fund's strategy or operations. Any potential conflicts should be assessed by the Board and a determination made about whether they might be appropriately managed or whether the candidate does not meet the requirements to effectively serve as a trustee director due to the conflict.

For some registered funds, the governing rules provide a unilateral power for the sponsoring organisations to nominate directors. In practice, there is generally consultation between the sponsoring organisation and the Board (or Chair) regarding nominees for Board membership.

Nevertheless, for Boards to be able to meet their obligations under the prudential standards, it is highly desirable that they engage with their sponsoring organisations to review the governing rules to ensure that:

- When nominating directors to the fund, sponsoring organisations have regard to requirements of fitness and propriety, the Board's identified skills requirements and its policies around diversity and Board renewal; and
- The Board has the power to not accept one or more nominees from a sponsoring organisation if it reasonably believes that the nomination fails any of those criteria.

If more than one person is nominated to the fund Board from the same representative organisation, in considering *SPS520 Fit and Proper* the Board renewal committee should have regard to the relationship of influence between the two, to ensure that each can effectively exercise independent judgement in the decision-making processes of the Board.

Before accepting the nomination, the Board should be clear about the person's qualifications and experience and the skills they bring to the Board. It may be appropriate to task the Board renewal committee to establish a process for undertaking such a review and ensuring that it is carried out.

REQUIREMENT 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.

COMMENTARY:

For the purpose of this requirement, the term “senior executive” includes, but is not necessarily limited to, any fund employee who meets the definition of a responsible officer in section 10 of the SIS Act.

AIST registered funds must have a written agreement for each trustee director and senior executive, setting out their roles and responsibilities, to provide them with a clear understanding of the expectations. This usually forms part of the letter of appointment or employment contract.

The form of written agreement need not be the same for directors as for senior executives, and may vary between senior executives.

In a document signed by either the Chair or the company secretary, trustee directors should be advised of:

- The duration of their appointment, and any relevant maximum tenure in line with the fund’s policy;
- The commitment of time envisaged, including any committee work expectations or other special duties, such as Chairing responsibilities;
- Details of any remuneration payable;
- The circumstances in which the fund will reimburse costs incurred by the director in fulfilling their role as director;
- The requirement to disclose, on an ongoing basis, any interests or duties the trustee director may have that could impact their ability to exercise independent judgement, or be perceived as such;
- The duty of the director to familiarise themselves with their obligations as a trustee director, and in particular with the fund’s governing rules, code of conduct, and policies on conflicts, risk management and investment governance;
- The requirement to comply with the fund’s code of conduct, the fund’s conflicts of interest and duties policies and any other fund policies affecting directors;
- Any obligation of the director to undertake relevant professional development and how that obligation may be satisfied;
- The fund’s policy on seeking independent professional advice;
- The circumstances in which the trustee director’s role becomes vacant;
- The fund’s policy for renewing a trustee director’s term on the Board;
- The fund’s indemnity policy and insurance cover for trustee directors;
- The trustee director’s ongoing rights of access to the fund’s company records, trust deed, insurance policies and other relevant information; and
- The trustee director’s ongoing confidentiality obligations and if relevant, what this means in relation to sponsoring organisations or other stakeholder groups.

It is good practice for the fund to require the director to sign a copy of the agreement as an acknowledgement of receipt, and to retain a copy.

In the event of any material change in circumstances or in expectations of the director, an updated agreement should be signed.

Contracts of employment for the CEO and company secretary would ordinarily be signed by the Board Chair. Contracts for other senior executives would ordinarily be signed by the manager of the person to whom the executive would report.

A letter of engagement or contract for a senior executive should contain at least:

- Their position description outlining their duties and responsibilities;
- The name of the person or body to whom they report;
- Details about their remuneration arrangements and work patterns;
- The requirement to comply with the fund’s code of conduct, risk management framework, the fund’s conflicts of interest and duties policies and any other relevant fund policies;
- The circumstances whereby their employment might be terminated; and
- Confidentiality obligations.

It is good practice for the fund to require the senior executive to sign a copy of the agreement as acknowledgement, and to retain a copy.

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REQUIREMENT 1.3

The fund's company secretary is accountable directly to the Board, through the Chair, on all matters concerning effective Board operations and must provide every assistance to the Board to fulfil their obligations in acting in the best interests of members' interests. The Chief Executive Officer (CEO) must not be the company secretary.

COMMENTARY:

In addition to performing their responsibilities under section 1.5.5 of the *Corporations Act 2001*, company secretaries of AIST registered funds must provide guidance to the Board in relation to their obligations to prioritise member interests.

The company secretary must:

- Understand the fund's governing rules, including its constitution and trust deed;
- Advise the Board and its committees on governance-related matters;
- Monitor the Board and committee processes and relevant policies;
- Be responsible for the timely completion and distribution of the Board and committee packs;
- Maintain a forward schedule of Board meetings;
- Diarise a rolling 3 year forward schedule of Board obligations and ensure that required matters are listed on Board agendas in a timely manner;
- Record accurate minutes of meetings;
- Facilitate the induction of new trustee directors and coordinate the professional development needs of all trustee directors; and
- Be available, and provide requested assistance, to all trustee directors.

The company secretary's role is to be the chief advisor to the Chair and the Board on governance matters, and to manage the mechanics of Board and committee meetings. The CEO's role is to be chief advisor to the Board on the business of the fund, and to ensure that the Board's strategic plan is implemented. The two roles are thus quite distinct, and could on occasion be in conflict.

It is therefore a requirement that the CEO not also be the company secretary.

The appointment or removal of a company secretary should be approved by the Board and the performance review of the company secretary would generally be carried out by the Chair.

Depending on the nature and scale of the fund, the company secretary may also perform other duties. It is common practice for the company secretary to report to the CEO, or another senior executive, in relation to those duties.

The Board should ensure that the CEO respects the company secretary's independence in relation to his or her corporate responsibilities.

REQUIREMENT 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 to the needs of all its members.

COMMENTARY:

In addition to any reporting requirements a registered fund may have as a "relevant employer" under the *Workplace Gender Equality Act 2012* to report to the Workplace Gender Equality Agency, the Governance Code requires all AIST registered funds to have diversity policies and disclose relevant diversity objectives and progress against initiatives undertaken.

Diverse thinking and differing perspectives are widely recognised as:²

- Contributing to improved decision-making
- Resisting groupthink
- Broadening the talent pool
- Correlating with increased financial returns
- Contributing to leading governance practice
- Fostering a closer connection with, and understanding of, the fund's members.

2 The Business Case for Gender Equality, Workplace Gender Equality Agency, 2013: https://www.wgea.gov.au/sites/default/files/business_case_for_gender_equality.pdf

Diversity comes in many forms and funds could consider diversity in the context of:

- Gender
- Age
- Sexual orientation
- Economic status
- Skills
- Ethnicity
- Language
- Geography
- Marital or family status
- Interests
- Religion
- Abilities
- Politics
- Retirement status
- Work experience

It does not follow that Boards should endeavour to have each category of potential difference represented as directors or in senior management. The above list is intended to illustrate the breadth of characteristics which might be considered in promoting diversity on the Board and in senior management.

Boards should actively strive to achieve gender balance and in consultation with the fund's sponsoring organisations, aim to achieve a minimum of 40 percent of each gender represented around the Board table. Diversity considerations beyond gender balance should be considered as appropriate to the fund's demographics, size and complexity.

One of the benefits of equal representation on Boards is the diversity it can bring to super fund Boards. The Boards of profit-to-member superannuation funds generally have far greater occupational, cultural, gender and age diversity than corporate Boards because they draw their directors from a wider pool of talent than commercial entities traditionally do.

Boards should, where possible and in consultation with their sponsoring organisations, develop a pipeline of candidates whose career paths are enabling them to acquire the relevant professional expertise to be valuable superannuation trustee directors.

At all times, the Board and sponsoring organisations should ensure that primacy is given to the Board's obligation to act in the best interests of members and the promotion of diversity, while inherently valuable, should be addressed in that context. The first consideration in the selection of a Board member should always be that they satisfy the skills requirement of the role, as identified by the Board. If sufficient attention is paid to the development and recruitment processes, it should be possible to satisfy both the skills and the diversity criteria.

Objectives adopted to enhance diversity at both Board and senior executive levels can include:

- Develop recruitment, mentoring and development practices that would attract and retain a broader talent pool from which candidates for senior executive and Board roles could be drawn, without compromising merit based appointments; and
- Engage with sponsoring organisations seeking that they consider Board diversity when considering the set of candidates who meet the Board's skill requirements for appointment.

Highly functioning Boards would:

- Disclose their policies;
- Disclose any measurable targets they have set, or initiatives they are implementing;
- Monitor and report on their progress in each reporting period; and
- Report separately on gender diversity initiatives.

AIST recognises that some industries and functional operational areas have significantly higher rates of participation for one gender over another. The fund's gender diversity reporting should reflect this if applicable.

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REQUIREMENT 1.5

In accordance with SPS510, profit-to-member superannuation funds must have procedures to evaluate the performance of the Board and individual trustee directors at least annually. The fund must disclose a summary of those procedures and confirm annually that the performance evaluations were undertaken during the reporting period.

COMMENTARY:

Consistent with SPG510, a well-functioning Board would:

- Be clear about its objectives and the performance standards it expects of directors and document this in writing;
- Provide the document both to existing Board members and potential trustee directors;
- Ensure regular performance evaluation at both whole of Board and individual director levels;
- Be consistent with its policy on fitness and propriety and with SPS520, have a process for managing non-performing directors and act on it when required;
- Disclose whether the performance evaluation of the Board and individual trustee directors took place during the reporting period;
- Disclose whether the performance evaluation was conducted internally or by an entity independent of the trustee;
- Consider disclosing any insights and changes it intends to make as a result of the process, bearing in mind the sensitive nature of such disclosure; and
- Consider evaluating committee performance, if appropriate.

Trustee directors should:

- Be self aware of their own contribution to the Board;
- Participate fully in the performance evaluation process;
- Be open to criticism; and
- Be prepared to make changes if required.

REQUIREMENT 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.

COMMENTARY:

A formal performance review process for the management team must be in place, and any issues arising from such reviews should be appropriately dealt with.

The Board's responsibility is to ensure that the framework for annual performance reviews is in place, to approve the categories of staff who will be subject to performance review (if reviews do not apply to all staff), and to arrange for the performance review of senior management with direct reporting lines to the Board or the Chair.

The Board should consider publishing a listing of those positions which it considers makes up its senior management team, and whether the performance review was undertaken internally, by the Board (or a Board committee) or by a third party.

The CEO and fund senior management are responsible for the performance review of those staff who do not report directly to the Board or the Chair.

PRINCIPLE 2: Structure the Board to add value

A profit-to-member superannuation fund Board must have a diverse Board composed of highly competent and committed directors. Representation of member and employer interests must be ensured, and the Board must be of an appropriate size, composition and have the skills to be able to discharge their duties effectively.

Legal and regulatory context

SPS510 requires superannuation funds to have a Board renewal policy, to clearly define and document the competencies required of directors, and to have a documented process for nomination, appointment and removal of directors.

Part 9 of the SIS Act sets out the equal representation rules for employer-sponsored superannuation funds. SIS Regulation 4.08 requires equal representation funds to have a two-thirds minimum voting rule on its Board decisions.

SIS Regulation 2.38 requires a range of disclosures from superannuation funds including director details and the fund's rules relating to trustee director nomination, appointment and removal.

REQUIREMENT 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 have a charter that is disclosed 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 the reporting period.

COMMENTARY:

In addition to the requirements in revised SPS510 (effective 1 July 2017), AIST registered funds are required to have a Board committee responsible for Board renewal.

The purpose of requiring the committee to meet at least annually is to ensure that the Board actively monitors its membership and undertakes succession planning to ensure that the Board is aware of a pool of potential trustee directors who, either currently or with planned development, would meet the Board's skills and diversity objectives.

At a minimum a Board renewal committee should:

- Maintain engagement with the sponsoring organisations so that they remain aware of:
 - The fund's business and strategic plans and the skills and capabilities required in a nominated director to effectively oversee the implementation of that strategy;
 - The Board's diversity objectives;
 - The circumstances under which a nomination for a trustee director position may be declined; and
 - The circumstances under which a trustee director can be removed from the Board.
- Identify suitable potential trustee directors and non-director Board committee members if required.
- Plan for departures in unforeseen circumstances.
- Meet at least annually, even if there are no vacancies to fill at the time, to mitigate the risks from unforeseen departures.

It is open to the Board to decide that the committee responsible for Board renewal could also be responsible for other functions; for example, remuneration or nomination (for Boards which include one or more non-representative directors and/or committee members).

While not deviating from the primacy of the equal representation principle, in certain circumstances it may be appropriate to consider the appointment of one or more non-representative directors. Such consideration should be in the context of the fund's strategic and business plans, and having regard to the skill sets needed to implement those.

A highly functioning Board would ensure that the fund's governing rules provide for the refusal to appoint a nominee who fails the requirements of fitness and propriety, noting that the skills, knowledge and experience of a director relate closely to the concept of "fitness". If a Board considered that a nominee or potential nominee from a sponsoring organisation may not meet its requirements in terms of skills and experience, it would be expected that the Board would engage with the sponsoring organisation to secure a mutually acceptable nominee rather than relying on a capacity to formally refuse a nomination.

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REQUIREMENT 2.2

A profit-to-member superannuation fund must maintain a matrix showing the skills, relevant experience and diversity the Board currently has and acknowledge gaps it is looking to fill in order to effectively fulfil its strategic plan. It must disclose annually a representation of the existing collective skills, experience and diversity of the Board.

COMMENTARY:

SPS510 requires that the directors and senior management of the fund collectively have the full range of skills needed to effectively and prudently manage the operations of the fund and that each director has skills that allow them to make an effective contribution.

A soundly functioning Board would ensure:

- An appropriate balance of skills and experience exists across the Board and senior management team;
- The suitability, complementarity and continuity in the Board, taking into account education, personality, gender, length of service and age;
- The continuous assessment of directors' suitability throughout their term and any additional term;
- There is a skills matrix that identifies the existing individual and collective skills and competencies of the Board;
- Any skills gaps are identified so that they can be addressed through training or the next round of appointment of new directors; and they disclose the existing skills matrix; and
- It is appropriate for the Board to consider the individual skills required for certain key positions; in particular, there are certain skills that the Chair must possess in order to lead the Board well, in addition to the skills required of a director generally.

The fund should develop its skills matrix as a means of identifying the competencies and skills available to, and desired by, the Board as a whole to fulfil its role in light of the fund's strategic direction. It can also be useful to reflect on any gaps in skills and competencies that may be created by the forthcoming retirement of a director or directors or any change in the company's strategic direction.

The identification of any skills gap is an important governance measure for a Board promoting the best interests of fund members. Used properly, it is an important safeguard against complacency while providing direction for individual and collective professional development as well as informing the selection of new directors and Board committee members.

It is good practice to review the skills matrix annually, to ensure that not only the current needs in relation to supervising the fund and its operations are being met, but also so that any skills can be identified that may be sought as the fund's strategy is implemented and the environment in which it operates changes.

This new disclosure requirement improves transparency and provides members and employers of the fund with a clear impression of the current collective capability of the persons responsible for the stewardship of their retirement savings.

The requirement does not extend to disclosing publicly the Board's view of any current gaps in its skills base, though it would be sound practice for the Board to disclose it to the prudential regulator, together with an indication of the measures it proposes to adopt to address the identified gap.

REQUIREMENT 2.3

In disclosing the names of its directors, a profit-to-member superannuation fund must identify for each director whether they are a member representative, an employer representative or a non-representative member. In each instance, the name of the nominating body must also be disclosed.

COMMENTARY:

In addition to the legal requirements to disclose director names, registered funds must be transparent about the affiliations with sponsoring organisations of the fund.

Profit-to-member superannuation funds should have an equal number of member and employer representative trustee directors on the Board, and no more than one-third non-representative directors at any time. The identity of the respective sponsoring organisations for individual directors should be clearly disclosed to improve transparency. It would not meet reasonable expectations for such disclosure to be in an obscure location such as a conflicts register.

REQUIREMENT 2.4

The voting rights of all trustee directors on the Board must be equal, regardless of their status as a member or employer representative director, or non-representative director. The voting majority for any Board decision should be no less than two-thirds of all trustee directors.

COMMENTARY:

In addition to the requirement to have a minimum voting majority of two-thirds of directors, AIST registered funds are required to give equal voting rights to all directors of the Board. Consistent with the expectation that all directors act in the interest of members, the two thirds majority requirement means that any decision requires the support of both member-nominated and employer-nominated directors.

Boards make decisions collectively, and not as individuals. All directors have the same legal duties and obligations, and share the same liability. For this reason trustee directors must all have an equal vote on the Board. When taken with the requirement for decisions to be taken by a two thirds majority, it follows that it is neither necessary nor desirable for the Chair to have a casting vote.

It may be necessary for registered funds to seek amendment to their governing rules in order to comply with this requirement. It is expected that, within the first reporting period after this requirement takes effect, funds in this position would be able to demonstrate the actions they had taken in an effort to secure the necessary changes.

Trustee directors should not vote on matters where they have a material conflict of interest or of duty.

Profit-to-member superannuation fund Boards should:

- Aim for consensus decision-making;
- Consider the mix of representative and non-representative directors on their Boards in determining appropriate voting ratios, ensuring they do not fall below the legislative requirement of a two-thirds majority;
- Where there are one-third non-representative directors on their Board, increase their voting majority to 75%, to discourage voting blocks from forming; and
- Have deadlock breaking mechanisms in the fund's rules.

If a decision is not made with the consensus of the whole Board, the minority must respect the majority decision and observe their duty of confidentiality. Strong objections can be minuted, but final decisions need to be clearly recorded.

REQUIREMENT 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.

COMMENTARY:

The Chair:

- Leads the Board;
- Steers discussion; and
- Through leadership and example, strongly influences the culture of the Trustee and hence the culture of the organisation as a whole.

It requires a significant time commitment.

This key role should be undertaken only by a person possessing all the skills identified under Requirement 2.2 as being necessary for the role of Chair regardless of whether they are a member or employer representative director, or non-representative director.

It is highly desirable that more than one director should possess the skills to be Chair. Should that not be the case, sound governance principles and key person risk would require the Board to address the issue as a matter of priority. This could be done through defining the requirements for the next director(s) to be appointed, through the professional development of existing directors or a combination of these.

The Board should appoint an appropriate Chair for a fixed term. It is open to a Board to renew the appointment of a Chair, though in doing so it should have regard to issues of Board renewal and the capacity of the Board as a whole.

The Chair's role should be clearly defined in writing and should be understood by all trustee directors.

Boards may consider appointing a Deputy Chair to assist with succession planning, to take over the Chair's responsibilities when he or she is unavailable, or to step in should the Chair have a conflict with any Board matter under discussion.

AIST GOVERNANCE CODE GUIDANCE

REQUIREMENT 2.6

The CEO must not be a director of the fund.

COMMENTARY:

The roles of the Board and the CEO are complementary rather than overlapping.

The Board is directly responsible for the hiring and firing of the CEO, and is charged with general oversight of the fund's affairs and its management. As a result, installing the CEO — the one person directly responsible for that management — as a Board member would create an inherent conflict of interest that did not lend itself to appropriate management.

REQUIREMENT 2.7

A profit-to-member fund must have an induction program for new trustee directors and provide appropriate ongoing professional development and training opportunities to continuously enhance their skills and knowledge.

COMMENTARY:

The Board or Board renewal committee must ensure that an appropriate induction process for new directors of the Board takes place in a timely manner. An induction for a new trustee director should provide rigorous and comprehensive training including:

- The mission, vision and values of the fund;
- The legal and regulatory framework;
- Governance principles and expectations of the director;
- The fund's strategic objectives and long-term aspirations;
- The investment philosophy of the fund;
- The risk management framework; and
- The fund's history.

The Board should receive ongoing briefings in the legal, regulatory and accounting areas as well as any new areas of importance to the Board and ensure that it is always aware of the changes in its operating environment.

Boards or Board renewal committees should formulate and document training plans for trustee directors. Where a trustee director has a skill gap on joining the Board, this shortfall should be addressed with appropriate training within the first twelve months. All trustee directors are required to maintain a level of ongoing professional development throughout their tenure on the Board to maintain the requisite level of skill and knowledge to discharge their duties effectively and respond to the changing environment.

While recognising the demands on the time of directors who also maintain other professional roles, AIST considers that a person should not accept the role as trustee director unless they are prepared to commit the time necessary both to fully prepare for Board and committee meetings, and to undertake ongoing professional development to continuously grow into the role and expand their relevant skills. On that basis, AIST considers that thirty hours of relevant professional development should be completed each year by every trustee director.

PRINCIPLE 3: Act ethically and responsibly

A profit-to-member superannuation fund must act ethically and responsibly.

Legal and regulatory context

Sections 52(2) and 52A(2) of the SIS Act set out a series of covenants imposed on super fund trustees and their directors requiring them, among other things, to behave fairly and honestly; exercise the degree of care, skill and diligence expected of prudent superannuation trustees and directors; act in the best interests of the fund's beneficiaries and prioritise the interests of beneficiaries where a conflict exists.

REQUIREMENT 3.1

A profit-to-member superannuation fund must have a code of conduct for its Board, senior management and employees. This code, or a summary of it, must be disclosed.

COMMENTARY:

In addition to their legal duties and obligations, registered funds must have a code of conduct that reflects their unique commitment to behaviours that give effect to their members-first culture.

To ensure that all dealings of the fund are ethical and transparent, a code of conduct demonstrates the fund's commitment to ethical and responsible behaviour, beyond the mere basic legal responsibilities, in the context of their particular membership and other stakeholders.

The Code of Conduct must be communicated across the business and effectively integrated into the fund's daily operations. Any breaches or contraventions of the Code should be taken seriously and appropriate action taken. As a minimum, it is expected that an identified breach of the code by a staff member would be reported to the manager of the person to whom the individual reports. Breaches by a person who reports directly to the CEO should be reported to the Chair or the Chair of a relevant Board committee.

AIST GOVERNANCE CODE GUIDANCE

PRINCIPLE 4: Safeguard financial integrity

A profit-to-member superannuation fund must have appropriate and rigorous processes for financial governance.

Legal and regulatory context

Section 35A of the SIS Act requires that the trustee must ensure that accounting records are kept that correctly record and explain the transactions and financial position of the trustee itself as well as the fund.

Section 109 of the SIS Act requires that a superannuation fund's investments must be made and maintained on an arm's length basis.

APRA's role as a prudential regulator includes ensuring that, in all reasonable circumstances, regulated superannuation funds can meet their financial obligations when they fall due.

Section 588G of the *Corporations Act 2001* imposes a duty on all directors not to trade while the company is insolvent. A breach is a criminal offence.

Funds have statutory reporting requirements to APRA, financial reporting requirements and professional accounting requirements that they must comply with.

In accordance with SPSS10 an independent auditor must be appointed. The auditor must be fit and proper pursuant to SPSS20 and must issue their opinion on the financial statements to the trustee and members of the fund.

REQUIREMENT 4.1

The Board of a profit-to-member superannuation fund must ensure the financial integrity of both the fund and the trustee entity.

COMMENTARY:

In ensuring the financial integrity of the fund and the trustee itself, it is expected that the Board would:

- Keep assets, income and financial records of the two entities separate;
- Have procedures in place to ensure that assets, income and liabilities (including tax liabilities) attributable to various sub-plans, investment options and any reserves are clearly identifiable and appropriately recorded;
- Have procedures in place to ensure that transactions are properly authorised, and are undertaken on an arm's length basis; and
- Have procedures in place to ensure that financial records are subject to independent validation.

The Board should ensure that it has adequate skills within its own ranks and in senior management to question advisers and make an informed judgement on their advice.

The Board, management and auditors must undertake sufficiently detailed analysis and enquiries into the fund's accounts to ensure that all Australian accounting standards and audit and assurance standards have been met, and the accuracy of the fund's accounts is protected.

A well-functioning Board would:

- Have direct access to the fund's auditors, actuaries, valuers, custodian and other appointed experts;
- Ensure that third-party experts have the appropriate skill, competence and diligence for the role and that their commitment is in line with the fund's relevant service standards;
- Satisfy themselves that the consultants are free of conflicts and can provide independent advice; and
- Assess the quality of the advice before relying on it.

REQUIREMENT 4.2

A profit-to-member superannuation fund must ensure due process in all transactions, and ensure that any related party transactions are conducted under market conditions with full transparency and disclosure.

COMMENTARY:

In addition to the legal requirements for arm's length contracting, Boards should be confident in the integrity of all material transactions and their benefit for members of the fund. The fund's process for safeguarding such transactions should be relative to transaction complexity and size and should be disclosed.

If the deal is with a related party to the fund, the trustee or a sponsoring organisation of the fund, then the importance of transparency in the process is even more significant. Related party transactions should be disclosed.

REQUIREMENT 4.3

The Board of a profit-to-member superannuation fund must receive an attestation from the fund's CEO and CFO that the fund's accounts are a true and accurate reflection of the fund's financial position and that the financial records have been properly maintained, before approving the financial statements.

COMMENTARY:

It is expected that the audit committee of a registered fund would provide diligent oversight of the fund's financial reporting and disclosures and provide the necessary assurances to the fund's Board.

The Board should be satisfied that the declaration from the CEO and CFO is based on a robust system of internal controls and risk management.

While the views of the audit committee are an important factor in Board consideration of the accounts, directors cannot rely on them without giving their own independent consideration to the accounts. It is important that all directors have the skills and confidence to review fund accounts and ask pertinent questions about them.

AIST GOVERNANCE CODE GUIDANCE

PRINCIPLE 5: Respect the rights of scheme participants

A profit-to-member superannuation fund must respect the rights of stakeholders. These scheme participants must be provided with open and transparent disclosure as well as opportunities to participate in dialogue with the fund's Board and management.

Legal and regulatory context

The disclosure requirements imposed on superannuation funds are extensive and cover a wide range of subject matter. There are reporting requirements from the regulators, as well as those that exist in legislation.

SIS Regulation 2.38 requires superannuation funds to disclose a range of information about the fund and its responsible persons.

REQUIREMENT 5.1

A profit-to-member super fund must develop and implement a stakeholder engagement program, for effective disclosure of relevant and material issues. The program must provide opportunities for directors and senior management to communicate directly with stakeholders and for stakeholders to ask questions of them.

COMMENTARY:

While members will always be the main stakeholders in profit-to-member funds, employers, sponsoring organisations and staff all have a legitimate interest in the fund's sound governance and performance.

In addition to the requirements to disclose a range of information, AIST registered funds should give thought to the quality, readability and ease-of-access of information relevant to their members and employers.

All information disclosed should be accurate and plainly drafted, accepting that not everyone has high levels of understanding of complex financial issues and investment matters. Funds should have regard to the usability of the information contained in their communications including on their website, considering their material stakeholders and their interaction with such information. Depending on the fund's membership demographic, it may be desirable to provide access to key information in languages other than English.

Funds should consider using best practice frameworks such as the International Integrated Reporting Framework and Global Reporting Initiative for guidance in their corporate reporting.

Engagement with stakeholders provides a benefit to them collectively, in that more engaged members are more likely to make well-informed decisions about remaining with the fund, making additional contributions and whether they wish to choose an investment strategy other than MySuper for some or all of their benefit. Engaged employer sponsors are more likely to retain the fund as the default for their employees.

Engagement goes beyond the simple provision of information to enabling an understanding of the fund's philosophy, culture and planned strategic direction.

Representation of members and employers on the fund's Board is a key facilitator of dialogue with members and employers and creates an accountability mechanism in the heart of the governance structure.

A program for engaging with member and employer sponsoring organisations should also create opportunities for two-way communication. While the Board is not specifically accountable to the sponsoring bodies, or required to disclose information to them, mechanisms for continuous communication should be encouraged as this leads to improved mutual cooperation and understanding. These relationships should not only exist through the relevant nominated directors, but through the Chair and management of the fund.

Funds should take into account the cost and practicality of providing member engagement opportunities.

Providing a capacity for Board members and senior management to interact directly with stakeholders, and for stakeholders to ask questions and make comment (for example using webinars or social media), is a good way to identify those issues which are of most interest to stakeholders and to help pitch communications in a way which members can understand.

Funds should also ensure that members' personal account information is easily accessible to them on the fund's website through a secure portal.

Complaints procedures should be clear and accessible for members and all complaints should be treated seriously by the fund. The Board should receive reports on complaints, and any actions arising from them should be disclosed at an aggregated level (in a way that protects confidentiality).

PRINCIPLE 6: Recognise and manage risk

In accordance with SPS220, a profit-to-member superannuation fund must establish a robust risk management framework, monitor and regularly review the effectiveness and continuing appropriateness of that framework. The risk management framework must consider the maintenance and prioritisation of a member-first culture.

Legal and regulatory context

Section 52(8) of the SIS Act requires superannuation trustees to comply with a range of risk covenants including the formulation and review of a risk management strategy. SPS220 requires superannuation funds to have a comprehensive risk management framework that covers, among other things, governance risk.

REQUIREMENT 6.1

A profit-to-member superannuation fund must have a strong risk culture with a Board that provides robust oversight of the fund's material risks. The risk management framework must explicitly address factors that may erode the fund's members-first culture.

COMMENTARY:

Profit-to-member superannuation funds are obliged to comply with the general legal and regulatory requirements surrounding risk management frameworks.

The members-first culture of AIST registered funds provides a clear point of difference from other superannuation funds. Preserving it is integral to the values and performance of a profit-to-member fund. Any threat to that point of difference would put at risk the fund's ability to deliver its business strategy. There have been examples in the past of organisations which have been established for the mutual benefit of members but which have subsequently changed so that benefits were disproportionately captured by the governing body and management.

AIST registered funds should therefore be diligent in identifying and monitoring risks that could weaken the profit-to-member model and put in place appropriate risk mitigation strategies.

AIST GOVERNANCE CODE GUIDANCE

PRINCIPLE 7: Remunerate fairly and responsibly

A profit-to-member superannuation fund must establish a remuneration policy for its trustee directors and staff in alignment with the best interests of the members of the fund, and that complies with SPS510 and SPG511.

Legal and regulatory context

SPS510 requires Boards of superannuation funds to have a remuneration committee and remuneration policy. SIS Regulation 2.37 requires extensive remuneration disclosures.

REQUIREMENT 7.1

A profit-to-member superannuation fund must have policies and practices in place to attract and retain highly competent people, assessed relative to the size, nature and complexity of the fund. These policies and practices must be consistent with its responsibilities for maximising members' retirement outcomes and encouraging and rewarding ethical practices and behaviour.

COMMENTARY:

Funds are required to develop, monitor and review their remuneration policy. This policy should:

- Reflect the size and complexity of the fund;
- Reflect the long-term interests and strategy of the fund;
- Promote ethical behaviour;
- Be aligned with delivering on members' best interests;
- Be sustainable and not negatively impact on culture, attitudes and behaviour; and
- Be disclosed and available to members and other scheme participants.

Trustee director and senior management remuneration must be disclosed and the way in which it is presented should be easy for stakeholders to understand.

PRINCIPLE 8: Strong investment governance practices

A profit-to-member superannuation fund must establish an investment framework to deliver appropriate retirement outcomes for its members and continually monitor and review the effectiveness and continuing appropriateness of that framework.

Legal and regulatory context

Section 52(6) of the SIS Act requires superannuation trustees to comply with a range of investment covenants including the formulation and review of a risk adjusted investment strategy for the whole of the fund and for each investment option, the requirement for investment diversification and the exercise of due diligence in making its investment decisions. SPS530 requires superannuation funds to formulate specific and measurable investment objectives and implement due diligence processes for investment selection. It also requires stress testing, monitoring the performance of investments, review of objectives and strategies, and a liquidity management plan at fund and investment option levels.

REQUIREMENT 8.1

A profit-to-member superannuation fund must design and manage appropriate investment strategies having regard to member demographics and circumstances during both the accumulation and decumulation phases.

COMMENTARY:

In addition to the legal and regulatory requirements, AIST registered funds should ensure that their members-first culture is always at the heart of their investment decision-making.

Profit-to-member super funds should:

- Have a good understanding of its current and prospective member demographics;
- Understand the employment and retirement pathways and expectations of different member cohorts; and
- Understand how these inform the investment choices of members and investment strategies of the fund.

These understandings should inform the design and investment strategy of the fund's MySuper option, as well as the selection of other choice investment options to be offered to members.

Profit-to-member super funds should consider a range of factors in determining appropriate investment strategies to be offered to members of the fund, including but not limited to:

- Age of members and likely length of stay with the fund;
- Occupational profiles and associated retirement ages;
- Gender and ethnicity considerations;
- Members' risk appetites over the length of their stay with the fund;
- Accumulation versus decumulation phases;
- Inflows versus outflows trends; and
- Costs, risk and return characteristics of different investment types, including taxation and investment management costs.

These considerations should inform fund decisions about the number and characteristics of investment options to be offered to members in the accumulation phase and to those drawing an income stream from the fund. In particular, funds should note that the investment horizon and taxation considerations are materially changed if members near retirement age are likely to transition to an income stream from the fund rather than withdraw a lump sum at that point.

Monitoring and accountability

Adoption of the Governance Code should lead the Board of AIST registered funds to turn their minds to the principles and accompanying requirements in the Code and consider how they help achieve outcomes in the best interests of their members. Funds will need to consider the requirements for achieving each principle and then report, on an annual basis, on how they meet the Code.

COMPLIANCE WITH THE CODE

With effect from the 2018-19 financial year, all AIST registered funds will need to demonstrate how they have fulfilled each requirement set out in the Code, or provide a reasonable explanation of why it was not possible to comply, or why it would not be in the interests of members of the fund if they were to comply.

AIST recognises that there may be a good reason an AIST registered fund does not meet a particular requirement of the Code. The 'if not, why not' reporting framework upon which the Code is based anticipates this, provided the fund Board has discussed the matter and considered the appropriateness of its alternative approach for its particular circumstances.

Where funds do not fulfil a requirement, they will be expected explain why it was not possible to meet it or why it would not be in the best interests of members to do so. If the fund's existing governing rules prevent them from fulfilling a requirement, the Code notes an expectation that fund Boards would negotiate with key stakeholders to secure changes to enable compliance. AIST recognises that, for public sector funds where the governing rules are established in legislation, achieving change may take a significant time. Where relevant, funds in this situation should report their inability to fulfil a particular requirement and note the actions they have undertaken in seeking a change to the governing rules.

REPORTING ON MEETING CODE REQUIREMENTS

EXPECTATIONS OF AIST REGISTERED FUNDS

The Boards of AIST registered funds will be required annually to sign a declaration setting out briefly how they have met each requirement of the Code or, if certain requirements have not been satisfied, why it was not possible or not in the interests of members to do so.

They would provide the declaration to the Code monitoring body by 30 September following the end of the reporting year.

While the final form of reporting will be established after the Monitoring Panel has been appointed, it is likely to be similar to that shown in **Appendix A**.

It is important that funds recognise, and where appropriate make use of, the flexibility inherent in the 'if not, why not' reporting approach to tailor their governance practices to their individual circumstances, rather than opting for a straightjacket that does not meet their specific needs.

It is expected that fund staff would prepare material for the Board's consideration, to enable the declaration to be signed.

There would be no requirement for external validation of the Board's declaration, except by the Code monitoring body as set out below.

SELF-PUBLISHING THE OUTCOMES OF THE REVIEW AND ACCOUNTABILITY PROCESS

Funds are encouraged but not required to publish their declaration about the way in which they have met the requirements of the Code, or the reasons why they have not. Ideally, reporting would be publicly available either in member funds' annual reports or on the relevant governance pages of their websites.

THE MONITORING PANEL

COMPOSITION OF THE MONITORING PANEL

The AIST Board will appoint a three person panel, comprising an eminent Chair, a person with significant experience in the profit-to-member sector of the superannuation industry and a person with significant experience in governance to monitor reporting against the Code.

TERMS OF REFERENCE FOR THE MONITORING PANEL

The terms of reference for the panel will be to:

- Carry out an annual assessment of whether, and to what extent, each AIST member fund meets the requirements of the Governance Code, including assessing the reasonableness of funds' explanations of why they have not met the requirements.
- On a light sample basis, engage with funds to test the basis on which they have made declarations about meeting the requirements of the Code, or explaining why they have not fulfilled certain requirements.
- Annually, provide to the AIST Board a report setting out details of:
 - those funds that meet all requirements of the Code;
 - those that meet most requirements and for the others have provided explanations which the panel finds reasonable; and
 - those member funds that, in the opinion of the panel, neither meet a requirement nor have a reasonable explanation for not meeting it.
- Provide to AIST examples of best practice governance in the profit-to-member sector.
- Recommend, to AIST and affected member funds, engagement or education initiatives based on relevant findings.
- Annually, prepare for publication an overview report on the extent to which the AIST member funds have satisfied the requirements of the Code, or provided reasonable explanations where they have not done so. It would not name individual funds, except perhaps in drawing attention to examples of best practice.
- Draw attention to relevant governance developments in Australia and overseas.
- Make recommendations about adjustments to the Code for its three yearly review.

VALIDATING FUND REPORTING

The Panel will assess the reasonableness of explanations about why a fund has not met a requirement.

In addition, each year the Panel would identify a light sample of about 5 to 10 per cent of AIST registered funds to assess the basis on which the Board made its statement about satisfying between two and five of the requirements as nominated by the Panel. The secretariat would engage with staff of selected funds to gather the required information. The secretariat would report its findings back to the Panel.

In any year the Panel could, at its discretion, choose requirements at random for each selected fund, or adopt a themed approach.

PUBLIC REPORTING ON FUNDS' PERFORMANCE IN MEETING CODE REQUIREMENTS

The Code monitoring body will make an annual public overview report on the extent to which the AIST member funds have satisfied the requirements of the Code, or provided reasonable explanations where they have not done so. It would not name individual funds, except perhaps in drawing attention to examples of best practice.

Other than with the consent of the fund in question, AIST will only make public a finding in relation to the Code in the unlikely event that a fund persistently declined to satisfy one or more requirements of the Code without offering a reasonable explanation. Such a fund would likely cease to be a member of AIST.

Glossary

AIST registered fund means a fund, determined by the AIST Board to be eligible for registered fund status, being a representative superannuation fund within the meaning of the AIST constitution.

Disclosure means to make publicly available, and when disclosing care should be given to ensure the particular item is worded, and presented, in a clear and effective manner.

Material issue means an issue, the disclosure of which is likely to influence the decision – making of the person to whom it is disclosed.

Material transaction means a transaction:

- Whereby the fund commits the lesser of 1% or more of the assets of the fund, 20% of the assets of a single investment option or A\$100 million;
- Whereby the fund gains or exits a controlling interest in any investment; or
- Which may expose the fund to reputational risk.

Non-representative director means a director of the fund who is not nominated by a sponsoring organisation as a representative of the members or employer sponsors of the fund.

Representative director means a director of an equal representation Board who is nominated by a sponsoring organisation as a representative of either the members or employer sponsors of the fund.

Scheme participants means members, beneficiaries, employer sponsors, fund staff and sponsoring organisations of the superannuation fund.

Senior executive includes but is not necessarily limited to any person who meets the definition of a responsible officer in section 10 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act).

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

Sponsoring organisations means the organisations that have rights under the superannuation fund's governing documents to nominate or appoint trustee directors to the Board.

SPS means superannuation prudential standard.

Appendix A

SAMPLE REPORTING FORMAT

With the authority of the Board of *<insert name of registered fund>*, I *<insert name and position>*, advise that the fund has satisfied the requirements of the AIST Governance Code during the *<specify year>* reporting period as indicated in the table below.

Requirement	Indication of how the fund has satisfied the requirement, or explanation of why it was not possible, or not in the best interests of members, to do so
<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 in particular, this includes engagement with sponsoring organisations.</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>1.3 The fund’s company secretary is accountable directly to the Board, through the Chair, on all matters concerning effective Board operations and must provide every assistance to the Board to fulfil their obligations in acting in the best interests of members. The Chief Executive Officer must not be the company secretary.</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 to the needs of all its members.</p>	

AIST GOVERNANCE CODE GUIDANCE

<p>1.5 In accordance with SPS510, profit-to-member superannuation funds must have procedures to evaluate the performance of the Board and individual trustee directors at least annually. The fund must disclose a summary of those procedures and confirm annually that the performance evaluations were undertaken during the reporting period.</p>	
<p>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.</p>	
<p>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 have a charter that is disclosed 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.</p>	
<p>2.2 A profit-to-member superannuation fund must maintain a matrix showing the skills, relevant experience and diversity the Board currently has and acknowledge gaps it is looking to fill in order to effectively fulfil its strategic plan. It must disclose annually a representation of the existing collective skills, experience and diversity of the Board.</p>	
<p>2.3 In disclosing the names of its directors, a profit-to-member superannuation fund must identify for each director whether they are a member representative, an employer representative or a non-representative member. In each instance, the name of the nominating body must also be disclosed.</p>	
<p>2.4 The voting rights of all trustee directors on the Board must be equal, regardless of their status as a member or employer representative director, or non-representative director. The voting majority for any Board decision should be no less than two-thirds of all trustee directors.</p>	
<p>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.</p>	
<p>2.6 The CEO must not be a director of the fund.</p>	
<p>2.7 A profit-to-member fund must have an induction program for new trustee directors and provide appropriate ongoing professional development and training opportunities to continuously enhance their skills and knowledge.</p>	
<p>3.1 A profit-to-member superannuation fund must have a code of conduct for its Board, senior management and employees. This code, or a summary of it, must be disclosed.</p>	
<p>4.1 The Board of a profit-to-member superannuation fund must ensure the financial integrity of both the fund and the trustee entity.</p>	
<p>4.2 A profit-to-member superannuation fund must ensure due process in all transactions, and ensure that any related party transactions are conducted under market conditions with full transparency and disclosure.</p>	



<p>4.3 The Board of a profit-to-member superannuation fund must receive an attestation from the fund’s CEO and CFO that the fund’s accounts are a true and accurate reflection of the fund’s financial position and that the financial records have been properly maintained, before approving the financial statements.</p> <p>In accordance with SPS510 an independent auditor must be appointed. The auditor must be fit and proper pursuant to SPS520 and must issue their opinion on the financial statements to the trustee and members of the fund.</p>	
<p>5.1 A profit-to-member superannuation fund must develop and implement a stakeholder engagement program, for effective disclosure of relevant and material issues. The program must provide opportunities for directors and senior management to communicate directly with stakeholders and for stakeholders to ask questions of them.</p>	
<p>6.1 A profit-to-member superannuation fund must have a strong risk culture with a Board that provides robust oversight of the fund’s material risks. The risk management framework must explicitly address factors that may erode the fund’s members-first culture.</p>	
<p>7.1 A profit-to-member superannuation fund must have policies and practices in place to attract and retain highly competent people, assessed relative to the size, nature and complexity of the fund. These policies and practices must be consistent with its responsibilities for maximising members’ retirement outcomes and encouraging and rewarding ethical practices and behaviour.</p>	
<p>8.1 A profit-to-member superannuation fund must design and manage appropriate investment strategies having regard to member demographics and circumstances during both the accumulation and decumulation phases.</p>	

Signed on behalf of the Board

Date

AIST GOVERNANCE CODE GUIDANCE

EXAMPLE RESPONSE WHERE A REQUIREMENT HAS BEEN MET

<p>4.2 A profit-to-member superannuation fund must ensure due process in all transactions, and ensure that any related party transactions are conducted under market conditions with full transparency and disclosure.</p>	<p><i>The fund meets the requirement.</i></p> <p><i>The fund maintains a register of related parties with which it has any commercial arrangement (e.g. transaction banking through ME Bank). In every case, fund management is aware of market terms offered for similar services by unrelated parties, and is satisfied that the terms secured by the fund are at least as favorable to members as those generally available in the market.</i></p> <p><i>The fund publishes in the member section of its website a list of each related party with which it has any commercial arrangement, and a broad description of the services provided.</i></p>
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EXAMPLE ACCEPTABLE RESPONSE WHERE A REQUIREMENT HAS NOT BEEN FULLY MET

<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 in particular, this includes engagement with sponsoring organisations.</p>	<p><i>The fund partly meets this requirement, and has good reason for not fully meeting it.</i></p> <p><i>No new board appointments were made in the reporting year. The board renewal committee met with each of the sponsoring organisations and there is agreement that sponsoring organisations will have regard to the board's requirements in terms of skills and experience for the next director(s) appointed by each organisation. However, under the terms of the fund's governing rules, it is the sponsoring organisations rather than the board which has the power to appoint directors. The board has initiated discussions with the sponsoring organisations to seek a change in the governing rules so that a sponsoring organisation could only appoint a director if the board passed a resolution accepting the appointment.</i></p>
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