**The Victorian Bar** hereby nominates the following person for appointment to the Board of Legal Super Pty Ltd with effect from 9 June 2021:

|  |  |
| --- | --- |
| **First name:** |  |
| **Surname:** |  |
| **Residential address:** |  |
| **Suburb:** |  |
| **State:** |  |
| **Postcode:** |  |

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**Signature: Victorian Bar: Date:**

*(of an officeholder of the nominating body)*

for a new nominee (not a current Director of Legal Super Pty Ltd) please tick below indicating the items listed below are attached:

|  |  |  |
| --- | --- | --- |
| **Yes** | **No** |  |
|  |  | Curriculum vitae outlining nominees work experience and academic credentials |
|  |  | Completed nominee experience and skills questionnaire |
|  |  | Completed fit and proper declaration |
|  |  | Completed Australian police check form with copies of personal identification documents satisfying the 100-point check. |
|  |  | Confirmation that nominee is a member of legalsuper (n.b. this requirement does not apply to nominees by the Law Society of NSW and Law Institute of Victoria). |

|  |  |  |  |
| --- | --- | --- | --- |
| **Name:** |  | | |
| **List all tertiary or post-graduate qualifications:** | 1. <insert details> | | |
| **List and describe any other board or committee appointments over the last five years:** | **Name of organisation** | **Period of appointment** | **Role held & responsibilities** |
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| Describe your work experience over the last five years: |  |  |  |
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| **Describe any other relevant experience, professional development or training:** |  |  | |
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| legalsuper board skills and capabilities requirements | | | |
| Insert details of your ability to satisfy all of these core competencies | **Core competencies** | | |
| 1. Superannuation and/or financial services |  |  |  |
| 1. Financial literacy |  |  |  |
| 1. Governance & trusteeship |  |  |  |
| 1. Board or Committee experience |  |  |  |
| Insert details of your ability to satisfy all of these core attributes | **Core attributes** | | |
| 1. Integrity and judgment |  |  |  |
| 1. Ability to think critically and impartially |  |  |  |
| 1. Strong interpersonal skills & collaboration |  |  |  |
| 1. Effective listener, communicator and contributor |  |  |  |
| Insert details of your ability to satisfy any of these collective competencies | **Collective competencies**  **required by some directors** |  |  |
| 1. Executive management & leadership |  | | |
| 1. Investment |  | | |
| 1. Strategy & business planning |  | | |
| 1. Information technology |  | | |
| 1. Human resources |  | | |
| 1. Marketing & communication |  | | |
| 1. Risk management |  | | |
| 1. Taxation |  | | |
| 1. Legal, regulatory & compliance |  | | |

I, the undersigned, confirm I have read the background information provided by legalsuper to the nominating body and hereby declare that I am eligible to be a director under the Corporations Law and on the Board of Legal Super Pty Ltd.

I confirm that the information contained in my completed Nominee Experience and Skills Questionnaire is true and complete and I give permission for legalsuper to verify any information provided by me in this Questionnaire and if relevant to contact nominated referees or other persons or organisations for verification purposes.

The items listed below have been provided by me to the nominating body:

|  |  |  |
| --- | --- | --- |
| **Yes** | **No** |  |
|  |  | Curriculum vitae outlining your work experience and academic credentials |
|  |  | Completed nominee experience and skills questionnaire |
|  |  | Completed fit and proper declaration |
|  |  | Completed Australian police check form with copies of personal identification documents satisfying the 100-point check. |
|  |  | I confirm that I am a member of legalsuper (n.b. this requirement does not apply to nominees of the Law Society of NSW and Law Institute of Victoria). |

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**Signature: Date:**

*(by the individual nominated by the nominating body)*

# Background:

All responsible officers of Legal Super Pty Ltd (**the Trustee**) must complete this declaration on appointment and thereafter at least annually.

### DECLARATIONS TO BE MADE BY ALL RESPONSIBLE PERSONS:

### I agree to be a responsible officer of the Trustee of legalsuper (the Fund) and will:

1. assist the Trustee obtain a criminal history check in respect of myself
2. maintain a satisfactory solvency record
3. provide, on appointment, and also while in office, the following to the Company Secretary:
4. curriculum vitae outlining my qualifications, training or other professional development before and after my appointment as a responsible officer
5. personal information including full name (and any previous names), date and town/state/country of birth, nationality, residency status (if not Australian), residential address, email address, office and mobile telephone number and will promptly advise any future changes.
6. details of any executive or non-executive directorships or major shareholdings[[1]](#footnote-2) and any direct or indirect financial benefit I receive from an entity that provides services to the Trustee
7. complete training and professional development in accordance with the Trustee’s policy
8. provide any information or documentation required by the Trustee or Regulators

**Disqualified person requirements:**

1. I am not a “disqualified person” as defined in the *Superannuation Industry (Supervision) Act 1993* (*refer*  *A of explanatory notes, end of this declaration)*.

**Financial product advice:**

1. I am sufficiently trained to understand the meaning of “financial product advice”, “general financial product advice” and “personal financial product advice” for the purposes of the *Corporations Act* (*refer to B of the explanatory notes at the end of this declaration)*.
2. I am not authorised to provide financial product advice and will not do so.

**Conflicts of relevant interests or relevant duties:**

1. I will disclose conflicts of relevant interests or relevant duties in accordance with the Trustee’s policy.

**Compliance:**

1. I will comply with legal and regulatory standards applicable to my role as a responsible person.

**Fitness, propriety and character:**

1. I have not been:
2. convicted of any dishonesty offence
3. declared a bankrupt or discharged bankrupt
4. responsible for causing loss to others from seriously or persistently failing to satisfactorily manage my personal finances
5. the subject of an adverse finding by APRA or ASIC
6. found guilty of contravention of the Superannuation Industry (Supervision) Act 1993 or Financial Sector (Collection of Data) Act 2001
7. the subject of civil or criminal proceedings or enforcement actions in respect of the management of an entity or commercial or professional activities that were determined adversely against me and adversely reflected on my competence, diligence, judgment, honesty or integrity
8. reprimanded, disqualified, or removed by a professional or regulatory body due to poor honesty, integrity or business conduct

**DECLARATIONS TO ONLY BE MADE BY RESPONSIBLE OFFICERS NAMED IN THE TRUSTEE’S AUSTRALIAN FINANCIAL SERVICES LICENCE (I.E. ANDREW PROEBSTL & DAVID EASTWOOD). THEY ARE DEEMED EXCLUDED FROM ALL OTHER DECLARATIONS:**

**Financial product advice:**

1. I am sufficiently trained to understand the meaning of “financial product advice”, “general financial product advice” and “personal financial product advice” for the purposes of the *Corporations Act* (*refer to B of the explanatory notes at the end of this declaration)*.
2. I am authorised to provide general financial product advice only and will not provide personal financial product advice.
3. I understand I must undertake training and development as required by the Trustee’s policy, any law or regulation.

**ASIC financial services license requirements**

1. In the last 10 years in Australia or overseas, I have not been:
2. refused or restricted in the right to carry on any trade, business or profession for which financial services law requires a licence, registration or other authority
3. suspended, refused from membership or disciplined by any securities, futures, commodities or exchange
4. removed from membership or disciplined by any professional body
5. subject of any findings, judgment or proceeding involving fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceeding
6. involved in the management of a company or enterprise that had:
7. an external administrator appointed or was declared insolvent
8. revoked an instrument of approval under the *Superannuation Industry (Supervision) Act 1993*
9. revoked or suspended a *Corporations Act* licence (or previous laws) or *Insurance Agents and Brokers Act 1984* registration

**Conflicted remuneration**

I acknowledge and understand the Trustee’s obligation to ensure its responsible persons do not accept conflicted remuneration. *(refer to C of the explanatory notes at the end of this declaration).*

### In signing this declaration, I certify that all of the above declarations are correct at the date this declaration was signed and I will promptly notify the Company Secretary if any of these declarations change at a future date.

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| --- | --- |
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| **Signature** | **Date** |

## Explanatory notes:

## A: Disqualified persons

*Section 120(1) of the Superannuation Industry (Supervision) Act 1993, defines “disqualified persons” as including anyone:*

1. *convicted of an offence (including spent convictions) in respect of dishonest conduct in Australia or overseas*
2. *in respect of whom a civil penalty order has been made*
3. *declared “insolvent under administration” (see below)*
4. *disqualified by APRA, the Commissioner of Taxation or the Federal Court of Australia*

*Under this policy, it also includes having had an order made under section 19B of the Crimes Act 1914, or similar State, Territory or overseas law.*

## Insolvent under administration

*The Superannuation Industry (Supervision) Act 1993 defines “insolvent under administration” to mean a person who:*

1. *is a bankrupt and has not been discharged under the Bankruptcy Act 1966 or the law of an external Territory*
2. *is an undischarged bankrupt under the law of a country other than Australia or the law of an external Territory and includes:*
3. *a person any of whose property is subject to control under section 50 or 188 of the Bankruptcy Act 1966 or a corresponding provision of the law of an external Territory or the law of a foreign country*
4. *a person who has executed a personal insolvency agreement under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or the law of a foreign country*
5. *if a certificate has not been given under section 232 of that Act or the corresponding provision of the law of the external Territory or foreign country, as the case may be, in respect of the agreement*

## B: Financial product advice

*Section 766(B)(1) of the Corporations Act defines “financial product advice” as a recommendation or statement of opinion or report:*

1. *is intended to influence a person or persons in making a decision or interest in a particular or a class of financial products*
2. *could reasonably be regarded as being intended to have such an influence.*

*Provision of or giving of an exempt document or statement is not to be taken as the provision of financial product advice.*

*Section 766(B)(4) of the Corporations Act defines “general financial product advice” as financial product advice that is provided without consideration of the individual’s personal circumstances.*

*Section 766(B)(3) of the Corporations Act defines “personal financial product advice” as advice given or directed to a person where the provider of the advice has considered one or more of the person’s objectives, financial situation or needs, or a reasonable person might expect the provider to have considered one or more of those matters.*

## C: Definition of ‘conflicted remuneration’[[2]](#footnote-3)

*Conflicted remuneration is any monetary or non‑monetary benefit given to a financial services licensee or its responsible persons providing financial product advice to retail clients. The cost of intra fund advice to members is not conflicted remuneration.*

*The Trustee does not pay conflicted remuneration. A breach of the election to not charge conflicted remuneration to MySuper members would be a breach of a MySuper authorisation and could lead to the cancellation of the authorisation.*

*The Trustee’s RSE licence also contains the general fee provisions s99F of the Superannuation Industry (Supervision) Act 1993 whereby the cost of providing financial product advice to a member must not directly or indirectly be passed on to any other member of the fund in a number of defined circumstances. A breach of the general fee rules is a breach of the RSE Licence conditions and could lead to the cancellation of Legal Super Pty Ltd’s licence to act as a Trustee of legalsuper. Accepting conflicted remuneration is also a breach of the AFSL license conditions.*

***Note 1 - Obligations and covenants of directors in the SIS Act include:***

***52 Covenants to be included in governing rules—registrable superannuation entities***

***Governing rules taken to contain covenants***

*If the governing rules of a registrable superannuation entity do not contain covenants to the effect of the covenants set out in this section, those governing rules are taken to contain covenants to that effect.*

*General covenants - the covenants referred to in above include the following covenants by each trustee of the entity:*

*S52(2)*

*Act honestly in all matters concerning the entity;*

*Exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments;*

*Perform the trustee’s duties and exercise the trustee’s powers in the best interests of the beneficiaries;*

*Where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee:*

*Give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and*

*Ensure that the duties to the beneficiaries are met despite the conflict; and*

*Ensure that the interests of the beneficiaries are not adversely affected by the conflict; and*

*Comply with the prudential standards in relation to conflicts;*

*Act fairly in dealing with classes of beneficiaries within the entity;*

*Act fairly in dealing with beneficiaries within a class;*

*Keep the money and other assets of the entity separate from any money and assets, respectively:*

*Held by the trustee personally; or*

*Money or assets, as the case may be, of a standard employer sponsor, or an associate of a standard employer sponsor, of the entity;*

*Not enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee’s functions and powers;*

*If there are any reserves of the entity—to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the entity’s investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;*

*Allow a beneficiary of the entity access to any prescribed information or any prescribed documents.*

***Superannuation trustee***

*S52(3) A superannuation trustee is a person whose profession, business or employment is or includes acting as a trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.*

***Obligations to beneficiaries override obligations under certain other Acts***

*S52(4) The obligations of the trustee override any conflicting obligations an executive officer or employee of the trustee has under:*

*Part 2D.1 of the Corporations Act 2001; or*

*Division 4 of Part 3 of the Commonwealth Authorities and Companies Act 1997.*

***Trustee not prevented from engaging or authorising persons to act on trustee’s behalf***

*s52(5) A covenant referred to in paragraph (2)(h) does not prevent the trustee from engaging or authorising persons to do acts or things on behalf of the trustee.*

***Investment covenants***

*S52(6)*

*to formulate, review regularly and give effect to an investment strategy for the whole of the entity, and for each investment option offered by the trustee in the entity, having regard to:*

*Risk involved in making, holding and realising, and the likely return from, the investments covered by the strategy, having regard to the trustee’s objectives in relation to the strategy and to the expected cash flow requirements in relation to the entity; and*

*Composition of the investments covered by the strategy, including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification; and*

*Liquidity of the investments covered by the strategy, having regard to the expected cash flow requirements in relation to the entity; and*

*Whether reliable valuation information is available in relation to the investments covered by the strategy; and*

*Ability of the entity to discharge its existing and prospective liabilities; and*

*Expected tax consequences for the entity in relation to the investments covered by the strategy; and*

*Costs that might be incurred by the entity in relation to the investments covered by the strategy; and*

*Any other relevant matters;*

*Exercise due diligence in developing, offering and reviewing regularly each investment option;*

*Ensure the investment options offered to each beneficiary allow adequate diversification.*

***Insurance covenants***

*S52(7)*

*Formulate, review regularly and give effect to an insurance strategy for the benefit of beneficiaries of the entity that includes provisions addressing each of the following matters:*

*Kinds of insurance that are to be offered to, or acquired for the benefit of, beneficiaries;*

*Level, or levels, of insurance cover to be offered to, or acquired for the benefit of, beneficiaries;*

*Basis for the decision to offer or acquire insurance of those kinds, with cover at that level or levels, having regard to the demographic composition of the beneficiaries of the entity;*

*Method by which the insurer is, or the insurers are, to be determined;*

*Consider the cost to all beneficiaries of offering or acquiring insurance of a particular kind, or at a particular level;*

*Only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries;*

*Do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success.*

***Covenants relating to risk***

*S52(8)*

*Formulate, review regularly and give effect to a risk management strategy that relates to:*

*Activities, or proposed activities, of the trustee, to the extent that they are relevant to the exercise of the trustee’s powers, or the performance of the trustee’s duties and functions, as trustee of the entity; and*

*Risks that arise in operating the entity;*

*Maintain and manage in accordance with the prudential standards financial resources (whether capital of the trustee, a reserve of the entity or both) to cover the operational risk that relates to the entity.*

***Covenants relating to regulated superannuation funds—annual outcomes assessments***

*s52(9) If the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*is a*[*regulated superannuation fund*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*(other than a*[*regulated superannuation fund*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*with fewer than 5*[*members*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#member)*), the covenants referred to in*[*subsection*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52b.html#subsection)*(1) include the following covenants by each*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*of the*[*entity.*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)

*to determine, in writing, on an annual basis, for each [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) and*[*choice*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)[*product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*offered by the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*, whether the financial interests of the beneficiaries of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*who hold the product are being promoted by the*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*, having regard to:*

*if the product is a [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product)--a comparison of the [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) with other [MySuper products](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) offered by other*[*regulated superannuation funds*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*, based on the factors mentioned in*[*subsection*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52b.html#subsection)*(10), and a comparison of the [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) with any other*[*benchmarks*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#benchmark)*specified in regulations made for the purposes of this subparagraph; and*

*if the product is a*[*choice*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)[*product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*--a comparison of the*[*choice product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*with the*[*comparable choice products*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#comparable_choice_products)*in relation to the*[*choice product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*, based on factors mentioned in*[*subsection*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52b.html#subsection)*(10A), and a comparison of the*[*choice product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*with any other*[*benchmarks*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#benchmark)*specified in regulations made for the purposes of this subparagraph; and*

*the factors mentioned in*[*subsection*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52b.html#subsection)*(11);*

*to determine, in writing, on an annual basis, whether each*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*is promoting the financial interests of the beneficiaries of the*[*fund*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s242.html#fund)*, as assessed against*[*benchmarks*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#benchmark)*specified in regulations made for the purposes of this*[*paragraph*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52a.html#paragraph)*;*

*to make the determination referred to in*[*paragraph*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52a.html#paragraph)*(a), and a summary of the assessments and comparisons on which the determination is based, publicly available on the website of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*;*

*to do so within 28 days after the determination is made;*

*to keep the determination, and the summary of the assessments and comparisons on which the determination is based, on the website until a new determination is made as referred to in*[*paragraph*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52a.html#paragraph)*(a).*

1. *In comparing a [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) with other [MySuper products](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product), the*[*trustees*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*must compare each of the following:*

*(a)  the fees and costs that affect the return to the beneficiaries holding the [MySuper](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product)*[*products*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#mysuper_product)*;*

*(b)  the return for the [MySuper products](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) (after the deduction of fees, costs and taxes);*

*(c)  the level of*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*risk for the [MySuper products](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product);*

*(d)  any other matter set out in the*[*prudential standards*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#prudential_standard)*.*

*(10A)  In comparing a*[*choice product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*with the*[*comparable choice products*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#comparable_choice_products)*in relation to the*[*choice product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*, the*[*trustees*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*must compare each of the following:*

*(a)  the fees and costs that affect the return to the beneficiaries holding the*[*choice*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)[*products*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*;*

*(b)  the return for the*[*choice products*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*;*

*(c)  the level of*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*risk for the*[*choice products*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*;*

*(d)  any other matter specified in the*[*prudential standards*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#prudential_standard)*.*

1. *In determining whether the financial interests of the beneficiaries of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*who hold a [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) or*[*choice product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*are being promoted by the*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*, the*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*must assess each of the following:*

*(a)  whether the options, benefits and facilities offered under the product are appropriate to those beneficiaries;*

*(b)  whether the*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*strategy for the product, including the level of*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*risk and the return target, is appropriate to those beneficiaries;*

*(c)  whether the insurance strategy for the product is appropriate to those beneficiaries;*

*(d)  whether any*[*insurance fees*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#insurance_fee)*charged in relation to the product inappropriately erode the retirement income of those beneficiaries;*

*(e)  any other relevant matters, including any matters set out in the*[*prudential*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#prudential_standard)[*standards*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#prudential_standard)*.*

*Covenants relating to*[*regulated superannuation funds*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*--promoting financial interests of beneficiaries*

1. *If the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*is a*[*regulated superannuation fund*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*(other than a*[*regulated superannuation fund*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*with fewer than 5*[*members*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#member)*), the covenants referred to in*[*subsection*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52b.html#subsection)*(1) include a covenant by each*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*to promote the financial interests of the beneficiaries of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*who hold a [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) or a*[*choice product*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#choice_product)*, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes).*

*Covenants relating to*[*regulated superannuation funds*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*--MySuper products*

1. *If the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*is a*[*regulated superannuation fund*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#regulated_superannuation_fund)*that offers a [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product), the covenants referred to in*[*subsection*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52b.html#subsection)*(1) include the following covenants by each*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*:*

*(a)  to include in the*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*strategy for the [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product) the details of the*[*trustee*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#trustee)*'s determination of the matters mentioned in*[*paragraph*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52a.html#paragraph)*(9)(a);*

*(b)  to include in the*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*strategy for the [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product), and update each year:*

*the*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*return target over a period of 10 years for the*[*assets*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#asset)*of the*[*entity*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s38.html#entity)*that are attributed to the [MySuper product](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html" \l "mysuper_product); and*

*the level of risk appropriate to the*[*investment*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#invest)*of those*[*assets*](http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s10.html#asset)

***52A Covenants relating to directors to be included in governing rules—registrable superannuation entities***

*If the governing rules of a registrable superannuation entity of which a trustee is a body corporate do not contain covenants to the effect of the covenants set out in subsection (2), those governing rules are taken to contain covenants to that effect.*

*Act honestly in all matters concerning the entity;*

*Exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation entity director would exercise in relation to an entity where he or she is a director of the trustee of the entity and that trustee makes investments on behalf of the entity’s beneficiaries;*

*Perform the director’s duties and exercise the director’s powers as director of the corporate trustee in the best interests of the beneficiaries;*

*Where there is a conflict between the duties of the director to the beneficiaries, or the interests of the beneficiaries, and the duties of the director to any other person or the interests of the director, the corporate trustee or an associate of the director or corporate trustee:*

*Give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and*

*Ensure that the duties to the beneficiaries are met despite the conflict; and*

*Ensure that the interests of the beneficiaries are not adversely affected by the conflict; and*

*Comply with the prudential standards in relation to conflicts;*

*not to enter into any contract, or do anything else, that would:*

*Prevent the director from, or hinder the director in, properly performing or exercising the director’s functions and powers as director of the corporate trustee; or*

*Prevent the corporate trustee from, or hinder the corporate trustee in, properly performing or exercising the corporate trustee’s functions and powers as trustee of the entity;*

*Exercise a reasonable degree of care and diligence for ensuring that the corporate trustee carries out the covenants referred to in section 52.*

***Obligations to beneficiaries override obligations under certain other Acts***

*Part 2D.1 of the Corporations Act 2001; or*

*Division 4 of Part 3 of the Commonwealth Authorities and Companies Act 1997.*

***Director not prevented from engaging or authorising persons to act on behalf of the trustee***

*A covenant referred to in paragraph (2)(e) does not prevent the director from engaging or authorising persons to do acts or things on behalf of the trustee.*

***Using reasonable care and diligence to ensure compliance by corporate trustee***

*Reference to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a superannuation entity director would exercise in the circumstances of the corporate trustee.*

***Covenants operate as if director party to the governing rules***

*A covenant referred to in subsection (2) operates as if the director were a party to the governing rules.*

***Note 2: Working knowledge of the following key Acts that have application to superannuation funds and their trustees:***

*Superannuation Industry (Supervision) Act 1993*

*Superannuation (Resolution of Complaints) Act 1993*

*Related levy Acts*

*Knowledge of parts of the SIS Act relating to RSE licensing including:*

*SIS Act Part 2A – Licensing of Trustees and Groups of Individual Trustees*

*SIS Act Part 2B – Registrable Superannuation Entities*

*SIS Act Part 3 – Operating Standards*

*SIS Act Part 12 – Duties of Trustees and Investment Managers of Superannuation Entities*

*SIS Act Part 15 – Standards for Trustee’s Custodians and Investment Managers of Superannuation Entities*

*SIS Regulations Part 3A – Matters Prescribed or Specified in Relation to Licensing of Trustees and of Groups of Individual Trustees*

*SIS Regulations Part 4 – Management and Trusteeship of Superannuation Entities*

***Requirements imposed on superannuation funds by the SIS Act, including:***

*Eligibility requirements for trustee’s, investment managers, custodians, auditors and actuaries;*

*Duties and responsibilities of trustees, investment managers, custodians, auditors and actuaries;*

*Requirements for the trust deed of a superannuation fund;*

*Powers for APRA and ASIC to supervise and enforce compliance with SIS or the Corporations Act 2001;*

*APRA reporting and ASIC disclosure requirements;*

*Rules for the investment of superannuation fund money and borrowing by the Trustee;*

*Accounting requirements;*

*Penalties for contravention of SIS;*

*Rules for making contributions to and the payment of benefits from superannuation funds; and*

*Conditions for funds to receive concessional tax treatments.*

***Note 3 - Other prudential requirements of superannuation funds, including:***

*APRA regularly issues superannuation standards which contain prudential requirements of superannuation funds and their trustees. These standards can be accessed via the APRA website located at* [*https://www.apra.gov.au/industries/33/standards#category-2*](https://www.apra.gov.au/industries/33/standards#category-2) *and include:*

*SPS 114 - Operational Risk Financial Requirement*

*SPS 220 – Risk Management*

*SPS 231 – Outsourcing*

*SPS 250 – insurance in Superannuation*

*SPS 510 - Governance*

*SPS 520 – Fit & Proper*

*SPS 521 – Conflicts of Interest*

*SPS 515 – Strategic Planning and Member Outcomes*

*SPS 530 – Investment Governance*

*CPS 232 – Information Security*

#### About legalsuper

With 44,000 members, legalsuper is the predominant superannuation fund for the approximately 115,000 people who work in Australia’s legal community.

Employed and self-employed people can join legalsuper. As legalsuper is a public offer fund, individuals working outside the legal sector can join.

#### Investments

13 investment options are available for members to invest their balances including single asset class options (Australian shares, overseas shares, cash & enhanced cash) and nine multi asset class options with different risk and return profiles.

With the direct investment option members can invest their balance in individual securities of their choosing from a menu of securities which includes term deposits, S&P/ASX300 shares and exchange traded funds.

#### Insurances

Life, total & permanent disablement (**TPD**) and income protection insurances are available.

On joining, employed members are automatically provided $440,000 of life and TPD insurance up to age 44.

On joining, self-employed members are automatically provided $250,000 of life and TPD insurance.

Discounted health insurance is available via NIB.

#### Member education & advice

legalsuper has appointed Client Service Managers who work across Australia with members and employers. They are available to conduct workplace seminars or one-on-one meetings.

legalsuper’s website includes additional information and other resources including calculators to assist members better structure their membership.

#### Other features of membership

* Pension accounts (including transition to retirement pensions)
* Guaranteed income accounts (annuities provided via Challenger)
* 24 hour on-line access to enquire upon and update member accounts

#### The Board

**Structure and composition:**

The Board is comprised of ten Directors:

1. 1 independent Chair appointed by the Board;
2. 4 employer directors – 2 appointed by the Law Society of New South Wales and 2 appointed by the Law Institute of Victoria;
3. 5 member directors – 2 appointed by the Australian Services Union, 2 appointed by the United Services Union and 1 appointed by the Victorian Bar Council.

Each year on 31 March at least one employer and one member director must retire from office. A retiring Director is eligible for re-nomination.

**Qualification of directors (extract from the Trustee’s Constitution)**

Clause 33 sets out the qualifications of Directors:

*In order to be appointed as a Director pursuant to rule 32, a person:*

1. *must not be of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;*
2. *must not be mentally or physically incapable;*
3. *must not be absent without the consent of the Directors, from three consecutive meetings of the Directors;*
4. *must satisfy the requirements specified in any legislation, regulations or regulatory policy in relation to directors, of a trustee of a complying superannuation fund and any policy developed by the company in its capacity as trustee of a complying superannuation fund pursuant to those requirements;*
5. *must satisfy the requirements of any applicable financial services license or other license which is held by the company;*
6. *must satisfy the fit and proper standards as determined and implemented by the Australian Prudential Regulation Authority from time to time;*
7. *in the case of a Member Director nominated by [[..] pursuant to rule 32 [..], must satisfy the conditions prescribed in rule 32 [..]; ……….]*
8. *must not be a disqualified person for the purposes of any relevant law.*

*The Board may determine whether the above criteria has been met by any Director or proposed director.*

#### Skills & competencies for Directors:

APRA’s Prudential Standard SPS 510 requires that: *The Board must ensure that the directors …. , 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.*

The Board has set out in the legalsuper board skills matrix the core competencies and attributes required of all Directors in order to meet their individual fit and proper standards and collective competencies which a number (but not necessarily all) directors must hold in order to ensure that the board as a whole has the balance of skills needed to govern legalsuper. They are described in the Board skills matrix and Appendix 2. An annual Board performance review is undertaken. A Board skills evaluation is also undertaken to form a view of the skills of the Board as a whole.

#### Role of the Board:

The Board’s role is to govern, set strategy and approve policy for the Fund and the Trustee. The Board has delegated certain matters to its Committees which are set out in each Committee’s Charter. The Chief Executive (supported by the management team) manages the operations and affairs of the Fund and the Trustee.

Other responsibilities of the Board include the following:

1. Setting and monitoring strategy;
2. Appointing and reviewing the performance and determining appropriate remuneration for the Chief Executive;
3. Monitoring compliance with legal and regulatory requirements and ethical standards;
4. Ensuring an effective audit, risk management, internal control environment and financial reporting;
5. Appointing and monitoring out-sourced service providers;
6. Approving the annual expenditure budget;
7. Evaluating the performance of the Board and individual directors; and
8. Developing appropriate succession planning and renewal for the Board

**Director duties & responsibilities:**

1. Overriding duties include:

* Duty to act with the degree of care and diligence that a reasonable person would exercise in the same position; and
* To not improperly use information obtained as a Director to gain advantage for them self or another or to cause detriment to the company.

1. Overarching obligations under the Superannuation Industry (Supervision) Act and trust law include:

* Statutory covenants to act honestly, exercise the same degree of care, skill and diligence as an ordinary, prudent person would exercise in dealing with the property of another for whom the person felt morally bound to provide, and act in the best interests of beneficiaries; and
* To exercise powers in good faith, on a proper consideration of matters, and for the purpose for which the powers are provided.

1. Ensure compliance with the requirements of all licenses including the Registrable Superannuation Entity and Australian Financial Services licences.

**Other responsibilities**

1. Represent the best interests of members.
2. Actively contribute as a member of the Board.
3. Have a high level of commitment.
4. Demonstrate personal and interpersonal skills that contribute to Board success.
5. Aid the enhancement of legalsuper’s relationships with its stakeholders.
6. Keep up to date with all issues affecting the financial, statutory and compliance responsibilities of Directors. Each year Directors must undertake at least 20 hours of professional development activity.
7. Pro-actively and constructively participate as a member of the Board and its Committees.

#### Meetings of the Board and its Committees:

The Board meets six times a year. Meetings normally alternate between Sydney & Melbourne but are currently being conducted via video conference.

The Board has established the following Committees which meet via video conference:

* Audit, Risk & Governance Committee (four meetings per year);
* Administration & Insurance Committee (four meetings per year);
* Investment Committee (six meetings per year); and
* Remuneration & Nomination Committee (three meetings per year).

The membership of each Committee is determined by the Board.

Each Committee has a written Charter outlining its responsibilities and any delegations from the Board.

Directors may appoint one of their co-Directors as alternate for meetings of the Board and/or its Committees.

#### Director remuneration:

Directors are paid an annual fee.

#### Director induction

New Directors will be provided access to electronic copies of key constituent documents (including the Trust Deed, Constitution, Agreements with key service providers and Policies of the Trustee). Shortly after appointment, new Directors will participate in an all-day induction program including a briefing on the structure and operations of legalsuper.

Conflicts of Interest**:**

Directors appointed further to a nomination by a nominating organisation:

1. Acknowledge that they owe duties to the members of legalsuper as a whole not as a representative of the nominating organisation:

* Act in the best interests of the members as a whole;
* Directors can (and should) ensure that needs and concerns of a nominating organisation are brought to the Board. But otherwise do not owe any duties to a nominating organisation that they would not owe to other similar organisations (e.g. all participating employers);
* Not act in the interests of a nominating organisation (unless consistent with the interests of members);
* Must be conscious of competing interests (e.g. if nominated by an organisation representing the interests of members, they must also be conscious of employer interests and vice versa for Directors nominated by an organisation representing the interests of employers);
* Must satisfy obligations under the SIS Act, Corporations Act, the Trustee’s Constitution, the Fund’s Trust Deed and general trust law and company law

1. If conflicts arise Directors must follow legalsuper’s Conflict Management Framework and provide notice of potential conflicts to other Board members under the Corporations Act and the Framework. Directors must disclose where they have a material personal interest in a matter that relates to the Trustee’s affairs. A standing notice may be provided for ongoing matters.
2. Non-confidential information may be provided to nominating organisations subject to first obtaining the Chair’s permission. Confidential information must not be given to or discussed with nominating organisations or interested persons or organisations. Directors have access to commercially sensitive information and must be conscious of insider trading and or directors’ duties issues. Directors must also comply with privacy laws.

#### Trustee liability insurance policy:

Each year the Board negotiates a trustee liability insurance policy. This cover encompasses professional indemnity and crime/bond cover with a separate directors’ and officers’ policy. For the year ended 1 April 2021, the limits of indemnity provided under the policy are as follows:

* PI & Crime ($20 million any one claim and in the aggregate);
* D&O ($20 million any one claim and in the aggregate); and
* Director and officers defence costs ($2 million).

Other sub-limits also apply.

#### Overview - regulators of the superannuation industry:

Australian superannuation funds operate as trusts with trustees responsible for their prudential operation and the formulation and implementation of an investment strategy.

Specific duties and obligations are codified in the Superannuation Industry (Supervision) Act 1993. Other obligations are the subject of general trust law. Trustees are liable under law for breaches of obligations.

One key obligation of superannuation trustees is to ensure superannuation monies are invested prudently with consideration given to diversification and liquidity.

Four main bodies regulate the superannuation industry:

1. Australian Prudential Regulation Authority (**APRA**)

The Trustee holds a registrable superannuation entity licence issued by APRA. legalsuper is a registrable superannuation entity and has been registered by APRA.

Governance requirements of APRA

APRA’s Prudential Standard SPS 510 (**SPS 510**) sets out the minimum foundations for good governance, including:

* ‘*The ultimate responsibility for the sound and prudent management of an RSE licensee’s business operations rests with its Board of directors.’*
* *‘It is essential that an RSE licensee has a sound governance framework and conducts its affairs with a high degree of integrity. A culture that promotes good governance benefits all stakeholders of an RSE licensee and helps to maintain public confidence in the entity.’*

*‘The Board must ensure that the directors …. , 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.’*

APRA’ Fit & Proper requirements

APRA’s Prudential Standard SPS 520 (**SPS 520**) sets out the minimum requirements for RSE licensees in determining the fitness and propriety of individuals to hold positions of responsibility, including:

* *‘The ultimate responsibility for ensuring the fitness and propriety of the responsible persons of an RSE licensee rests with its Board of directors.’*
* *‘the fitness and propriety of a responsible person must generally be assessed prior to initial appointment and then re-assessed annually’*
* *‘For the purposes of the SIS Act and for the purposes of determining whether a person is fit and proper to hold a responsible person position, the criteria are whether:*

1. *it would be prudent for an RSE licensee to conclude that the person possesses the competence, character, diligence, experience, honesty, integrity and judgement to perform properly the duties of the responsible person position;*
2. *it would be prudent for an RSE licensee to conclude that the person possesses the education or technical qualifications, knowledge and skills relevant to the duties and responsibilities of an RSE licensee;*
3. *the person is not disqualified under the SIS Act from holding the position; and*
4. *the person either:*
5. *has no conflict in performing the duties of the responsible person position; or*
6. *if the person has a conflict, it would be prudent for an RSE licensee to conclude that the conflict will not create a material risk that the person will fail to perform properly the duties of the position’.*
7. Australian Securities & Investments Commission (**ASIC**)

The Trustee holds an Australian Financial Services licence. It authorises the Trustee and legalsuper to provide financial product advice to clients and deal in a financial product. ASIC licenses and monitors financial services businesses (including those dealing in superannuation) to ensure they operate efficiently, honestly and fairly.

1. Australian Tax Office (**ATO**)

Ensures tax is correctly calculated and paid from the superannuation savings of Australians.

1. Australian Financial Complaints Authority (**AFCA**)

Provides a formal process for resolution of member complaints about their superannuation.

1. The Trustee must notify APRA of any shareholdings which exceed 10% of total issued shares. [↑](#footnote-ref-2)
2. Conflicted remuneration is defined in Division 4 subdivision B 963 A to D of the Corporations Amendment (Further Future of Financial Advice Measures) Act 2012 [↑](#footnote-ref-3)