

# Developments in the governance of superannuation funds

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## INTRODUCTION

The governance of superannuation funds is a topic that is receiving increasing attention, both in Australia and overseas.

There appears to be a general view, at least amongst many financial sector and public policy analysts, that fund governance is important. There also are perceptions that improving governance will lead to the improved performance of superannuation funds. Whether improved governance leads to improved performance is basically an empirical question, one for which the answers are more ambiguous than some would expect. Very bad governance can lead to disastrous outcomes for fund members, but the impact of a marginal increase in the quality of governance can be difficult to untangle from other influences on recorded performance.

One very basic goal of superannuation fund (pension fund) governance is to minimise if not eliminate the risk of potential severe agency problems. Agency risk is where the interests of the persons operating the fund diverge from the interest of fund members. The legal and financial complexity of superannuation, combined with a lack of member knowledge of these complexities, generate an imbalance of information that can disadvantage members and create opportunities for incompetence, misuse or outright fraud and theft by plan providers and/or their service providers.

Such agency problems have arisen in a number of countries, including Australia in the past, and the consequences are necessarily severe for individuals that are affected. Some jurisdictions, including Australia, have in place arrangements for compensation or financial assistance to be paid by the government to those who have lost retirement savings in a regulated pension fund through fraud or theft. This reflects the fact that it may not always be possible to prevent fraud or theft prospectively. However, public compensation arrangements generally go hand in hand with regulatory arrangements designed to reduce the incidence of fraud and theft facilitated by poor governance arrangements. Governments are of course aware of the moral hazard associated with paying compensation in the case of fraud. Without appropriate regulatory arrangements individuals would not make much inquiry into the probity of a provider if they knew that the government would step in and pay compensation in the case of fraud or theft.

### A POTTED HISTORY OF FRAUD AND THEFT IN SUPERANNUATION – WHEN GOVERNANCE HAS GONE VERY WRONG

Historically, the prudential framework for superannuation rested broadly on the principles of trust law supplemented, as and when appropriate, by controls in the Life Insurance

Act (for retail products), certain aspects of the corporations law, and the income tax legislation. This had more to do with the prohibition of really bad behaviours than encouraging or requiring good governance practices.

More general provisions of the law also applied. Fraud or theft has never been legal. Accordingly there always have been minimum legal standards for fund governance. Unfortunately, even these minimum standards were not always complied with.

An analysis undertaken in 1996 by an officer of the National Crime Authority gave the then breakdown of alleged perpetrators of fraud in superannuation funds. Out of 27 case studies, 11 of the perpetrators were trustees, 6 were fund managers, 4 were in the employer/trustee, 2 were accountants, 2 were auditors, and 2 were superannuation product vendors. However, it should be noted that these cases occurred prior to 1 July 1994 when many parts of the SIS Act came into operation. They also very much pre-dated APRA licensing of trustees.

More generally, the experience of the pre-APRA licensing period indicated that the incidence of fraud appeared to be greatest when there was an absence of genuine member representation in the governance of a fund. A significant number of frauds and losses occurred in small to medium size funds that had an Approved Trustee, and consequently have had little effective member input, or in small to medium sized so-called industry funds. Appropriate governance arrangements are likely to be more effective in avoiding fraud happening than the threat of civil and criminal action applying to those who do wrong. Those who know the law well can still transgress.

The incidence of fraud and theft in pension funds in overseas jurisdictions also has tended to occur when there have been poor governance arrangements, including where there has been a lack of effective member representation.

Some of the largest losses for which financial assistance was paid by the Commonwealth Government (with the costs recovered through levies on the industry) were in funds which were the responsibility of Commercial Nominees. Commercial Nominees was an Approved Trustee, with a board of directors made up largely of professionally qualified individuals with substantial knowledge of investments.

Unfortunately professional knowledge and expertise does not necessarily translate into appropriate governance behaviour. Professional qualifications can give rise to both more capacity and more opportunities to commit fraud.

A number of the supposed industry funds that encountered difficulties were located in Queensland, and their creation was the consequence of industrial relations regulatory structures that have encouraged or required State based

funds and/or employers desired to avoid union involvement. A number of such funds had an unhappy history. For instance, the Beneflex Retirement Plan, which had approximately 9,000 members through 400 employers in the hospitality industry in Queensland, was wound up in 1994, with two directors jailed in 1998.

Most of the small Queensland funds that encountered problems were set up in industries such as hospitality, hairdressing, and legal services which have traditionally involved small employers with a wariness towards, if not antipathy to, unions. With weak governance structures it was possible for undue influence to be exercised by a relatively small number of individuals. There have also been cases (Wall and Ceiling Fund) where the trustees advanced the interests of the employer sponsors over and above the interests of the members of the fund. Rather poor governance practices (the creation of falsely dated documents to provide a pretence of legality for actions taken) led to criminal prosecutions of a number of persons associated with the management of the fund.

Effective stakeholder engagement, including fund members rather than just fund sponsors, would have reduced or eliminated the chances of such frauds occurring. Reputational risk is also an important factor in motivating good governance in superannuation funds and products associated with major banks, insurance companies and other financial companies. The major financial entities associated with retail superannuation products are stakeholders who have much to lose if governance of retail superannuation products goes wrong.

Good governance does not provide an absolute guarantee against theft or fraud within a superannuation fund. However, it does substantially decrease the probability of such activity occurring. On the other hand, bad governance creates opportunities for fraud and theft to occur. Good governance can involve either or both of effective stakeholder engagement in governance and minimum legislated requirements for governance.

In regard to the latter, APRA licensing appears to have been successful in bringing about more stringent governance practices. The evidence available suggests that it has substantially reduced if not eliminated the risk of gross and blatant frauds by fund trustees. In the period since APRA licensing was put in place there have been no new cases of fraud or theft at the management level of a fund. The only cases that have occurred in the sector have involved members of the public or relatively junior members of staff in service entities engaging in cheque fraud, identity theft or like activities. There have also been some early releases of benefit scams where the fund member was a willing participant in the fraud on tax collections. Such frauds or attempted are likely to continue at some level regardless of how well superannuation funds are governed.

Even prior to APRA licensing, the various agency problems were mild compared to some overseas examples. The Robert Maxwell transactions with Mirror newspaper group pension funds resulted in losses to those funds of over \$900 million. The United Kingdom introduced its own changes to regulatory arrangements in order to reduce the risk of such frauds occurring again.

## **OTHER OBJECTIVES OF GOOD FUND GOVERNANCE**

As a number of writers and analysts have observed, good governance goes beyond dealing with conflicts of interest which can severely impact on the security of retirement savings. It also is about delivering high pension fund performance and keeping costs as low as possible for all stakeholders.

Good governance also can indirectly reduce costs of superannuation funds through reducing the need for prescriptive and costly regulation.

All that said, there is the not insubstantial issue of how high pension fund performance is defined. Is pension fund performance simply a matter of average net investment returns over a given period? If so, what is the appropriate period and how should risk and volatility of investment returns be taken into account? How should differences in investment allocations and the liquidity of underlying investments be taken into account? How should unlisted investments be valued and how frequent should revaluations be? How should differences in ancillary services provided (such as access to financial planning services or high levels of reporting and communication) be considered in assessing fund performance? Fund performance is multi-dimensional, as debates about investment return league tables have clearly demonstrated. When the holy grail of comparable investment performance figures has been found we may be one step closer to being able to evaluate in numerical terms comparative governance performance.

A further complication is that risk exposures of a fund might only become fully apparent when a totally unprecedented ("Black Swan") event occurs. Until then various quantitative measures for the fund might be interpreted as indicating quality governance of the fund, with past fund performance meeting or exceeding that of the peers of the fund.

Yet another complication is that with many retail superannuation product offerings the design of the product offering is largely pre-determined with limited or no opportunity for the trustee board to redesign the product. On one view this is entirely consistent with good fund governance. Expecting retail fund trustees to redesign products in ways which change the attributes and costs of the product offerings can be as unrealistic as expecting the trustees of an industry accumulation fund to redesign the

product offering to be a defined benefit pension paying fund.

There is also a growing literature on the positive effects of superannuation funds engaging with the corporations they invest in. Effective engagement in corporate governance often is part of effective fund governance. However, again the impact on net fund returns of active corporate governance is hard to test empirically. A number of analysts have attempted this but it is difficult to untangle the benefits of active share ownership from the noise in the data from sectoral and economic cycle developments.

### IDENTIFYING GOOD FUND GOVERNANCE

Identifying really bad fund governance is not very difficult to do. For instance, the reported departure of one of the principals of Commercial Nominees to South America allegedly with both an unspecified amount of fund assets and a lap dancer girlfriend would be universally regarded as a marker of bad governance.

Defining good governance is harder. A number of approaches have been adopted by assorted analysts. Some of these approaches are more logical and/or practical than others.

Approaches that have been used include:

- Statistical analysis of the characteristics of governance arrangements and functions of funds, with outliers either considered to be characteristics of very good governance or bad governance practices.
- Existence of appropriate risk assessment and abatement processes (such as, passing tests for APRA licensing).
- Peer and/or CEO subjective assessment of governance practices and relating this to fund performance.
- Examining how superannuation fund governance relates to traditional trust law approaches.

The remainder of the paper looks at each of these in turn.

### STATISTICAL ANALYSIS OF FUND BOARDS

Statistical data on superannuation fund boards have not been collected on many occasions. This is both because interest in the characteristics of fund boards is a relatively recent phenomenon, and because it is difficult to get good response rates. As someone who has conducted or commissioned surveys in the sector I know all about the latter problem.

The regulator APRA has more success in eliciting cooperation in the completion of their surveys. Funds generally do what they are told by a regulator, particularly if civil and criminal penalties flow from non-compliance.

However, even APRA had its challenges in conducting such a survey and publishing its results. The survey, which

was intended to examine trustee practices and to identify factors that could influence investment performance was compulsory for all funds with assets of more than \$200 million in June 2005. The survey was conducted in 2006 but survey results and analysis were not published until 2008.

The two years devoted to the task no doubt involved considerable analysis of the data collected and attempts at drawing relevant conclusions from the data. However, there were remarkably few conclusions in the final published research reports about what amounts to good governance and/or influences investment performance. Much of the information provided is descriptive rather than coming to any policy relevant conclusion about good (or bad) governance. For instance, it was observed that retail superannuation funds have governance arrangements and other characteristics that are different from corporate, public sector and industry funds. However, you do not have to undertake a two year study to determine that.

It is possible that at least part of the two years was spent removing any contentious or not well supported conclusions from the initial analysis of the data. However, arguably some (most?) of the remaining conclusions are either contentious or not well supported.

Board Directors: The APRA survey research papers attempted to draw a link between the performance of trustee boards with directors who hold their own superannuation accounts with the fund. The paper *Superannuation fund governance: trustee policies and practices* at page 14 makes the statement "Some 48% of directors do not put any of their own superannuation in their funds." Further to this at page 27 the paper contends that "'Personal stake' is relevant as a measure of the extent to which interests of directors and fund beneficiaries are aligned."

While arguably it may be good practice for a director in a listed company to own shares in the company, company directors are different in that they do not have "fiduciary" obligations. In a normal fiduciary test of appropriate governance, having funds invested creates a potential for conflicts and bias that must be disclosed.

The APRA report compounds this by ranking fund sectors whose directors have the highest "personal stake" stating that the public sector has 73% of its trustee directors with a "personal stake", 69% for corporate funds, 62 % for industry funds and only 21% for retail funds. Perhaps the most surprising feature of these results is that the figures for public sector and corporate funds are low as they are as often public sector and corporate fund members have limited or no opportunity to opt out from such funds.

Apart from failing to recognise the risk of bias discussed above, the words used by APRA also have the potential to lead to a conclusion that where directors do not invest in their

own entities, that this may be a sign of a lack of confidence.

It also should be recognised that in the retail sector directors frequently are trustees of multiple RSEs. They cannot or should not contribute to all of them. In fact consolidation of accounts has always been an efficiency practice for those with multiple accounts.

On page 27 of this paper there is also a finding in relation to the number of family members per director who is also a member of the fund to which that director is a trustee. Given that many individuals, particularly young people in casual employment or starting their career proper, are in a specific because of the job that they are in it is difficult to see the relevance of this data or how it is linked to fund performance.

Service Providers: The paper *Superannuation fund governance: trustee policies and practices* at page 21 makes the claim that there are closer relationships between retail super funds and associated service providers than there are in other sectors. The results appear to be calculated on a fund basis therefore the findings in the paper suggest that “33% of retail funds, 10% of corporate funds and 5% of public sector and industry funds” have a link such as a parent company link with their service providers.

The relevance of such a finding is not clear. As well it needs to be noted that there are other ways a fund board can have links with a service provider. For instance, some funds outside the retail sector have directors in common with service providers such as an administrator or debt collection agency.

Actual or potential conflicts of interest are common across the finance sector and indeed in other sectors. What is important is how these actual and potential conflicts are managed rather than that they exist.

Differences in costs: The APRA research papers appear to confuse differences in cost levels and product design with fund governance issues. The August 2008 Wilson Sy Working Paper actually goes so far as stating at page 13 that “Every defined contribution fund should have a few low-cost diversified portfolios for most members to choose as their default options, without having to make complex investment decisions, which should only be required to be made by those members who have more complicated financial needs”.

Using this logic it could be argued that the David Jones food hall should have a few low cost generic food items for most customers to choose as their default food purchase. However, the fact that David Jones does not adopt such an approach says nothing about the governance of the organisation relative to, say, Aldi. The assessment of the quality of governance should be based on how an organisation is governed rather than on the characteristics of the product or service produced, or the market segmentation adopted by an organisation.

## APRA REQUIREMENTS FOR GOVERNANCE OF FUND BOARDS

Another approach to the quality of fund governance is to apply a pass or fail test, with at least some opportunities to get up to the required standard if you fail the first time around.

Since July 2006 all fund trustees (other than SMSFs) need to be licensed by the regulator, APRA. To get an APRA licence, superannuation funds need to have policies dealing with adequate resources, outsourcing and risk management.

Importantly, trustees also have to demonstrate that they both individually and collectively they are “fit and proper” persons to acquire a licence from the regulator and to maintain this competence on an on-going basis. This requires all individual trustees to submit to police checks, character references, identification of necessary skills and establishment and adherence to minimum training requirements.

Evaluating whether these requirements in regard to the operations of superannuation fund boards has led to improved governance is not an easy thing to do either conceptually or numerically. One of the reasons for this is that outcomes after regulation need to be compared to a projection of how things would be without the regulation.

Particular care needs to be taken in order to avoid the perils of *post hoc, ergo propter hoc* type evaluations. Using a trivial and not altogether relevant example, the efficacy of wearing a bright yellow hat in warding off rogue elephants is not tested by the absence of elephants in Pitt Street (or Queen or Bourke Street) Mall if you stroll along wearing a bright yellow hat. On the other hand the absence of rogue elephants (or rogue trustees) might have something to do with controls over the entry into the areas by rogue elephants (or trustees). APRA is no doubt hopeful that their efforts have improved governance, but hard evidence is hard to come by.

One potential source of evidence on the benefits of regulation in terms of improved governance is to undertake a survey asking those that who should know what the benefits of regulation of superannuation are. This was done by Sue Taylor of the Queensland University of Technology in a survey of some 90 holders of a Registrable Superannuation Entity licence. This was a reasonably representative sample of the just over 300 holders of RSEs then in existence.

While the responses of trustees were clearly subjective views, it is interesting to note that out of the trustees surveyed 42% of responses indicated that no benefits were expected for members of funds from the APRA licensing process. However, the majority of respondents indicated that there would be benefits, with better governance and improved risk management the most commonly mentioned benefits (Table 1). Some respondents appear to have named more than one benefit from APRA licensing. A number

of the identified benefits are also different ways of saying “better governance”.

Table 1: Benefits of APRA licensing volunteered by respondents

Benefit	Frequency of response	Percentage of responses
None	38	42%
Better governance	18	20%
Improved risk management	14	14%
Improved prudential standards	9	10%
Compliance	6	7%
Other	33	28%

Source: Survey of RSE holders, 2006

A survey of APRA staff involved in the regulation of superannuation funds might give even more positive views on the impact of licensing and enhanced supervision of funds. Again there would be some subjective elements in any such evaluations.

In terms of the objective evidence available a number of benefits can be clearly identified. It is clear that all funds now have much **better documentation** of their various policies and procedures, especially those relating to the **management of risks**. In some cases this will have involved funds for the first time systematically addressing all the risks they face and developing appropriate responses and policies dealing with such risks. In other cases the practices and policies would already have existed, but what is new is the documentation meeting APRA's requirements. Some, but not massive, improvements in governance are likely to have been involved.

APRA most likely has also stimulated superannuation trustees to address some risks at a level of detail they would not have otherwise undertaken. Whether all this activity is worthwhile is not self evident, as it relies on a balancing of costs and benefits.

The creation of barriers to entry to the superannuation sector inherent in the licensing regime has led to some specific benefits. One area in particular has been the elimination of practices adverse to the interests of at least some members and to tax collections that were carried out by trustees of some very small corporate funds and hence **reducing the incidence of agency risk**.

Certain such funds, never members of ASFA, had assets of less than \$2 million, with these assets in some cases being applied more to the benefit of the employer sponsor than necessarily to members of the fund generally. There even have been suggestions that some small corporate funds were originally set up as a sort of unofficial tontine, where the owner/manager of the company was angling to take

the greatest share of the fund assets after the departure of assorted unfortunate employees. The owner manager also had considerable control over the departure of the staff. Some such funds also dabbled in or even specialised in related party transactions, which seldom benefited non-related parties or tax revenue.

Such opportunities have in practice been eliminated by the introduction of trustee licensing. This is both because it is expensive to be a trustee, and because of the higher governance requirements that are actively enforced. The hurdles involved in becoming licensed have meant that there are no trustees with assets under their trusteeship of under \$2 million (and relatively few with assets under \$50 million), as the costs of obtaining a trustee licence in such circumstances generally far exceed the potential benefits for the employer sponsors concerned. While only a small minority of very small corporate funds engaged in improper practices and the number of affected fund members was numerically small, elimination of this problem area delivers benefits for fund members and the sector more generally.

More generally the legislation and regulations administered by ASIC and APRA provide benefits in the form of **management of conflicts of interest**. Both APRA and ASIC licensees have responsibilities to control the inevitable actual or potential conflicts of interest that arise during the course of business. This requires the identification of actual or potential conflicts of interest and the assessment and evaluation of those conflicts. Appropriate responses might range from disclosure of the conflict, to an individual or individuals withdrawing from a decision making process, to a fund deciding not to be involved in a transaction. The required response will vary with the circumstances of each actual or potential conflict of interest. Better governance is closely associated with better dealing with conflicts of interest.

The requirement for each RSE to address the **fitness and propriety** of trustees and key staff may also have led to benefits for funds in terms of improved governance in funds both small and large. However, passing a more comprehensive police record check merely indicates that a person has not yet been convicted of an offence. The criminal justice system would not have very many customers if a previous clean record indicated that no crime would be committed in the future.

As noted earlier in this paper, the largest losses due to theft and fraud that have occurred in the superannuation sector have been in funds which had Approved Trustees who presumably had to satisfy APRA or its predecessor of their fitness and propriety. Both Commercial Nominees and EPAS had numerous trustee directors with commercial and other relevant professional qualifications (see the (then) Senate Select Committee on Superannuation and Financial Services, 2001 for further details).

An honest but initially unskilled representative trustee will provide more protection for members of a superannuation fund than a highly skilled but corrupt professional. While APRA clearly wants to screen out the corrupt, it can be argued that there is a continuing role in at least some fund for representative trustees who may not have professional skills but are willing to participate in training and to ask the hard questions of the professionals who do the day to day work of the fund. Having representative trustees certainly is not sufficient for good governance, it is not even necessary for good governance, but it can be a characteristic supportive of good governance.

There is also the interesting question of whether post APRA licensing there are some further funds that should be encouraged or required to exit the industry. The former Minister for Superannuation, Senator Nick Sherry, appeared to be of the view that there are some such funds in that he appeared to support the development of investment performance league tables that identified what could be chronic underperforming funds and/or the development of minimum performance criteria for a superannuation fund to be a default fund for employer contributions.

While there are arguments that can be used to support such a view there also are arguments that any fund that meets the APRA and ASIC licensing requirements should be permitted to continue to operate. APRA has foreshadowed or implemented various changes or at least clarification in regard to matters such as the management of conflicts of interest, the use of reserves, and unit pricing. However, the requirements of APRA are more about governance and process requirements than specifying minimum expected performance standards in terms of investment returns or other measure of performance. Moving to more performance based criteria for ongoing licence eligibility would be a substantial step for APRA and the industry. It is not an approach much used anywhere in the world.

#### **ASSESSMENT OF IMPACT OF GOVERNANCE PRACTICES ON FUND PERFORMANCE**

As noted early in this paper, estimating the impact of good or better fund governance arrangements on fund performance should be an empirical question. However, unfortunately this empirical question has not been addressed to any great extent either overseas or in Australia.

There are a number of reasons for this. First off there is the challenge of establishing what is good or bad governance practices. While very bad governance is easy to identify it gets hard to differentiate between various levels of satisfactory or good governance practices. What is good practice in the eyes of one analyst might be more or less irrelevant to another analyst.

On top of this is the issue of what measure or measures capture the performance of a superannuation fund. While investment returns are clearly one measure of performance, a simple investment return figure does not take into account risk or volatility. Investment returns and variability of returns between funds can also reflect differences in strategic asset allocation. A very conservatively invested fund which only invests in bonds and cash may look good when returns to equities are low or negative, but over the longer term may not perform as well as a fund with greater exposure to equities. The number of years being considered and the stage of the economic and financial cycle may have a far greater impact on comparative performance than any impact from differences in the quality of fund governance.

Ambachtscheer et al (2006) attempt to show that good performance and good governance are linked by looking at data for around 80 funds in Australia, New Zealand, Canada, the United States and Europe. The great bulk of the funds examined were in Canada and the US. The bulk of the funds considered were corporate or public sector funds. Most of the assets under management in the sample were in public sector funds. The funds were relatively large by Australian standards, with median assets of \$3.7 billion and mean assets of \$17.9 billion (with the dollars either US or Canada).

The authors claim that the 'poor - good' gap in governance performance (based on pension fund executives' own opinions on how well the governance of the fund they are involved in is working) is worth as much as 1% to 2% of additional return per annum.

Clearly this sample is not typical of funds in Australia. As well, the perspective of fund executive staff on the questions posed in the study may not necessarily be an accurate measure of the state of governance of a fund. The questions used by Ambachtscheer et al are reproduced in the Attachment to this paper. A number of them do not make a lot of sense for Australian superannuation funds that contract out many of their activities and/or for smaller funds. The relevance of some of them to assessing the state of governance in any pension fund is also debatable. There is a mixture of board governance, executive management and human resource management issues in the questions that were asked.

A statistical concern also is that the sample is not very large, and the time periods used for comparing investment performance are not very long. This obviously has implications for how rigorous the estimated return to "better governance". As well, the estimates relate to funds that do not operate in Australia, and indeed could struggle to get licensed in Australia given their governance and funding arrangements. The additional investment return for better governed funds in Australia, presuming such funds can be identified, might be considerably less than the international estimate.



However, 1% to 2% claimed additional performance is a substantial amount, and we can expect to see this assertion repeated in articles and papers on fund governance for years to come.

### **SUPERANNUATION FUND GOVERNANCE IN THE CONTEXT OF GENERAL TRUST LAW**

The SIS legislation builds upon, codifies and extends traditional trust law.

This heritage of general trust law does have specific implications for required governance practices. Traditional trusts in English law had much to do with estate planning and tax planning. Trustees accordingly a very hands on involvement in the trust, and generally a close and ongoing relationship with the beneficiaries of such trusts.

While the trust model can be scaled up to thousands or indeed millions of trust beneficiaries by necessity the trustees involved in such arrangements have to purchase a range of services and in many cases delegate authority. The governance of these larger trusts is more about governance of the management process than directly making decisions specific to each trust beneficiary.

Scott Donald in a number of recent papers has provided useful and comprehensive accounts of the impact and relevance of general trust law provisions on the investment and management of superannuation funds. He has also pointed out the evolution of trust law notions. In general law trustees are required to take the care and exercise the skill of a prudent person in their exercise of their investment power. They also are required to preserve trust capital, exercise caution and to avoid speculation. However, over time the interpretation of those duties has evolved in line, more or less, with contemporary theory and expert views on investment practices. Both law and practice recognize that over the longer term there are investments other than capital guaranteed investments which will provide appropriate levels of investment income and protect the value of capital against erosion by the effects of inflation.

However, the operation of traditional trust law approaches and the realities of modern investment processes and member empowerment do not always fit comfortably together. For instance, the regulator APRA has not had an easy job in putting together circulars on how superannuation fund trustees should approach investment portfolios in the context of almost universal and extensive investment choice in most superannuation funds. Is good governance facilitating member investment and other choices or is this a dereliction of trustee duties?

In practice member choice and/or significant exposure to equity investments appear to be dominating as the governance model in many funds, but the events of 2007

and 2008 in regard to investment returns have lead to some commentators questioning what had become the new conventional wisdom. More specifically, some such commentators have claimed that boards, investment committees and superannuation fund trustees should have reflected very seriously and very quickly about whether they had an appropriate allocation of assets going into the latter part of 2007 and 2008.

While it is easy enough for commentators to use hindsight to blame trustees for not shifting more into capital protected investments in 2007 and 2008, the fact that many trustees did not is not necessarily evidence of any failure in governance arrangements. Taking a consistent approach to the construction of default investment portfolios on the basis of expert advice from asset consultants is actually consistent with good governance practices. On the other hand "going the punt" on the basis of what may or may not be emerging market conditions sounds more like hoping for good luck rather than being an exercise in good management.

### **CONCLUSIONS**

Good governance practices are clearly important, especially given that superannuation funds are entrusted with what for most people is their second most important financial asset after the family home.

What is somewhat surprising is the lack both in Australia and overseas of clear and unambiguous definitions of what is good or best practice governance. However, there is an emerging body of literature and regulatory requirements which seek to better define appropriate governance arrangements for superannuation and pension funds.

A range of benefits come from good and better governance of funds. That said, it is likely that it will continue to be difficult to quantify the beneficial impact on investment and other performance of superannuation funds associated with improving governance arrangements.

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