



**ICGN**

International Corporate Governance Network

Financial Services Council  
Level 24  
44 Market Street  
Sydney  
NSW 2000  
Australia

Email: [standards@fsc.org.au](mailto:standards@fsc.org.au)

22<sup>nd</sup> October 2012

Dear Sirs,

**Re: Response regarding draft proposed Standard on superannuation governance.**

We welcome the opportunity to respond to the FSC's proposed revised standard for voting policy, records and disclosure.

We are writing on behalf of the International Corporate Governance Network (ICGN). The ICGN is a global membership organisation of over 500 institutional and private investors, corporations and advisors from 50 countries. Our investor members are responsible for global assets of US\$18 trillion.

The ICGN's mission is to raise standards of corporate governance worldwide. In doing so, the ICGN encourages cross-border dialogue at conferences and influences corporate governance public policy through its Committees. We promote best practice guidance, encourage leadership development and keep our members informed on emerging issues in corporate governance through publications and the ICGN website. Information about the ICGN, its members, and its activities is available on our website: [www.icgn.org](http://www.icgn.org).

**Pension schemes have specific governance needs**

There is strong academic and practical evidence internationally that boards of trustees of pension schemes are most effective where they fulfil two fundamental requirements: accountability and representation, and skill and professionalism. In much of what this standard does, it emphasises independence above all else, which may be an attempt to address the latter aim, and may risk neglecting the vital role of pension scheme boards as representative fiduciaries trusted to take decisions on behalf of beneficiaries. The references to external standards are in many cases to the governance standards for public companies; in this aspect particularly, these are not wholly relevant to pension schemes. We would therefore suggest that the standard refers to the

expanding and rich literature on pension fund governance specifically. The principal among these is the OECD guidelines in this regard.

### **Definition of independence**

Since one of the most important roles of pension scheme directors is to be representative of the beneficiaries, and so trusted by them to act fully on their behalf, it is vital that any definition of independence permits a director to be considered independent notwithstanding the fact that he or she is a beneficiary of the pension scheme. At present 8.2.4(e) bar on material contractual relationships for a director to be deemed independent might be understood to prevent a beneficiary from being accepted as an independent director (while the individual contract will not be material to the scheme, it certainly will be to the individual – and we would note that both aspects are important to the consideration of the issue of materiality). We would therefore suggest that the definition of independence must be amended to make this explicitly clear. It is worth noting that one would be significantly concerned about the independence of a director whose personal pension was overseen by a rival organisation in the context of open offer.

### **Flexibility**

We welcome the flexibility allowed under 8.5 for temporary vacancies in office. We wonder whether some similar flexibility may be required with regard to the requirement that the quorum for every meeting needs to be a majority of independent directors. This standard may be difficult to achieve in particular circumstances, whether in the case of a temporary vacancy or something even more short-term. It would be extremely unfortunate if schemes were prevented from taking appropriate and necessary actions because of the one-off absence of one or more independent director. While there may need to be mechanisms to avoid abuse of such flexibility, it is important to provide some degree of flexibility in this respect.

### **Stewardship, not just voting**

In our response to the FSC's draft standard on voting, which is in effect embedded within the requirements of this standard, we have raised the question as to the narrowness of its requirements given that it acknowledges that voting is only one element of the institutional investor's important role in improving and upholding the governance of entities and markets in which they invest. As we state in that response, we would welcome the FSC giving consideration to broadening the scope of Standard 13 to encompass these activities more fully. This would reflect the ICGN's own *Statement on Institutional Shareholder Responsibilities* and the world's developing body of stewardship codes. We would also commend to the FSC the inclusion of a reference to, or the issues considered by, the ICGN's *Model Mandate Initiative*. We attach both documents for your reference.

The proposal to require the development and disclosure of an ESG policy may be an approach to this call. We fail to understand the logic of restricting such a requirement simply to MySuper offerings rather than applying it more generally: as the standard itself states (at 10.7), this is an important way for fiduciaries to deliver value over the

long-term to their beneficiaries and in our view therefore it ought to apply across the whole superannuation marketplace. We do not favour the FSC providing a model ESG policy in the way that is proposed. This risks reducing the engagement of directors with the relevant issues and makes the approach more likely to be compliance-driven rather than principles-based. We would welcome the FSC at most laying out the elements that are needed to be included in an ESG policy, rather than providing the full model as proposed. We believe that the list of questions at 10.9 delivers this sufficiently.

If you would like to discuss any of these points, please do not hesitate to contact Kerrie Waring, ICGN Acting Head of Secretariat at +44 207 612 7079 or [kerrie.waring@icgn.org](mailto:kerrie.waring@icgn.org). Thank you for your attention and we look forward to your response on the points above.

Yours faithfully,



Paul Lee  
Co-Chair, ICGN Shareholder  
Responsibilities Committee



Rita Benoy Bushon  
Co-Chair, ICGN Shareholder  
Responsibilities Committee



Michelle Edkins  
Chairman of the ICGN Board of Governors

Cc: ICGN Board Members  
ICGN Shareholder Responsibilities Committee