Submission to Productivity Commission Inquiry
Default superannuation funds in modern awards
A few points on governance

I have been asked to make a few clarifying comments about the governance of superannuation funds. I do so in my personal capacity and not in any way representing the views of my current employer, Challenger Limited or the Government.

Independent directors

The key thing about looking after large amounts of other people's money is that you have the necessary skills to do so. You particularly need to be able to bring independent judgment to the role, asking the right questions where necessary. You need to be able to act without fear or favour. It's at this point where the super industry often gets caught up in arguments around terminology; whether or not someone is 'independent' or, alternatively, querying the need for independence in the first place. The desirability of independence in corporate governance is well established to the point of being beyond serious question. There are some technicalities in the superannuation legislation that complicate this debate and so, in the 2010 Super System Review, the Panel used the expression 'non-associated' to make it clear what was meant. The essence was the need for an 'outside perspective'.

This is how it was put on page 55 of Part 2 of the Final Report of the Super System Review:

> 'Best practice in corporate governance includes the presence of independent directors on the board.[1] The Panel believes that the same broad principle is relevant to superannuation fund boards. However, given the different types of superannuation funds, the reasons why independence is valuable differs. For example, for retail funds, independence from management would be an important objective; on the other hand, for many not-for-profit funds obtaining an 'outside perspective' is vital. The Panel believes that outsiders or 'non-associated' trustee-directors (that is, people who generally have no historic connection with the fund or the appointor) could help to provide an objective assessment of issues that would assist the employer and member representatives. Of course, the boards of many superannuation funds already include independent trustee-directors. The Panel believes that those trustee-directors have brought great value to the boards that they serve, a proposition borne out in several submissions.[2]

[1] (Endnote 28) For a brief summary see IOSCO Corporate Governance Task Force, 2006, *Consultation Report: Board Independence of Listed Companies*, p 32. < www.iosco.org/library/pubdocs/pdf/IOSCOPD228.pdf>.
[2] (Endnote 29) For example, Cbus, Submission no. 35, p 1; EquipSuper, Submission no. 328, p 11; UniSuper, Submission no. 56, pp 5-6; PwC, Submission no. 85, p 6.

> The Panel believes that a minimum number of non-associated trustee-directors should be required on all boards. Also, the Panel believes it is important that such trustee-directors have a 'critical mass' so that they can genuinely influence the decisions of those boards.
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> For this purpose, the term 'non-associated' would have a different meaning from the term 'independent' in the SIS Act. For example, the Panel believes that a member of the fund could be a 'non-associated' trustee-director. Non-associated trustee-directors would still need to be free of connections to, or associations with, employer sponsors, the appointor (other than by reason of the appointment itself), entities related to the trustee, employer groups, unions, service providers and should not be current or former executives of the fund or a related entity. Of course, if a non-associated trustee-director is paid for their duties as a trustee-director, the fee should be paid only from fund assets and not by any third party.
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> …'

It remains my view that the super industry would benefit from an increased participation by talented business people not directly connected to super, but with relevant skills. Such people bring the value of their reputations and have the option of resigning if they feel that they are not adding value or are not happy with the way things are going. This reflects the legal notion of the 'disinterested' director.

It is widely accepted that good governance impacts investment returns, possibly as much as one or two percentage points per annum.[3] These issues are therefore not trivial. We are rapidly approaching the point where the leading super funds will control $100 billion each. This lead the Panel of the Super Review to question a model that was founded in a $50 million world and to suggest enhancements, including that all APRA-regulated super funds have a majority of non-associated directors unless they were following the equal representation model, in which case it was recommended that not less than one-third be non-associated.

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1 October 2012

[3] Ambachtsheer, K (2006) *Pension Revolution: A solution to the Pension Crisis*, John Wiley & Sons.