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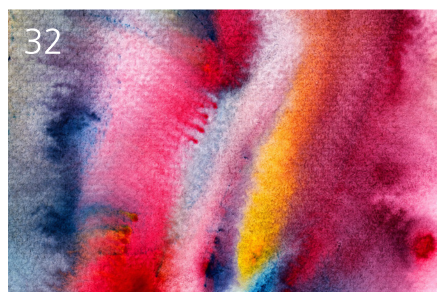

REGULARS

Stay the course **and deliver on the promise of superannuation**

Dr Martin Fahy

ASFA Chief Executive

Our superannuation system has been subject to an extraordinary degree of close examination over the last few years. The Government has released a number of legislative proposals which have drawn attention to various parts of our industry. The Productivity Commission (PC) has spent three years looking at our 'efficiency', and, of course, the Financial Services Royal Commission (at the time of writing) is about to release its final recommendations. These are just the most prominent of the various other reviews that have been undertaken by the Parliament and the regulators.

It looks like 2019 will be a year of digesting and dealing with the insights and recommendations of these reviews and the results of the self-examination which they have engendered, not forgetting that there will also be an election.

THE PRODUCTIVITY COMMISSION

The Productivity Commission has released its final report and recommendations and, disappointingly, it has doubled down on the recommendations in its draft report; in particular, its chief recommendation for a top ten 'best in show' default system.

This, and related recommendations, would dramatically change Australia's retirement income landscape. The top ten proposal risks creating an oligopoly and reducing long-term competition and innovation in the superannuation industry. There are also serious questions about what criteria should be used to choose the top ten and who should choose them – given the tension between the need for both expertise and independence for the selection panellists.

All these recommendations are somewhat inconsistent with the report's findings which confirm the strength and overall benefits of the Australian superannuation system. The report finds that the majority of funds are delivering very good value to fund members as well as providing broader favourable economic impacts. Superannuation has kept the fiscal burden of the age pension below 3 per cent, allowed Australians to save $800 billion more than they otherwise would have, and will deliver higher retirement incomes for millions.

For me the most disappointing recommendation was that for a further review of the retirement system to be conducted before moving the Superannuation Guarantee rate to 12 per cent.

If we don't move to 12 per cent we will find it harder to pay for increasing longevity and the associated retirement and aged care costs, and to fund decent retirements for Australians who have broken work patterns for lengthy periods in their working lives. The case for moving to 12 per cent is compelling and does not need a further review.

IF THE FUTURE FUND IS THE ANSWER WHAT WAS THE QUESTION?

Interestingly, the public debate triggered by the release of the PC's report has moved quickly from the top ten proposal to an idea that the PC did not support; the use of the Future Fund, Australia's sovereign wealth fund, in some way to support the Australian default system.

In the context of the broader public debate around the efficiency and competitiveness of the superannuation system, it is almost inconceivable that anyone would countenance a government monopoly delivering the best retirement outcomes for Australians, in effect nationalising our default system.

The Future Fund effectively operates as the Australian Government's wholesale investment manager. However, it lacks the required governance framework and administrative capabilities needed for it to operate in a superannuation context.

Broadening the role of the Future Fund—from managing money to meet public liabilities to also managing private superannuation assets—would represent an erosion of the trustee and investment governance frameworks critical to the delivery of member returns. It would also increase political risk for the Future Fund and the government, and risk heightening market or member perceptions that savings are underwritten by the government.

Given its purpose, the Future Fund also does not offer vital group insurance coverage that protects Australians in times of personal crisis, nor does it have the capability to do so.

UNDERPERFORMANCE SHOULD BE OUR MAIN CONCERN

As the Productivity Commission report itself shows, we already have more than 100 funds who are strong performers. We don't need another government-sponsored fund. What we need to address is underperformance and how this can best be remedied. Previously ASFA has called for enhanced MySuper authorisation—with appropriate thresholds to be determined in a thoughtful and considered manner—and we consider this a strong option for improving superannuation fund performance.

This is a complex area, but we need to develop a sensible definition of underperformance which is based on valid comparisons, reasonable benchmarks and the product's investment objectives, as well as a valid comparison timeframe. For example, the PC's proposed eight years may be too long for investments like cash but too short for volatile assets where timing can produce significant variances against stable benchmarks.

There are lots of good funds in the system already. The key challenge is to identify the habitually underperforming funds and an appropriate mechanism for an orderly wind-down and transition of their members to better-performing funds.

There may be a role for regulators and government in the ¬orderly resolution and transition of underperforming funds by providing support in warehousing ¬assets to allow them to be held to maturity to minimise losses.

MAKING A GOOD SYSTEM BETTER

As the PC report itself demonstrates, superannuation is working for the vast majority of Australians. It makes retirement better for individuals, it reduces the fiscal burden of retirement funding and it has created a pool of $800 billion in increased savings which are substantially invested in Australian assets. To reinforce these benefits we need to raise the SG rate to 12 per cent according to the timetable supported by both the Government and the Opposition. The last thing we need is another review.

That's not to say we should be complacent or that there is nothing to work on. Improvements can be made by targeting certain aspects of the system, rather than a wholesale restructure of the entire system and the way it functions. So what are the most urgent things we need to do?

- We need to raise the MySuper authorisation standard in a thoughtful and effective way.
- We need to work out a sensible and nuanced definition of underperformance, avoiding simplistic and arbitrary approaches.
- We need to raise the performance of the poorly performing funds and where that is not possible, we need to ensure that they are merged with other funds in a mutually beneficial and considered way – ideally with the help of the regulators. SF

HEADLINES

Equip's $190 million corporate super win

Equip has started 2019 on a high, winning the $190 million superannuation benefits for more than 1,100 employees of dnata, one of the world's leading international air services providers.

Based in Dubai, dnata purchased Qantas' catering business earlier this year with the benefits and members to transfer into Equip from the Qantas Super fund.

Equip's CEO, Nicholas Vamvakas, said dnata's superannuation plan included a mix of defined benefit and accumulation benefits.

"We look forward to working closely with dnata and Qantas Super to achieve a smooth transfer of the members into Equip."

"The banking royal commission has increased the number of discussions in corporate superannuation and we are anticipating a significant amount of movement in the sector over the next twelve months," he said.

Finance jobs drop in the wake of the Royal Commission

According to the latest Sunsuper Australian Job Index Report, finance job opportunities have dropped nearly 10 per cent in the wake of the Royal Commission.

Sunsuper's chief economist Brian Parker said it comes as little surprise that financial services was the worst performing industry in 2018 when it came to employment demand.

However, he said, the demand started to stabilise in the last quarter (growing 1.6 per cent) suggesting that the worst may be over.

Productivity Commission misses important tax-retirement outcomes link

Raewyn Williams, managing director, research (Australia), at the global implementation manager Parametric says the Productivity Commission's final superannuation report missed an opportunity to show how the industry's pre-tax investment focus is penalising members who retire on after-tax returns.

Williams says the Commission's report, titled Superannuation: Assessing Efficiency and Competitiveness, provided some thought-provoking insights into Australia's $2.7 trillion superannuation industry, including the importance of managing taxes, but "it stopped short of calculating the impact of tax naivety on a member's retirement outcomes".

Williams' comments are in Parametric's latest research report, titled 'After-Tax Returns: Filling in the Productivity Commission's Report'.

Vanguard announces the passing of founder John C. Bogle

John Clifton Bogle, founder of The Vanguard Group, has passed away in Bryn Mawr, Pennsylvania at age 89. Bogle had legendary status in the American investment community. He introduced the first index mutual fund for investors and, in the face of skeptics, stood behind the concept until it gained widespread acceptance; and he drove down costs across the mutual fund industry by ceaselessly campaigning in the interests of investors. Vanguard, the company he founded to embody his philosophy, is now one of the largest investment management firms in the world.

How Vision Super's 'save more later' program is working

Vision Super says their 'Save more later' program is now helping workers at eight councils and other workplaces save more for retirement.

The program is based on the behavioural economics concept of 'hyperbolic discounting', which suggests people value their future self less than they value their current self – meaning that although they may be unwilling to save extra for retirement now, they are willing to save more for retirement in the future.

Vision Super CEO, Stephen Rowe, said the program was several years in the making, and was designed to help workers reach a comfortable level of retirement more easily.

"Our research suggested that if you ask people to save more now, they are likely to say no, even when you give them all the information about why they need to save more to have a comfortable retirement," he said.

"People need the money now to pay bills and put food on the table, or they'd rather have the money to spend now.

"But if you ask them to save money they don't have yet – for example from a future pay rise – they're very likely to agree."

In 2014, Vision Super began talking to their default employers and to the Australian Services Union (ASU) about writing the program into their enterprise agreements with staff. The basic idea of the program is that rather than simply getting a pay rise, staff get part of their increase in their pay packet and part as an extra contribution to their super. Staff are automatically opted in to the program but can choose to opt out. Over the three years of an enterprise agreement, this can add up to a significant ongoing additional contribution.

Vision Super CEO Stephen Rowe said the results so far are exceptional.

ASFA SUBMISSIONS

ASFA's policy team has been working on a number of submissions lately. The most recent are:

- Submission to the Senate Economics Committee Inquiry into Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018
- Submission to the Australian Law Reform Commission
  - Review of the Family Law System – Discussion Paper 86 – issues with respect to superannuation
- Submission to the Productivity Commission:
  - ASFA response to the Supplementary Paper – Investment performance: Supplementary analysis
- Submission to the House of Representatives Standing Committee on Economics:
  - Inquiry into the implications of removing refundable franking credits
- Submissions to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry:
  - Response to the Interim Report – issues with respect to regulation and the regulators
  - Response to Round 6 insurance in superannuation policy questions
  - Response to Round 5 superannuation policy questions
- Submission to the Treasury on the work test exemption for recent retirees – draft legislation and regulations

Can 'soft-skills' help get older Australians back into the workforce?

Older jobseekers are invited to apply to be part a Deakin University pilot program, where they will be able to complete free professional skills and expertise assessments, then get matched with relevant employers.

Project leader Dr Nick Patterson, a Lecturer in Deakin's School of Information Technology, said the program would allow job seekers to be formally assessed by the university on a raft of its 'Professional Practice credentials', which recognised core employability skills.

"These credentials focus on so called 'soft-skills' such as critical thinking, teamwork, problem solving, communication, digital literacy, self-management and innovation," Dr Patterson said.

Dr Patterson said the program recognised that Australians were increasingly being required to stay in the workforce longer, and was particularly focused on helping those in situations that made it more difficult than usual to find a job.

INDUSTRY MOVEMENTS

Willis Towers Watson appoints new head of Australasia

Willis Towers Watson has announced the appointment of Simon Weaver as head of Australasia, effective immediately, following Andrew Boal's decision to leave the company after 27 years.

Head of international for Willis Towers Watson, Adam Garrard, said "Andrew led the company with distinction, taking it through a stage of intense integration and consolidation.

"Andrew's leadership has been invaluable during this period of significant change and we are grateful to him. He is an industry figure, and a highly regarded and trusted strategic adviser. I would like to thank him for his enormous contribution to Willis Towers Watson and his many years of dedication and service."

Weaver's role as head of corporate risk and broking (CRB) has been merged into the head of Australasia position.

Commenting on Weaver's appointment, Garrard said that "Simon has extensive risk management and insurance broking industry expertise. He has a strong knowledge and understanding of our Human Capital and Benefits (HCB) segment, having managed our combined Singapore operations through and after the Willis Towers Watson merger."

Metlife announces new CEO for Australia

MetLife has announced Richard Nunn as its next CEO in Australia, commencing 1 May 2019.

Nunn is currently the CEO of SA based Statewide Super. He brings over 30 years' financial services experience across wealth management (including life insurance and retail advice) and banking in Australia and Asia more broadly.

Geoff Brunsdon, chair of MetLife in Australia, said of the appointment: "We're delighted to welcome Richard to MetLife. His deep financial services experience and proven ability to deliver growth make him a great fit for MetLife.

Prior to joining Statewide, Nunn worked for NAB, Commonwealth Bank of Australia (CBA), IOOF and AXA, across a range of management roles and geographies. He will be relocating to Sydney to take up the role in May.

Brunsdon also thanked Vince Watt, MetLife Australia's CFO, who will continue as acting CEO until Nunn commences in May.

Equity Trustees appoints new chief risk officer

Australia's leading specialist trustee company, Equity Trustees has announced the appointment of Owen Brailsford as chief risk officer, commencing in February.

He previously led the risk and compliance team TelstraSuper.

"Owen brings 20 years of international experience in risk management and regulatory roles in the superannuation, pensions and insurance industries," said Mick O'Brien, managing director.

Brailsford's background includes roles at the Australian Prudential Regulation Authority (APRA), Prudential PLC and RSA Insurance (both UK) and a risk management advisory role at KPMG.

Mine Super announces resignation of CIO

Mine Super has announced the resignation of its chief investment officer David Bell.

Bell has been employed by Mine Super since July 2014 and has been instrumental in advancing the fund's investment model from being consultant-led to an internally driven model.

He is leaving to focus on the completion of his PhD on investment management at the University of New South Wales and will remain with the fund over the coming months while a recruitment search is undertaken.

AMP announces new appointment to its group leadership

AMP has announced the appointment of Alex Wade to its group leadership team as group executive, advice, effective 7 January 2019. He will report to AMP chief executive Francesco De Ferrari and will lead the continuing transformation of AMP's advice business.

Wade will succeed AMP group executive, advice and New Zealand, Jack Regan, who is retiring from AMP after nearly 20 years' service.

AMP chief executive Francesco De Ferrari said: "Alex is a talented leader and strategic thinker, who will bring valued experience and relationships to AMP's advice business. The financial advice industry in Australia is in the process of renewal, and AMP and Alex will play a prominent role in driving this change. We firmly believe that financial advice is essential for helping people manage their finances, and plan for retirement.

Mercer's new appointment in portfolio management senior leadership team

Mercer has announced the expansion of its Australian Portfolio Management senior leadership team with the appointment of Ronan McCabe as head of portfolio management.

McCabe joins Mercer from the Irish Strategic Investment Fund (ISIF), the sovereign wealth fund of Ireland, where he was a senior investment manager.

Relocating from Dublin to Sydney and commencing in February 2019, McCabe will be responsible for leading manager selection and portfolio construction at the asset class level for the Mercer Funds.

MLC Life Insurance announces new board appointment

MLC Life Insurance has announced the appointment of Jacqueline Korhonen to its board as an Independent non-executive director. Korhonen has over 30 years' experience in the technology sector, most recently as Asia Pacific VicePresident of Cognitive Process Transformation Services with IBM. Prior to that she was CEO with Infosys Australia from 2008 to 2014.

Super SA board welcomes new presiding member

Super SA is pleased to announce the appointment of Greg Boulton as presiding member (chair) of the Super SA Board by the Governor of South Australia, His Excellency The Honourable Hieu Van Le AC.

"Greg brings a wealth of experience to Super SA, including insights from private sector super fund management, which will invigorate our team," said Super SA Chief Executive Dascia Bennett. "The Board and I are really looking forward to working with Greg to achieve our strategic goals for members and the Fund."

Boulton fills the vacancy left by former presiding member, Annette Hurley.

Australian Ethical appoints new Chief Operating Officer

Australian Ethical Investment has announced the appointment of Kim Heng as chief operating officer.

Phil Vernon, managing director at Australian Ethical Investment, said: "We are delighted to welcome Kim to Australian Ethical Investment. She brings significant operational and industry expertise to our organisation which we look forward to leveraging to support the ongoing growth of our business."

Kim's appointment brings gender diversity at senior management to just under 50/50 split (44 per cent female / 56 per cent male). The company, which has exceeded its gender diversity targets for the overall business, has a 50/50 gender split at board level.

FEBRUARY 2019

05 TUE — **VIC** Risk and Compliance Discussion Group **WA** Risk and Compliance Discussion Group	06 WED — **Sydney** Federal Election Briefing	07 THU — **VIC** Fund Taxation Discussion Group
08 FRI — **Brisbane** Federal Election Briefing	12 TUE — **Melbourne** Federal Election Briefing	20 WED — **Brisbane** RG 146 Superannuation
25 MON — **Sydney** Spotlight on Insurance in Super	26 TUE — **NSW I VIC** SMSF Discussion Group	27 WED — **VIC I WA** Member Services Discussion Group
28 THU — **QLD** General Discussion Group **Brisbane** Emerging Leaders Networking Event		

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Sydney: **Thursday 21 March**

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MARCH 2019

05 TUE — **VIC I WA** Risk and Compliance Discussion Group	07 THU — **VIC** Fund Taxation Discussion Group	12 TUE — **VIC** Investment Discussion Group
13 WED — **Brisbane** RG 146 Superannuation	14 THU — **National** Investment Discussion Group	21 THU — **New South Wales** State Conference **Sydney** Core Governance for Superannuation
26 TUE — **NSW I VIC** SMSF Discussion Group	27 WED — **VIC I WA** Member Services Discussion Group **QLD** General Discussion Group	

Events | Learning courses | Discussion Groups | *Superfunds* deadlines

See the ASFA website for more information/to register. Dates subject to change.

Getting old

Ross Clare
Fellow of ASFA

ASFA Director of Research

The matter of getting old is an ongoing concern on both a collective and individual basis.

On a collective basis we have policy debates and prescriptions driven by what is often characterised as an ageing population crisis. There are several drivers for Australia's ageing population – more of the large baby boomer cohort is reaching 65 and there has been an increase in life expectancy. This has occurred alongside low fertility rates.

Everyone understands that ageing brings challenges. So such a characterisation helps with the pursuit of policy reforms aimed at containing the costs of pharmaceuticals, hospital costs, aged care or the like.

In terms of the ageing of the Australian population being a demographic time bomb, it is a time bomb with a very long fuse and not much explosive power. Australia has had a relatively young population structure, assisted by continuing net immigration. Also, current immigration policies do not allow much scope for older migrants on the basis of family reunion.

The latest demographic statistics issued by the ABS indicate that there has not been any dramatic increase in dependency ratios in Australia. Over the 20 year period to 2018, the proportion of Australia's working age population remained fairly stable at around two-thirds of the total population, while the proportion of people aged 65 years and over increased from 12.2 per cent to 15.7 per cent. Conversely, the proportion of people aged under 15 years decreased from 21.0 per cent to 18.8 per cent during this same period.

Older Australians can be expensive to run, especially in regard to health care costs. But as parents of children going back to school know, those aged under 15 are not cheap to run either. The cost of schools is also a major public sector expense.

Policies really need to be justified in terms of whether they make sense in their own right; rather than as an urgent response to what is in effect a glacial rate of ageing of the population structure.

At the individual level, ageing involves a range of issues and attitudes. After about age 18 nobody really gets excited about being a year older, and enthusiasm for another birthday falls even more sharply for those in their sixties and seventies. For instance, I have discovered that one of the few good things about being aged over 60 is that you can get cheap cinema tickets. Tax free super benefits are not bad either.

Somewhat oddly, once a person gets into their 90s they not infrequently round up their age. Claiming to be 100 (and still spritely) sounds much better than saying you are aged 97.

Measurement issues aside, the number of centenarians has increased sharply in Australia, albeit from a low base. In June 2010 there were around 2,900 Australians aged 100 and over with this increasing to 4,500 in June 2018. In comparison, by single year of age there were around 243,000 persons in June 2018 aged 67.

The Australian Government Actuary in recent work has sought to measure the effectiveness of retirement income products in dealing with the risk of negative income variations in retirement by projecting out to age 100 – which is a very long period and most people will be dead by that age. The role of the means tested Age Pension is also ignored.

Actuaries are always interested in the full range of cases. Defined benefit pensioners and their reversionary beneficiaries tend to live for a very long time. The last widow of a US civil war veteran, Gertrude Janeway nee Grubb, died some 140 years after the conflict ended, but she did marry when she was 18 and the groom was 81. However, most individuals (and hopefully policy makers) focus on what is most likely rather than giving equal weight to outlying cases.

The Treasury is currently seeking comments on possible simplified, standardised disclosure making use of metrics like that developed by the Government Actuary. It is hard to be in principle against simplicity and standardisation. However, meaningful and relevant are other important principles.

ASFA will be providing a submission to Treasury and the input of ASFA members is welcomed. SF

Chris Wildman, Simon Mather and Ros Heit

Harcla, John O'Donnell, Brad Hutchinson and David Loy

ASFA 2018 Christmas Briefing

Brisbane

5 December

Photography: *Jeremy Veitch*

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2019 – a landmark year for superannuation

JULIA STANNARD reports on recent legislative and regulatory news and developments affecting the superannuation industry.

This edition of rules and regs comes as the industry digests the Productivity Commission's recommendations for the superannuation system, while keenly awaiting the final report from the financial services Royal Commission. These inquiries will shape the reform agenda over the medium term, although any short-term response will be delayed by the upcoming election. Since December's rules and regs we have also seen APRA's finalised member outcomes requirements and ASIC's much-anticipated consultation package on fee and cost disclosure, plus a slew of other developments. All in all, 2019 is shaping up to be a landmark year for superannuation.

EFFICIENCY AND COMPETITIVENESS OF SUPERANNUATION: PRODUCTIVITY COMMISSION REPORT

On 10 January the Government released the final report of the Productivity Commission from its three-year investigation into the efficiency and competitiveness of the superannuation system. The report outlines 31 recommendations to significantly 'modernise' the system to work better for members. This summary highlights the more significant recommendations.

In relation to default fund processes and outcomes tests, the Commission recommended:

- employees should only be defaulted into a superannuation account if they are new to the workforce or don't have an existing account. Employees without an account should be presented with a 'best in show' shortlist of funds, selected by an independent panel. An employee who fails to choose a fund should be defaulted into a fund from the shortlist
- all APRA-regulated funds should undertake an annual outcomes test for their MySuper and choice offerings, against clear benchmarks. Investment options that fall short of the benchmarks should be subject to remediation and withdrawn if remediation is not possible.

On insurance, the Commission recommended:

- insurance through superannuation should be opt-in for those under age 25, or for accounts where no contributions have been made for 13 months
- trustees should articulate and quantify the insurance balance erosion trade-off determination they have made for their members
- a binding and enforceable superannuation insurance code of conduct should be implemented through APRA and ASIC
- there should be an independent inquiry into insurance through superannuation.

The Government will await the final report from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry before finalising its response.

STRENGTHENING SUPERANNUATION MEMBER OUTCOMES

APRA has finalised a package of prudential requirements to strengthen the focus of registrable superannuation entity (RSE) licensees on the delivery of quality outcomes for their members.

The requirements include the introduction of an outcomes assessment that will require RSE licensees to annually benchmark and evaluate their performance for choice and

MySuper products in delivering sound, value-for money outcomes for members. RSE licensees will also be required to meet strengthened requirements for strategic and business planning, including management and oversight of fund expenditure and reserves.

The package includes a new prudential standard SPS 515 Strategic Planning and Member Outcomes, amendments to existing standard SPS 220 Risk Management, and new prudential practice guides SPG 515 Strategic and Business Planning and SPG 516 Outcomes Assessment. The new measures will commence on 1 January 2020.

APRA acknowledges that the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017 seeks to introduce a legislated outcomes assessment. APRA will review whether any amendments are needed to its prudential requirements if the Bill is passed by Parliament.

NEW CONSULTATIONS

FEE AND COST DISCLOSURE

ASIC has released Consultation Paper 308 Review of RG 97 Disclosing fees and costs in PDSs and periodic statements on proposed changes to the fee and cost disclosure regime for superannuation funds and managed investment schemes. The paper follows an independent expert's review of the disclosure rules.

The consultation package also includes a draft updated Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements and proposed amendments to the Corporations Regulations 2001. During the consultation period, which runs until 2 April, ASIC will consumer test some of the proposed changes.

ASIC expects to release its response to submissions on the consultation package, conclusions from the consumer testing, a revised Class Order [CO 14/1252] and an updated RG 97 in the second half of 2019. Its current compliance approach to the disclosure requirements will apply until the consultation process is complete and any amended requirements are in force—ASIC will not take action where an entity is making reasonable endeavours to comply and not misleading consumers about fees and costs.

EARLY RELEASE OF SUPERANNUATION

The Government has launched further consultation on reform of the rules governing the early release of superannuation benefits on compassionate and severe financial hardship grounds.

An issues paper released by Treasury seeks views on proposed changes to relax aspects of the current regime and provide more scope for individuals to obtain early release of their superannuation—including in cases of family and domestic violence. Views are also sought on proposals to strengthen the integrity of the regime and ensure superannuation is accessed as a last resort in cases of hardship, and changes to the administration of the rules governing early release on compassionate and severe financial hardship grounds. Submissions close on 15 February.

RETIREMENT INCOME FRAMEWORK: DISCLOSURE METRICS

Treasury has released a consultation package on proposed disclosure metrics for retirement income products—the next step toward development of a retirement income framework, which will include the offering of comprehensive income products for retirement. The Government announced its intention to require providers of superannuation income streams to adopt standardised disclosure metrics in its May 2018 Budget.

The consultation package includes papers proposing metrics to help consumers assess how a product aligns with their preferences in relation to potential income, flexibility and risk management, and outlining the retirement income risk measure. Submissions close on 28 March..

SUPERANNUATION BILLS

When Parliament resumes on 12 February, it will have a long list of superannuation-related bills to consider–including bills intended to implement some of the Government's major superannuation reforms. Importantly, these include:

- ***Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018*** – this Bill has been passed by the House of Representatives and remains before the Senate. The Bill implements major reforms to insurance and fees within superannuation and consolidation of low-balance, inactive accounts. The 'protecting your super' package of reforms was announced by the Government in its May 2018 Budget.
- ***Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017*** – this Bill includes amendments to strengthen APRA's powers in relation to RSE licensees and enable APRA to obtain information on expenses incurred by RSEs and RSE licensees. It also introduces an annual 'member outcomes' test for MySuper products, requires RSE licensees to hold annual members' meetings, and amends the portfolio holdings disclosure rules. The Bill is yet to come before the House of Representatives.
- ***Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017*** – this Bill amends the SG law to provide that employees under workplace determinations or enterprise agreements made on or after 1 July 2018 have the right to choose their superannuation fund. It also provides that salary sacrificed amounts will not reduce an employer's mandated SG contributions. The Bill has been passed by the House of Representatives and remains before the Senate.
- ***Treasury Laws Amendment (2018 Measures No 4) Bill 2018*** – this Bill makes amendments in relation to SG compliance and penalties, single touch payroll (extension to small employers from 1 July 2019), fund reporting, employee commencement, Superannuation Complaints Tribunal secrecy provisions, and the taxation treatment of deferred annuities and reversionary transition to retirement income streams. The Bill has been passed by the Senate with amendments unrelated to superannuation and awaits reconsideration by the House of Representatives.
- ***Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018*** – this Bill has been passed by the House of Representatives and remains before the Senate. It provides for a one-off 12-month amnesty for unpaid SG, allows a partial opt-out from SG for higher income earners with multiple employers, and makes integrity measures to support the 2016-17 Budget reforms.
- ***Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018*** – this Bill remains before the House of Representatives but has been referred to the Senate Economics Legislation Committee for inquiry and report by 11 February. The Bill proposes to implement the Government's May 2018 Budget commitments to introduce new means testing rules for lifetime retirement income stream products.

NEW AND UPDATED REGULATIONS

Contribution work test - the Treasury Laws Amendment (Work Test Exemption) Regulations 2018 have introduced a one-year exemption from the contributions work test for eligible recent retirees, as announced in the May 2018 Budget. Retirees aged 65-74 with a total superannuation balance under $300,000 will be exempt from the contributions work test for 12 months from the end of the financial year in which they last met the work test. The exemption will apply to voluntary contributions made in 2019-20 and later years. Significantly,

the Government will not proceed with its proposal to restrict access to the 'bring forward' arrangements for individuals who utilise the exemption.

Fee and cost disclosure – prior to releasing its consultation package on reforms to fee and cost disclosure obligations, ASIC made ASIC Corporations (Amendment) Instrument 2018/1088. This extends, for a further 12 months, existing interim arrangements for the disclosure regime.

Section 29QC - ASIC Superannuation (Amendment) Instrument 2018/1080 has further deferred the commencement date for the 'consistency of disclosure' requirements in section 29QC of the Superannuation Industry (Supervision) Act 1993, until 1 January 2024. Section 29QC broadly requires that if an RSE licensee is required to give information to APRA under a reporting standard and gives the same or equivalent information to other persons, there is consistency in the way the information is calculated. The commencement of section 29QC has been deferred a number of times to ensure appropriate alignment with APRA's reporting standards, the proposed choice product dashboard rules and the expanded fee and cost disclosure rules.

Family law superannuation splitting regime - the Civil Law and Justice Legislation Amendment Act 2018 has made technical amendments relevant to the superannuation splitting regime, by renumbering provisions in the Family Law Act 1975.

Income stream benefits - the Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018 have amended the Income Tax Assessment Regulations 1997 to confirm the meaning of 'superannuation income stream benefit'.

APRA - the Australian Prudential Regulation Authority Regulations 2018 have remade the Australian Prudential Regulation Authority Regulations 1998. The latter regulations, which support the legislation establishing APRA, were due to sunset (expire) on 1 April.

Income tax - the Legislation (Deferral of Sunsetting – Income Tax Assessment Regulations) Certificate 2018 defers the sunset date of the Income Tax Assessment Regulations 1997 to 1 April 2021. The Certificate allows greater time for the Regulations—which were due to sunset on 1 April 2019—to be reviewed and replaced. The Regulations are relevant to the calculation of tax payable by individuals and entities, including superannuation funds.

ASIC levies - ASIC has issued the ASIC (Supervisory Cost Recovery Levy—Regulatory Costs) Instrument 2018/1062 and the ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2018/1063. Together, these provide ASIC with the information necessary to calculate the levies payable by each regulated entity for 2017-18.

AUSTRAC SUPERANNUATION GUIDANCE

AUSTRAC has released Industry specific guidance: superannuation sector. The guidance focuses on risks and potential scenarios relating to money laundering, terrorism financing and serious financial crime specific to superannuation organisations, and examples of methods to mitigate these risks and combat criminal threats. SF

'Rules and regs' provides a snapshot of key regulatory developments. ASFA members also have access, via the ASFA website, to the ASFA-Thomson Geer Regulatory Update. Delivered in partnership with Thomson Geer, this comprehensive quarterly Update seeks to keep members informed on the changing superannuation environment across new legislation, developing policy and pertinent case law developments.

BEST EXECUTION OF TRANSITION MANAGEMENT

We're likely to see more fund mergers and transfer of members into better performing funds, given the Productivity Commission's attention on underperforming funds.

In recent years, regulators have increasingly focused on the topic of best execution, and they may be asked to play an even greater role in the future. Best execution is at the hub of new disclosure requirements in the EU under the Markets in Financial Instruments Directive (MIFID II) and Australian asset owners increasingly expect similar levels of best practice from their managers. Fundamentally, best execution requirements are designed to protect clients and ensure brokers and asset managers seek to achieve the most favourable outcome on their behalf.

In the below article, STUART ANDERSON examines how management of a transition exercise can be evaluated through a similar lens.

WHAT IS TRANSITION MANAGEMENT?

Transition management is a short-term asset management service which aims to preserve portfolio value and provide accountability during periods of sizeable investment change. This could be triggered by changes to the manager structure, strategic or tactical asset allocation changes, rebalancing portfolios or super fund mergers/de-mergers and so on.

The rationale for choosing a Transition Manager (TM) shares many of the same criteria used to select brokers within the conceptual framework of best execution. An examination of the priority placed on each of these factors can help asset owners identify the type of TM they should appoint to achieve best execution of the entire transition mandate.

WHAT IS BEST EXECUTION?

When brokers take customer orders, they assume a responsibility to obtain 'best execution'. Unfortunately, best execution is not well defined and can mean different things to different people. No single criterion covers every investor and different factors will take priority based on the particular circumstances of the trade. Determining whether a trading strategy has achieved best execution requires a high level of transparency and scrutiny which has led to a growing number of transaction cost analysis (TCA) platforms. Underlying these solutions is the basic premise that 'you cannot manage what you do not measure'. This philosophy is also at the heart of the transition management industry in terms of how costs and risks are identified and managed during portfolio change events.

Asset managers are required to consider a range of qualitative and quantitative factors and must establish criteria to assess the relative importance of these factors. We break down below the different criteria considered when choosing a TM:

1. BEST PRICE / LOWEST COST

Any period of portfolio change exposes a portfolio to potentially major costs and risks, whatever the motivation may be for the transition exercise. If left unmanaged, these costs can serve as a significant drag on long-term performance that may compromise or diminish the original investment rationale behind the change.

Costs can arise every time assets are transacted or moved between portfolios. Sources of transition cost will include both those that are explicit and those that are implicit.

TMs can employ a multitude of strategies to reduce these costs during a transition that will include in-specie transfers; maximizing in-kinds (identifying and retaining any fixed income securities with similar characteristics to the target rather than an exact match); crossing; and hedging using a wide array of instruments.

The TMs own fee (commonly incorporated in the broker commission or as a separate management fee) is also an obvious component of the overall cost, but it is often the tip of the iceberg. Transparency, as always, is key. Hidden revenue sources and costs will result in underperformance even if the implicit costs such as market movement and impact are materially larger (which is frequently the case). Careful consideration and understanding of a TMs model and expertise in controlling these costs and providing this transparency is required to achieve the best outcome.

2. SPEED OF TRADE COMPLETION

If speed is of the essence, an investor may opt to incur higher execution costs in order to complete required transactions swiftly. If execution cost minimisation is the primary objective, the investor may elect to reduce disturbance on the market by phasing the acquisition over an extended period, perhaps over several hours, days, weeks or months even. However, the longer it takes to complete the trade, the more an investor is exposed to potential adverse market moves unrelated to their own trading behaviour.

When an asset is acquired over a period of time, this performance impact may be far greater than the cost of fixed fees and taxes. The ideal outcome that represents best execution involves a strategy which strikes an optimal balance between cost and risk (as represented by the "optimal frontier"), subject to an assessment of the investor's preference and sensitivity with respect to timing. Poor implementation or communication risks trading occurring at a different point along the theoretical curve, or even above it – meaning an unnecessary cost or risk has been incurred by the investor without any corresponding benefit.

3. MINIMAL INFORMATION LEAKAGE

The speed with which trading takes place is one factor in determining the market impact but it is not the only one and different TMs will leave different footprints in the markets. Activity and volatility in a stock may be expected to increase after a large trade as the information is revealed and digested by the market, however if this volatility appears before trades are executed, it suggests that other market participants were aware of sensitive pre-trade information. Brokers that send out Indications of Interest (IOIs) to asset managers and other market participants hope to generate crossing opportunities, but in doing so risk revealing sensitive information. This potential leakage of information could harm returns. TMs generally operate on the private side of information barriers to other parts of the firm in order to further restrict leakage.

There are ways of mitigating and removing this information leakage and the larger and more illiquid the required trades are, the greater the importance of doing so. IOIs for instance can be formulated to limit sensitive information on the position and TMs that are part of much larger entities are often able to mask their trading by incorporating it into the trading activity of the wider business. The anonymity gained from this means the market is often unaware that a transition is underway. Judicious selection of trading venues, utilisation of block desks and trading algorithms are also effective tools in a TMs arsenal.

Splitting a trade out across multiple counterparties has the potential to either help or harm the execution and TMs must use their judgement and expertise to understand which is likely to be the case for a particular trade. In many instances, trading smaller amounts with a number of counterparties will result in better prices and less market impact, but this will not always be the case and TMs need to be able to justify their decisions to demonstrate they have achieved best execution throughout.

4. ACCESS TO LIQUIDITY

Liquidity can be likened to oxygen - you only notice it when it's gone. Post GFC, markets have adapted to changes due at least in part to regulatory reforms intended to enhance the safety and soundness of the global financial system. Monetary policy, record new issuance, and financial regulatory reform have contributed to reduced dealer inventories and lower bond turnover for fixed income. As a result, bond trading has migrated to more of a hybrid principal/agency model. Agency trading, in which buyers and sellers are located and matched by banks and broker-dealers, has played a more prominent role as opposed to facilitating trades more through principal risk taking. In equities, the rapid growth of dark pools such as ASX's Centre Point, has seen liquidity move away from existing 'lit' exchanges.

With liquidity becoming fragmented in recent years, a good TM must use a variety of trading venues and counterparties to ensure that they can aggregate the available liquidity to increase the likelihood of filling an order and trading at the best possible price. Having a multi broker model, using electronic and advanced algorithmic trading and substantial ongoing investment in technology all contribute to ensuring sufficient access is available in a range of market conditions. The use of 'all to all' trading technology also provides for better liquidity and creates a greater variety of opportunities to trade a portfolio, including allowing buy-side firms to act as price makers rather than price-takers from a dealer.

The changing market structure also means that building portfolios solely with individual securities is increasingly costly and less efficient than in the past, leading investors to employ a range of instruments both as part of their long term strategy and transition arrangements. ETFs and futures in particular are valuable assets in meeting the market's needs. Historically, futures contracts have typically been used to gain exposure, but due to the maturation of the ETF market over the last five years, liquidity has deepened considerably and spreads have tightened to the extent that total cost of ownership evaluations can show they offer an optimal solution (even for fully funded investors), via superior tracking error, lower costs and / or improved liquidity.

Exposure can be obtained through ETFs, futures, total return swaps and options. Each of these vehicles have differing liquidity levels, costs and associated risks, meaning TM's must carefully consider on a case by case basis which is more appropriate to establish the desired level of benchmark exposure.

5. TRUSTWORTHINESS AND INTEGRITY

The reliability of counterparties has always been a key factor when considering who to trade with and these concerns are amplified when managing transitions due to the scale and sensitivities involved. An execution provider could offer the lowest fees and fastest execution but if there are concerns around their business model and cost structure transparency, they're unlikely to be selected.

Well publicised revelations from the Royal Commission into Misconduct in the Banking, Superannuation and

Financial Services Industry have revealed multiple cases of poor conduct and client interests taking a back seat. In most cases, this has been the result of an unmanaged conflict of interest, something that a well-structured TM model should take care to avoid.

A core divide for TMs is whether they act as principal, transacting largely with their affiliates and acting as counterparty on the trade, or as an agent, with a panel of brokers used to access the most favourable combination of liquidity and price. TMs acting as principal trade securities on their own account which creates opportunities to subsidise transition fees through the additional revenue generated elsewhere in the chain (such as. from generating flow). The industry code of practice, the T-Charter, states that TMs should 'disclose all sources of remuneration' but it's prudent to understand whenever the provider or an affiliate acts as principal and may be generating additional revenues.

Detailed and transparent reporting at all stages of the transition will also help asset owners to confirm for themselves that their interests are being put first. This is particularly important when trading asset classes such as FX and fixed interest where a centralised exchange does not exist to provide transparency. With the right checks and balances in place, either model is capable of producing good results for asset owners, but conflicts of interest must be identified and managed in order to ensure divergent incentives do not arise. A transparent charging structure and fiduciary mind-set are key to ensuring the TM acts with honesty and that their interests are aligned with their clients.

6. ENHANCED OPERATIONAL AND TECHNOLOGICAL SUPPORT

A robust TM process requires both experienced professionals and technology. Integrated investment technology enhances the quality of large volumes of data, supports consistent investment workflows and enables timely communications with both internal functions and external parties.

As transition activity becomes more complex and covers an ever-wider range of asset classes, geographical markets and fund structures, it's imperative that TM systems keep pace. A TM running a transition on a rudimentary platform or using different systems across asset classes increases operational risk and is unlikely to provide the same level of service to asset owners as one with a more integrated and sophisticated approach.

Performance in terms of execution will always be important, but TMs are also required to co-ordinate stakeholders and act as project managers. The ability to provide these services in a robust manner and to act as a partner to the asset owner is often a primary consideration in appointing a TM.

There's never a guarantee that a transition will run smoothly. However, by acting in a prudent and systematic fashion in the selection of their TMs, the asset owner can maximise the chance of success. This requires a full understanding by the asset owner of each TMs strengths and weaknesses and which is best suited for a particular type of transition.

As the concept of best execution evolves across the wider market, it will be informative to note the extent to which these developments are applied to the transition management business and the selection of these managers by asset owners. Transition trading decisions can be driven by circumstantial and complex factors, rendering it difficult to objectively demonstrate best execution. TMs must therefore establish trading processes and disclosures that together form a meaningful approach to seeking best execution for clients. Only by doing so can they consistently demonstrate that the execution of a transition mandate has been carried out in the best interest of the asset owners. SF

Stuart Anderson is Client Strategist for BlackRock's Australian Transition Management team.

BlackRock's transition management team seeks to help investors minimise costs through access to liquidity; manage sources of transition risk; centralise the point of accountability for change; and provide transparency via pre and post transition reporting.

cover story

Super sizing retirement

Kathleen Kennedy Townsend is drawing on her political and financial expertise to upscale Americans' savings for a safe and secure retirement. By **BEN POWER**


asia
confer

In 2002 Kathleen Kennedy Townsend, scion of the famed Kennedy political dynasty, ran for Governor of the state of Maryland. She lost. "The citizens didn't do the right thing," she jokes.

What would she do next?

California Democrat Kathleen Brown, the youngest sister of former California Governor Jerry Brown, gave her some advice.

"Don't do anything you know something about because you'll just be disappointed," Brown said. "Do something totally new and totally different. Get involved in finance because finance, like politics, is big and important and it makes a difference."

"I said, great, and I started working with a financial firm," Townsend recalls.

Townsend began her career in finance, but she couldn't turn her back on her political and crusading roots for long after she discovered the shocking state of America's retirement system.

"I thought this was an issue that was something I should take on because I'd worked in politics and I'd been working in finance."

Townsend, who addressed ASFA's recent Adelaide Conference around the 50th year anniversary of her father's death, is now crusading for a compulsory retirement contribution system in the United States in a bid to improve the dignity of retirees. She hopes it will become a key issue for the next Presidential election in 2020.

"We have a huge crisis in our country," she says. "What I'm asking for is big change."

POLITICAL AND INVESTMENT GENES

It is often forgotten that the Kennedy dynasty is as much an investment dynasty as a political one.

Kennedy Townsend's grandfather, Joseph Kennedy (Kathleen was the first grandchild), was a legendary Wall Street investor. He once saved the Yellow Cab company from an attack of short sellers, and later became the first chair of the Securities and Exchange Commission (SEC).

His financial speculation morphed into movies and property, including ownership of the giant Chicago Merchandise Mart, and he accumulated a fortune, once estimated by Forbes magazine to be worth $US1.7 billion to $US3.4 billion in today's money.

Townsend was the eldest child of Robert F Kennedy, who became Attorney-General in his brother, John F Kennedy's administration, and a famed fighter for civil rights.

Her mother, Ethel Skakel, was also from another successful business family. Townsend's maternal grandfather, George Skakel, established the Great Lakes Corporation, which became one of the largest private companies in the US.

At the recent ASFA Conference, Townsend described her childhood at the legendary mansion, Hickory Hill, in McLean, Virginia. At the dinner table, she and her ten siblings would be quizzed on current events, and her mother would take them to Senate meetings rather than parks.

MAKING A DIFFERENCE

Townsend says both her mother and father had a profound influence on her.

"They said, 'from those who have been given much, much will be expected," she says.

While her parents instilled a very strong sense of responsibility, they also inculcated a "very great sense of adventure to climb mountains, to explore the world, to listen to how other people live, to open yourselves to other people's pain and suffering. And enormous curiosity about what was going on in the world … To read, to think, to ask questions."

However it was her father's moral and social crusades against poverty and discrimination that had some of the greatest impact. As Attorney General from 1961 to 1964 he fought entrenched prejudice to improve the civil rights of African Americans and end discrimination.

> "What I learnt from my family is the importance of courage and compassion and caring. Those of us who are fortunate have a responsibility to make sure we're making the world a more just and a more loving place."

Townsend studied history and literature at Harvard before completing a law degree at the University of New Mexico School of Law. She then practiced as an attorney after moving back to her husband's home state of Maryland.

But, in essence, her father, had challenged her to follow in his footsteps into politics, once writing to her, "as the oldest of the next generation you have a particular responsibility … Be kind to others and work for your country".

Townsend ran for the US House of Representatives in Maryland's second congressional district but lost. In 1994, however, she was elected Lieutenant Governor.

Kennedy Townsend says she is most proud of the social reforms achieved during her time in office. Through her advocacy Maryland became the first (and still only) State to require community service as a condition of high school graduation. She also made a big impact by encouraging police and community leaders to work together and build trust with one another to reduce crime in their communities.

And she brought mental health services, traditionally provided to high school students, to elementary schools.

THE US RETIREMENT CHALLENGE

In 2002 she ran for Governor but lost to Republican Robert Ehrlich. The loss triggered the Kathleen Brown-inspired move into finance. She became managing director of Washington-based investment and advisory firm, Rock Creek Group, where she also worked with a number of the firm's major clients. She is still involved with the company as a senior adviser.

But then she heard a talk by Randi Weingarten, the president of the American Federation of Teachers, describing the terrible situation for retirees in the US. Some 68 million Americans have nothing saved for retirement. The median income for retirees is $US15,000. Even for the top 1 per cent of income earners, the average retirement savings is $US200,000; for median income earners it is just $US100,000.

Townsend notes that if Americans have no savings in retirement, they rely on Social Security. For almost 50 per cent of American seniors, social security provides at least 50 per cent of their income and for about one in five seniors, Social Security provides at least 90 per cent of their income. The average social security retirement benefit in June of 2018 was just $17,000 per year.

"I thought, this is a really horrendous situation," Townsend says. "More than 70 per cent of Americans fear retirement more than death, with good reason, because they have so little savings."

Townsend says there is increased awareness the US needs to solve this problem, largely brought about by a growing baby boomer bulge and changing work patterns. "People don't work at the same job for 30 or 40 years like they used to. We need a different way of saving."

She took action. She chaired the Governor's Retirement Security Taskforce in Maryland, which resulted in legislation that incentivises all businesses not offering a retirement plan to offer an opt-out retirement option for their employees. She is a board member of the entity created by that legislation.

She also founded the Centre for Retirement Initiative at Georgetown University to promote retirement solutions at the state government level.

Townsend says those moves have been important. "But what we really need is federal action to solve the problem," she says.

She has now launched a national campaign to start a federal-guaranteed retirement account program. It would start with employees contributing 1.5 per cent to a retirement account, with employers matching contributions. Townsend says it will "make sense to escalate the contributions".

"My goal is to get federal legislation passed so that every American has a way to save for a safe and secure retirement," she says.

LOOKING AT AUSTRALIA'S SYSTEM

Australia's superannuation system requires employers to make compulsory contributions of 9.5 per cent, with the nation's super assets totalled $2.8 trillion (at the end of September 2018).

"The Australian model is an extraordinary example of what can be done with visionary leadership and determination," Townsend says. "I am inspired by what has been accomplished in such a short period of time."

Townsend says when she looks at the Australian superannuation system, three things stand out as impressive.

Firstly, within a generation, and despite being the 16th largest economy, Australia has created the world's fourth largest retirement savings pool in the world. "That's impressive," she says.

Secondly, Australia achieved that as a mandate on employers. And thirdly, "You've done this in a way that does not just benefit the wealthy and well-off but you tried to make it help all Australians which is also impressive."

Townsend says the superannuation system will always be criticised, and she notes the Financial Services. "But don't lose faith in it because it's important what you have done and people all over the world are envious, particularly people over 65 are envious of what you've been able to accomplish," she says.

Townsend is particularly focused on creating income streams for Americans during retirement, something the Australian superannuation system is adapting to now as the bulge of baby boomers start to retire.

As part of the system she envisages for the US, "when people retire, we hope they would get a monthly pay cheque for the rest of their life and not a lump sum," she says. "What people really want is the security of knowing that the money would last till they die."

This was Townsend's first trip to Australia. She wants to return to see the Great Barrier Reef, the "wonderful forests", and Uluru.

But in the meantime she is focused on her retirement campaign.

Townsend says ensuring a financially secure retirement is one of the key roles the finance industry can play in society. "You've got to make sure that you're providing a secure retirement," she says. "You want to make sure the products that are developed are useful and understandable and helpful."

Townsend faces a big challenge building an equitable compulsory retirement system in the US.

Her goal is to have the retirement plan become part of the next Presidential campaign in two years. To achieve that, Townsend says it requires organising in the primary states with community and political leaders, as well as grassroots activists.

"I'm talking to both Senators and Members of Congress and hope it will be part of the Presidential Campaign so many Americans will hear about it and realise there is an answer to their fears on retirement, that there is something that can be done."

But she has strong community support from a cross-section of America. The non-profit think tank, the Economic Policy Institute, where Townsend is director of retirement security, polled 3000 Americans about their attitude towards the retirement plan. Some 75 per cent of Republicans and 75 per cent of Democrats liked the idea, and 86 per cent of millennials were supportive.

> "The Australian model is an extraordinary example of what can be done with visionary leadership and determination"

THE KENNEDY LEGACY

Townsend has her family's crusading spirit to guide her.

"What I learnt from my family is the importance of courage and compassion and caring. Those of us who are fortunate have a responsibility to make sure we're making the world a more just and a more loving place.

"I learnt that each of us has been given gifts, and each of us should use those gifts to improve the lives of our community and our country and to help others where we can. That can be from speaking out, to voting, to getting involved in a campaign, to volunteering. There are many ways to make a difference, but it's not enough to sit on the sidelines and stay silent." SF

A more precise way to measure after-tax performance: FTSE ASFA Australia Index

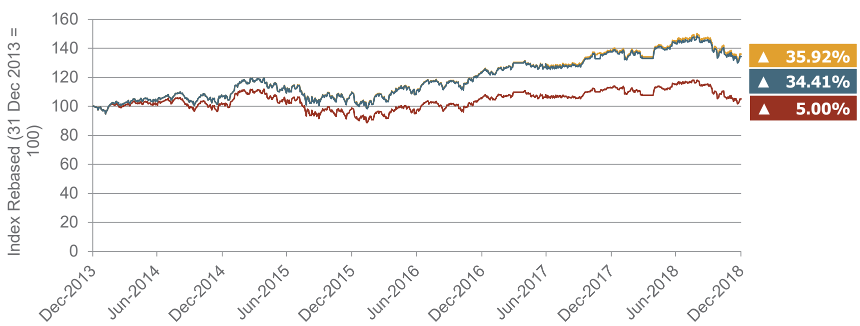
Data as at: 31 December 2018

The FTSE ASFA partnership is focused on providing Australian superannuation funds, fund managers and other stakeholders with industry standard after-tax benchmarks developed specifically to assist the transition to after-tax performance measurement and reporting. The FTSE ASFA Australia Index Series provides superannuation funds with a range of after-tax benchmarking options to make tax efficient investing a focus in every portfolio, whether it's optimising value from franking credits, participating in off-market buy-backs, managing capital gains tax more efficiently or all three.

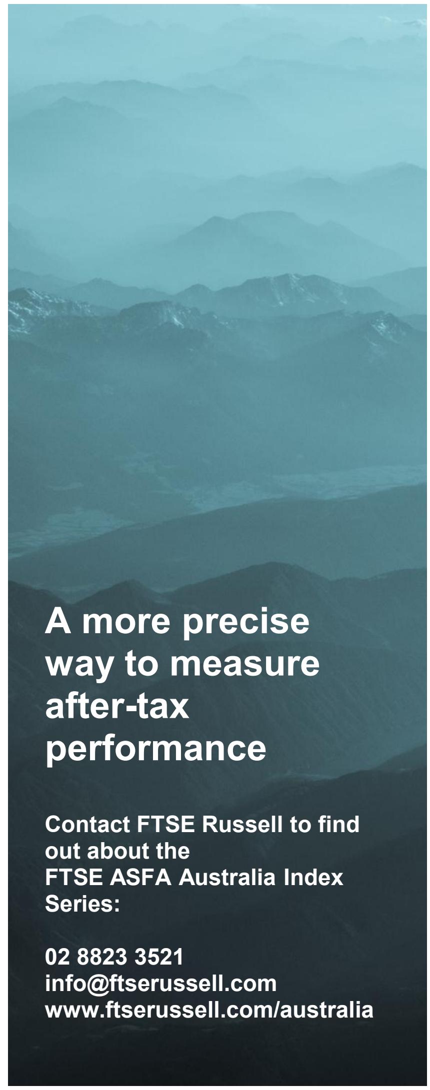
Performance highlights

- The FTSE ASFA Australia 200 Index finished the month down 0.04 per cent
- Price returns contributed -8.83 per cent to the FTSE ASFA Australia 200 Index return financial year to date
- Pretax income return contributed 2.12 per cent to the index
- The index has realised 0.01 per cent of capital gains tax financial year to date, and is sitting on unrealised CGT liability of 0.35 per cent as at the end of December

FTSE ASFA Australia 200 Index 5-year performance - price / total return (AUD)



- FTSE ASFA Australia 200 Index - Price Index
- FTSE ASFA Australia 200 Index - Superannuation*
- FTSE ASFA Australia 200 Index - Superannuation - Realised CGT-Adjusted*



Attribution of FTSE ASFA Australia 200 Index - superannuation CGT by financial year

	2013-2014 %	2014-2015 %	2015-2016 %	2016-2017 %	2017-2018 %	2018-2019# %
Price Return	12.18	0.90	-4.49	9.30	8.28	-8.83
Income Return	5.19	4.61	4.76	4.82	4.85	2.12
Franking Credits Contribution	1.80	1.63	1.66	1.64	1.67	0.72
Off-Market Buy-Back (Net of Tax)	-	0.02	0.00	0.02	0.01	0.19
Tax on Grossed Up Dividends	-1.08	-0.96	-0.99	-0.99	-1.00	-0.43
Realised Capital Gains Tax (CGT)	-	-	-0.23	-0.03	-0.54	-0.01
Realised CGT-Adjusted Total Return	**18.09**	**6.20**	**0.71**	**14.74**	**13.27**	**-6.24**
Unrealised CGT / DTA at Financial Year End	-3.03	-2.89	-0.88	-2.15	-3.66	-0.35
2-way Review Turnover	3.02	5.16	5.91	3.58	2.71	1.70
2-way Forced Turnover	38.25	37.67	37.82	38.94	38.88	-

* Superannuation indexes incorporate franking credits and the after-tax effects of off-market buy-backs in the dividend performance calculation. # Financial year to date

Source: FTSE Russell

Pre-election policies snapshot

While awaiting the final report from the Royal Commission into misconduct in the banking, superannuation and financial services, and ahead of the Federal election expected in May, the Government has clearly indicated the need to deal with underperforming funds. *SUPERFUNDS* provides a brief overview of both party's policies.

Parliamentary election timeline

The Government's parliamentary sitting calendar for 2019:

- **12 – 14 February** is the first sitting week of the new year and the only sitting week of the Senate prior to the Federal Budget
- **2 – 4 April** is the Federal Budget sitting week (brought forward from May), with the Budget to be delivered on Tuesday 2 April
- **15 – 18 April** is scheduled as a sitting week however it is increasingly likely that the Government will call an election immediately post-Budget and ask the Governor-General to prorogue the Parliament
- Either **11 or 18 May** are considered the most likely dates for the election, with 18 May the latest possible date to hold a standard general election with all Lower House seats and half of the seats in the Senate turning over

THE GOVERNMENT AND SUPER

In 2016 the Government made substantive changes in the Federal Budget designed to make the superannuation system more equitable and sustainable. They have indicated that they don't want to further tinker with these settings. Their key policy objectives currently reflected in legislation before Parliament are:

- major reforms to insurance and fees within superannuation and consolidation of low-balance, inactive accounts
- strengthen APRA's powers in relation to RSE licensees and introduce an annual 'member outcomes' test for MySuper products
- provide that employees under workplace determinations or enterprise agreements made on or after 1 July 2018 have the right to choose their superannuation fund
- strengthen the SG compliance regime and provides for a one-off 12-month amnesty for unpaid SG
- introduce new means testing rules for lifetime retirement income stream products.

When Parliament resumes on 12 February, prior to the election there will be a limited time for Government to pass the legislation necessary to implement some of these major reforms. These Bills include the *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018, Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017, Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017 , Treasury Laws Amendment (2018 Measures No 4) Bill 2018, Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018 and Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018.*

For further details refer to rules & regs on page 14.

Following the calling of the election, the Bills will lapse if they have not been passed. It will be a matter for a returned Coalition Government or an incoming Labor Government whether the Bills are reintroduced and in what format.

The Government's response to the Productivity Commission and Royal Commission will be announced sometime after 1 February. This will be a critical component of the Government's election platform in relation to superannuation.

WOMEN AND SUPER

Thee Hon Kelly O'Dwyer MP released the Government's Women's Economic Security Statement 2018. The Women's Economic Security Statement 2018 is designed to help women by:

- extending early release of superannuation for victims of domestic and family violence
- improving the visibility of superannuation assets in family law proceedings

PRODUCTIVITY COMMISSION AND ROYAL COMMISSION

The final Productivity Commission (PC) report was released on 10 January following the Government commissioned three-year investigation into the efficiency and competitiveness of the superannuation system and whether better ways to allocate defaults are needed.

LABOR

The Federal Opposition Government has articulated their core policies positions around superannuation that they will take to the next Federal election. Some of these include:

SUPERANNUATION TAXATION AND CONTRIBUTION MEASURES

- tax income in retirement over a $75,000 threshold
- impose a 30 per cent tax on contributions for individuals with incomes in excess of $200,000
- remove the ability to make concessional catch-up contributions over the following five years for those with balances under $500,000
- reduce from $100,000 to $75,000 the annual cap on non-concessional contributions that could be made by an individual, with a maximum three-year carry forward of $225,000
- abolish the tax deductibility of personal contributions
- remove cash refunds for imputation credits – as announced by Chris Bowen on 13 March 2018
- take superannuation out of the budget cycle, with custodians to look after super policy with a long term view to retirement policy

OTHER POLICIES

- Embed superannuation as an industrial entitlement
- Greater recourse to prosecute recalcitrant employers who do not meet their SG obligations, through channels other than the ATO
- Proceed to increase SG to 12 per cent as soon as practicable - eventually getting to 15 per cent

LABOR WOMEN'S ECONOMIC SECURITY STATEMENT 2018 AND SUPERANNUATION MEASURES

- The Opposition has recommended the following measures be taken to help women build their superannuation:
- remove the $450 threshold
- superannuation on parental leave
- ability to pay above 9.5 per cent to women without breaching anti-discrimination laws

PRODUCTIVITY COMMISSION

Since release of the Productivity Commission, the Federal Opposition has said that the bottom quarter of performing funds should be removed. They have expressed concern about the recommendations of the Productivity Commission's top 10 'best in show' performing fund idea, noting that current high performing funds may not necessarily remain so in future years, and that limiting the market may detrimentally impact competition.

It is expected Opposition will release their response to the final report of the Royal Commission shortly after its release.

WHAT'S THE VERDICT?

While we are yet to see the final suite of policies from both sides of politics, there appears to be bi-partisan agreement on the need to address under performance in the superannuation system to ensure member outcomes are a priority. SF

Q&A

Former Australian High Commissioner to the United Kingdom The Hon. Alexander Downer AC shared his views, at the 2018 ASFA Conference, on the state of international relations, the elevation of China and the rise of populist politics.

In this Q&A with *Superfunds*, he spoke further about the political, economic and cultural impact of these issues – both globally and for Australia.

Q: **At the ASFA Conference, you spoke about three major geopolitical trends; the rise of China, populism and the challenging of rules-based international systems. Do you see any other major trends emerging in the coming 12-18 months?**

A: Over the next 12 months there is likely to be a continuing deterioration in public support for mainstream political parties throughout the western world. This is being driven by a number of factors. First, mainstream political parties have misjudged the general public‘s commitment to national identity. They feel their national identity has been challenged by uncontrolled immigration (especially in Europe), by globalisation and by the denigration of national pride by elites. Watch out for the European Parliamentary elections in May of this year. It is possible that nationalists could gain a considerable number of seats. Given that the European Parliament decides ultimately on the membership of EU institutions and its laws, this could be a defining development in the politics of the European Union.

Liberal democracies in Europe, North America and Australasia will become increasingly challenged by the growing incivility in public debate. This is most obviously manifested on Twitter and other social media. The consequences of growing incivility and associated partisanship is that the public will gradually lose faith in public institutions, be they political institutions or business, the judiciary, the media and so on. This is discouraging and could lead to a gradual disillusionment with democratic processes. One of the great challenges of the next year will be to try to restore a modicum of civility into public discussion and public debate.

Q: **What will China's rising power mean for stability and the status quo, both globally and for Australia?**

A: The rise of China need not be a threat to status quo powers – particularly the United States. If China acts according to the rules-based international system and resist the temptation to try to change the status quo through the use of force—be it economic force or even military force—then any tensions arising from the rise of China can be contained. The Americans need to accept the rise of China as a given and ensure that China is able to play its full part in international institutions. It is reasonable for the Americans to take action to try to liberalise the Chinese market. It may be that the trade war declared on China by President Trump will lead to a greater liberalisation of the Chinese economy than would otherwise have been the case – so that in net terms, taking aggressive trade action against China may prove to be worthwhile.

> One of the great challenges of the next year will be to try to restore a modicum of civility into public discussion and public debate.

Q: How will the challenges ahead for China impact Australia?
A: We should not assume that China's continuing rise will be uncomplicated. China has considerable debt—particularly at the local government level—as state-owned enterprises have low levels of productivity, the banking system needs substantial reform to make it more efficient and, above all, China faces a very significant demographic challenge. As a result of decades of pursuing a one child policy, China's population growth is starting to decline. Indeed, in absolute terms China's working-age population has now begun to shrink. This plays to the saying that China needs to get rich before it gets old. For Australia, this means that the Chinese market will not continue to grow at the rate it has done over the last 20 years. China's economy will become more "normal" which means that rates of growth will be lower in the years ahead, and also less predictable.

Q: There seems to be a current trend away from globalisation and reversion to protectionism and nationalism. Do you think this trend will continue and, if so, what are the likely implications?
A: We need to remember that globalisation has never been particularly popular, including in Australia. Trade liberalisation and trade agreements opening up Australian trade to other parts of the world are not political winners. Equally, free trade is not especially popular in Europe or even in North America. Political leaders need to understand that the public are not just interested in economics. They do have pride in their own nations and the nation state is the fundamental building block of the international system. Leaders have not sufficiently taken that into account in recent years. As a result, there has been a strong reaction to the disparaging of national identity by metropolitan elites. This has particularly manifested itself with the demands by the elite that the public accept high levels of immigration and, in parts of Europe and North America, shambolic and unregulated immigration. It's not the migrants themselves who are the problem, it's the sense that some sort of internationalism is more important than the nation state. People imagine this in all sorts of different ways but essentially they do not like it. I do not see that the rise of protectionism is going to continue apace. The European Union is not likely to raise barriers and nor are Asian economies likely to. Trump is using increased tariffs to try to force better trade agreements on countries like China and, for that matter, Europe. In time, this strategy may work.

Q: What impact will the rise of populist political parties have, both internationally and in Australia?
A: The rise of populism in Australia is a substantial threat to our political system. At the next election, there is a real risk that independents will win several seats and gradually build on that foundation. Independents offer the public in their electorates whatever they want. They depend on getting the preferences of the one major party which doesn't think it can

win in that particular electorate. Once elected, they are very hard to get rid of because they never form government, they just criticise anything the government does which is unpopular and claim credit for everything the government does which is popular. If every member of Parliament was an independent, then it would be almost impossible to have a government at all. This is the greatest danger of populism in Australia. It has the potential to lead to a very serious deterioration in the quality of governance of Australia. Internationally, populists are more extreme still. Some of them are quite ideological. To govern will require sometimes making unpopular decisions but with populists in power, good decision-making will be rare indeed.

Q: **During your presentation at the ASFA Conference you said that "changes can be managed with wise leadership". What characteristics and values do you believe constitute wise leadership?**
A: Good and wise leadership in this era will strike a balance between policies which capitalise on the benefits of globalisation—particularly trade and investment agreements and so on—and making sure the nation state's pride and identity are well protected. Leaders need to try to unite their nations around their national values and historical narratives and try to avoid salami slicing society into gender, racial and sexual identities. So in a phrase, good international policy needs to be married with moderated and reasonable national pride. SF

Lessons on community standards and expectations

Ahead of the final report from the Royal Commission into misconduct in the banking, superannuation and financial services industry, **SCOTT CHARANEKA, STANLEY DRUMMOND & LINCOLN RODGERS** believe that for super fund trustee directors there is no cause for alarm.

Over the course of the last year, the phrase "community standards and expectations" has been increasingly associated with the misconduct of financial institutions.

What may be required, they write, is a refreshed understanding of the longstanding fiduciary concepts of diligence, prudence, single-minded loyalty and ultimate accountability.

DO MEMBER EXPECTATIONS AND COMMUNITY STANDARDS ACTUALLY MEAN ANYTHING IN LAW?

The phrase "community standards and expectations" became a catchcry emanating from the terms of reference of the current Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (RC).

It is worth noting that this phrase is not well developed in law, especially in the context of regulating the behaviours of superannuation fund trustees and their directors.

However, in the context of gathering information to inform the Commissioner, the idea of self–reporting on behaviours that may be legally permissible but (broadly speaking) unethical, sets a necessary low bar for disclosure. It is also worth bearing in mind that under the terms of reference for the RC, one of the areas for consideration was whether there was a case for law reform, based on the information assembled by the Commissioner.

The messaging to date from the Commissioner is that the case for wide ranging legal reform is not as pressing as the case for wide ranging compliance with the laws already in place .

It is thus timely to remind superannuation fund trustees that in addition to the plethora of statute based law to consider, there are also a number of general law legal principles regulating their actions.

HOW COULD SUCH A TEST OF COMMUNITY STANDARDS AND EXPECTATIONS WORK FOR SUPER FUNDS?

As part of current consideration for law reform, it has been suggested that "community standards and expectations" can become the new minimum standard for financial services institutions, their directors and officers.

It is at this point that the different regulatory systems operating for banks, insurers and superannuation funds becomes relevant. The vast majority of superannuation funds are established as trusts. This is a key point of distinction between superannuation funds and other financial institutions. Banks are not set up as trusts and neither are insurers.

So if superannuation fund trustee directors are now to consider "community standards and expectations" when making decisions, what is their relevant "community"? Given that super fund trustees are required legally to act with single-minded loyalty to the interests of their own beneficiaries, it can follow that the "community" to be considered by a superannuation fund trustee is only the collective of that fund's beneficiaries.

A more involved discussion occurs when trying to unpack "standards and expectations", with a number of questions to consider. Are the terms "standards and expectations" interchangeable or are these terms to be read conjunctively? Are "standards and expectations" static, and are they capable of capture and measurement?

We can start with the plethora of legal requirements governing the behaviours of superannuation fund trustees and their directors and officers. Very quickly this discussion can become footed in ethical terrain, when technical compliance with black letter legal requirements is perceived to fall short of the standards and expectations ascribed to beneficiaries.

Put another way, when considered at more than just at first blush, settling the standards and expectations of a constantly changing, massive and diverse population may be a challenge for any board.

Happily, there is an easier point of reflection for superannuation fund trustees, based on the well-established standards of trustee behaviours set out by the general law.

LESSONS FROM THE ROYAL COMMISSION ON COMMUNITY STANDARDS AND EXPECTATIONS

During the course of the hearings at the RC, counsel assisting made numerous submissions to the Commissioner regarding misconduct.

Many of these submissions have been well reported and include areas such as:

- poor and untimely disclosure of information to customers;
- poor record keeping and minute taking;
- failure to review and update key policy documents and procedures;
- failure to properly investigate breaches and to elevate these internally;
- selective and untimely disclosure of breaches to regulators;
- failure to properly remediate customers for accepted breaches;
- misunderstanding the proper role of trustees and their directors.

Regardless of whether "community standards and expectations" becomes an established legal threshold for superannuation fund trustee directors to observe, it is useful to consider each of the submissions regarding misconduct through the prism of the current general law.

Concepts such as diligence, prudence, single-minded loyalty and ultimate accountability are not just quaint notions. They already exist as the baseline legal obligations for superannuation fund trustee directors to observe. One should consider the many negative behaviours highlighted by counsel assisting the Commissioner in light of these existing and exacting general law requirements. SF

This article acts only as a summary of certain ideas and themes emerging from the current Royal Commission. Whilst the authors (Scott, Stanley and Lincoln) were retained and acted exclusively for a large industry super fund throughout the Royal Commission proceedings, the views expressed in this article are those of the authors exclusively.

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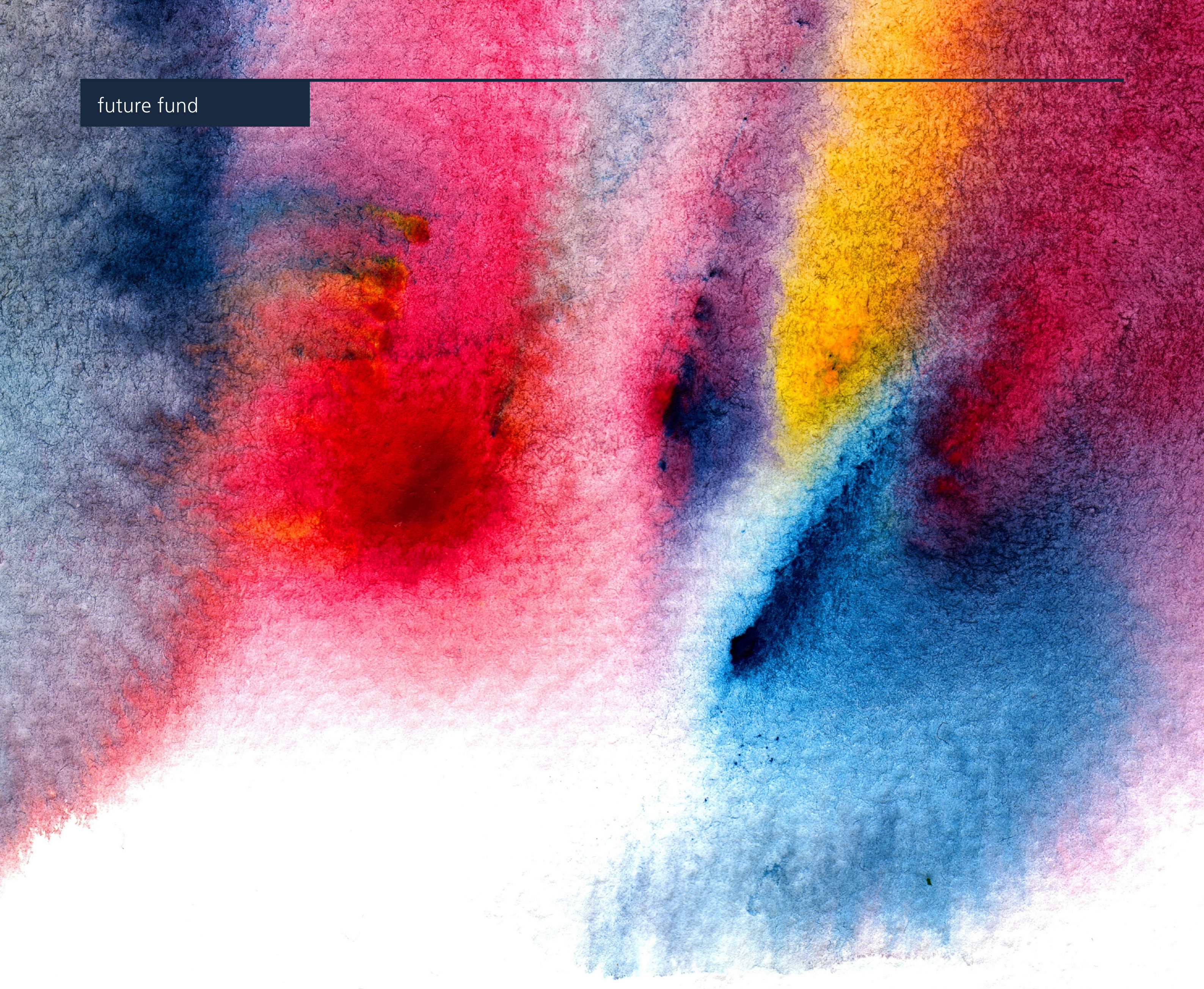

NATIONALISATION OF SUPER. WOULD IT BE A GOOD THING?

The possibility of the Future Fund operating as a default superannuation option for everyday Australians has emerged again, with politicians from both major political parties weighing in on the debate. *SUPERFUNDS* examines the case for a government-run default option, looking into arguments both for and against.

Talk around nationalising Australia's $2.7 trillion superannuation pool has been everywhere since the New Year. This isn't surprising given we're in a pre-election environment and everyone is waiting to see how the Government will respond to final recommendations from the Productivity Commission's assessment of efficiency and competitiveness of Australia's superannuation system, as well as the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

This idea of using the Future Fund to offer a simple, low-fee superannuation fund for everyday Australians is not new. The cabinet considered, and knocked back, the idea last year.

The Government has not publicly commented on the idea and are yet to release their policy around superannuation. That said, comments made by some senior ministers seem to suggest that the Government is weighing up whether the Future Fund could be used as a default superannuation option. Potentially, there are two options being considered:

- The Future Fund setting up its own consumer fund to compete directly with industry and retail funds.
- The Future Fund overseeing the asset allocation of a government-run fund where fund managers are selected through a competitive tender process.

Senior members of the opposition are against the idea of a government-run default option and, like the Coalition, appear to be waiting for the Royal Commission findings to be handed down on 1 February before making an official statement on their approach to super.

While we wait for the Government and Opposition to announce their full suite of election policies in relation to super, subsequent to the release of the Royal Commission's final report, it's worth exploring the idea further.

1. SHOULD THERE BE A GOVERNMENT-RUN DEFAULT SUPER OPTION?

Those in favour of a government-run default super fund claim the idea makes sense to overcome some of the problems identified by the Productivity Commission and Royal Commission. They claim the current system does not do enough to ensure members best interests.

Supporters also believe that a government-run option is a better idea than the "best-in-show" top 10 list put forward by the Productivity Commission.

These arguments put forward by supporters of the Future Fund proposal suggest that the current system is fundamentally broken and the problems insurmountable.

This doesn't marry up with findings from the independent Productivity Commission, which found that 65 per cent of default superannuation funds were delivering for members. Indeed, following its extensive three year review, the Productivity Commission did not recommend nationalising super. One of the key reasons for this is due to the political risk it entails. In its report, the Productivity Commission said the biggest risk with a government run option was the political risk of the fund performing badly, which could lead to calls for tax payers to top-up returns.

There are many who think it is more practical and reasonable to make improvements to the current system, which is working for the majority of default fund members, than make a monumental decision to nationalise retirement savings.

2. WOULD A GOVERNMENT-RUN FUND IMPROVE OUTCOMES FOR MEMBERS?

It has been argued that the immense pricing power and economies of scale of a large sovereign superannuation fund would reduce fess and administration costs, thereby delivering better outcomes for members. However, if the Future Fund grew to be too large it could experience diseconomies of scale.

The Future Fund's solid performance to date is another argument used by those for a government-run default fund. Right now, returns from the Future Fund have been good, but analysis suggests they are not necessarily the best. Performance analysis carried out by Rice Warner shows that the industry's best performers have beaten the Future Fund over one, three and five years. It's also questionable if the Future Fund would be able to deliver higher returns at lower fees than the incumbents once it began operating like a superannuation fund.

If the competitor tender model was the option chosen, this may also have a significant impact on member outcomes. The Productivity Commission looked into various options for competitive tender models, rejecting both a tender process and fee-based auctions. The tender process was rejected due to concerns the resulting contractual arrangements would be too rigid, thwarting the ability of investment managers to change their investment strategies in response to market conditions. The Productivity Commission also rejected the fee-based auction believing this poses risks to member outcomes.

The perils of a fee-based auction were highlighted in ASFA Research Paper 'The Chilean pension tender model' released last year.

3. DOES MANAGING SUPERANNUATION ALIGN WITH THE FUTURE FUND'S PURPOSE?

The Future Fund is a national sovereign wealth fund which invests to meet its future liabilities for pension benefit payments to retired civil servants of the Australian public service. Since it was founded in 2006, the Future Fund has produced good, stable returns in varying market conditions allowing it to stay ahead of its investment target. The argument behind using the Future Fund as the government default option is based on its solid performance, as well as the fact that it is a pre-existing and well-resourced capability within government.

Although investing to pay pensions for some federal public servants is its core remit, the Future Fund is not a superannuation fund. Unlike typical superannuation funds, it doesn't offer group insurance (or have the ability to do so), is not subject to tax, and does not have the administration infrastructure in place to service clients.

Broadening the role of the Future Fund – from managing money to meet public liabilities to managing private superannuation assets through a trust structure that requires the consideration of individual members best interests – will mean that the Future Fund will have to operate very differently from how it does now.

For instance, the Future Fund would incur costs in operating the necessary administration functions, such as unitising individual accounts, providing client services to members and establishing daily unit pricing. A separate approach would also be needed for the Fund's asset allocation and investment strategies. All in all, the additional costs and asset allocation changes call into question whether a Future Fund default super optioncould even deliver above-average returns at below-average fees.

4. WOULD THE INCLUSION OF A GOVERNMENT-RUN SUPER FUND BE GOOD FOR COMPETITION?

Backers of the Future Fund proposal argue that introducing a government-run default super option would spur competition in the sector.

This rules out the model were the government becomes the sole default super option, as this would create a monopoly.

The addition of a government-run Future Fund as a default option alongside other APRA approved fund, while better, may not promote a level playing field. The Future Fund would enjoy a huge and unfair competitive advantage over its rivals, attracting many Australians to switch because of the implied guarantee a government-run fund implies.

At the end of the day, the industry isn't really in need of more competition or more good funds. It needs to address the underperformance of the poorest performing funds.

5. WOULD A GOVERNMENT-RUN DEFAULT OPTION BE FREE OF CONFLICTS OF INTERESTS?

With APRA regulated funds having faced criticism about conflicts of interest, supporters for a government fund argue that the Future Fund is free from conflict.

While a government-owned super fund may be free from the kinds of conflicts that APRA regulated funds need to manage, it would have different types of conflicts to consider. For example, would politicians be able to resist the urge to influence the investment decisions of a government-owned default super fund?

It's not inconceivable that politicians may try to direct or influence how the funds should be invested. For example, if they were seeking to boost investment in certain industries or geographic regions they may seek to influence the Future Fund to invest some of its assets in these areas. Even if the said investment provided a basic return, it could represent an opportunity cost to members.

There's also a risk that the Government would use the private super savings of individuals in times of a budget shortfall or financial crisis. While using private savings for public purposes may be in the national interests, it is unrelated to the retirement outcomes of whom the savings belong. SF

The roller coaster ride of switches and rollovers

MATT DALEY, JANE PASKIN AND VANESSA PALLONE OF CLAYTON UTZ

CASE 1

When it comes to switch requests - timing is of the essence.

Prior to 3.00pm, the member tried to fax an investment switch request to the trustee. He regularly made such requests and knew the trustee's policy was any requests received before 3.00pm were transacted at that day's unit price and any requests after 3.00pm, at the following day's price. This process stopped members from gaming the system by knowing the closing price before transacting. Forward pricing is standard industry best practice.

Shortly before 3.00pm the member phoned the trustee's call centre staff and explained that he had attempted to fax the switch request several times but was receiving an error message. The member then sent through evidence of his attempts to fax before 3.00pm and the phone call was escalated to a senior staff person within the call centre.

The trustee's representative decided to accept the switch request as if it had been received by the call centre before the deadline. A trustee representative then phoned the member and confirmed the decision. The trustee's evidence was the member was most appreciative, but this call was not recorded and the member 's evidence was he did not receive the call.

The following day at 8.35am the member sent through a cancellation of the prior day's switching request. The trustee refused to action this request and the switch proceeded at the unit price applicable the day before. The trustee advised that to cancel a switch, notice must be received the same day and before the 3.00pm deadline.

The trustee submitted that there was no reason to reverse the member's switch request and to do so would have been a breach of its forward pricing standards. The Tribunal agreed with the trustee and held that it had exercised its discretion and actioned the member's switch request "as per his wishes and in good faith". The Tribunal went on to hold that the member cannot insist the trustee "override its switching policies on one day and then use that action against it the next day". Accordingly, the trustee's decision to not compensate the member was affirmed.

Case D18-19\050

CASE 2

This case concerns the trustee's decision to not compromise (settle) the complaint of a member who was complaining about higher insurance costs (amongst other matters) as a consequence of a successor fund transfer (SFT).

The member wished to transfer to his self-managed superannuation fund (SMSF) $165,000 but was advised by the trustee he had insufficient funds to complete this transaction while leaving $5000 in his account – the minimum balance under the fund rules. The member alleged he agreed with the trustee to transfer $163,500 whereas the actual amount subsequently transferred was $159,926. Further, the account balance left in the fund was $2424 not $5000.

The member wanted compensation of $6,150 being the difference between the alleged agreed transfer amount and the amount actually rolled over, plus the difference between the minimum balance and his actual balance immediately after the rollover. The trustee refused his request.

The facts were that the member lodged a request to rollover monies on 30 January which was received by the trustee on 3 February. The following day, the trustee telephoned the member to obtain his instructions as there were insufficient funds in the member's equity investment option to effect the request. The member also had monies in a direct share option so the trustee needed to know whether the member wanted some of those shares sold to permit $165,000 to be transferred. The member did not want any of his direct investments sold and agreed to effect the transfer only from his equity investment option. This conversation was recorded and provided to the Tribunal as evidence that the member understood the account balance went up and down with investment returns and the trustee's representative had stated "I'll do as much as I can and leave the direct alone".

On these facts the Tribunal found no representation was made by the trustee to transfer a specific amount and that the timing of the transfer satisfied the three business days rule under regulation 6.34A of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations). In this case, the three days started after the trustee had received additional information from the member in the phone call. Further, the Tribunal found, as a matter of fact, the member understood investment returns could be both positive and negative.

The remaining question for consideration by the Tribunal was whether the trustee inappropriately failed to leave a residual balance of $5000 in the member's account.

According to the trustee's records, when it decided to transfer the amount of $159,961.88 on 9 February the residual account had a balance over $5000 but negative rates were then applied retrospectively for 8 and 9 February leaving a balance of $2,505.58. On the day of transfer the daily crediting rates for the transfer day and the previous day were unknown. On this basis, the Tribunal was satisfied the trustee had done nothing wrong.

The Tribunal therefore affirmed the trustee's decision to not compensate the member.

Case D18-19\044

CASE **3**

Fund business rules are there to be followed!

The decision under review was that of the trustee deciding to not compensate the member for interest and reimbursement of fees caused by the delay in processing his rollover request to his SMSF.

On 19 July the member requested the entire balance of his income stream be transferred to his SMSF. The trustee received this request one week later and the day after this, the trustee contacted the member for further information which he supplied on the same day.

Under regulation 6.33E of the SIS Regulations, the trustee is required to use electronic services to check the name and ABN of the SMSF, and confirm that it is a regulated superannuation fund, and that the member is actually a member of the fund. If the trustee is unable to verify this information electronically it is required to make enquires of the ATO within five business days.

The trustee advised the Tribunal that it had attempted to verify the member's details through the AUSkey system but was unsuccessful. It then telephoned the member on 4 August which was within the five business days rule. This telephone call between the member and a trustee representative was recorded and supplied to the Tribunal. In summary, the member was being asked to contact the ATO himself, but he was not really following the conversation and the call ended by the trustee hanging up on him. It was acknowledged by the trustee that this was unprofessional. Importantly, the member at this stage, thought the trustee was continuing to process his rollover request, but the trustee did nothing until it received a letter from the member dated 6 September. On 22 September, the trustee wrote to the member asking him to contact the ATO to verify membership details. The member did this and on 3 October advised the trustee.

The trustee was asked by the Tribunal whether it had contacted the ATO as per the regulatory requirements. While the trustee could point to this being in its business rules it was unable to confirm the rules had been followed. On this point, the Tribunal found that, on the balance of probabilities, contact with the ATO was not made by the trustee. If however contact had been made, more than likely it would have resulted in the rollover proceeding within the regulatory timeline.

On 3 October the trustee was able to do all the necessary electronic checks and advised the member the rollover would proceed the next day. However, some further delay occurred and the member's rollover cheque was not issued until 19 October.

The Tribunal held that these facts were unacceptable. In all the circumstances the rollover should have been completed by 9 August being three business days after the day the trustee could reasonably have contacted the ATO. The Tribunal substituted its own decision which involved compensating the member for the delay pursuant to a detailed formula which included the member providing the trustee with evidence of the rate of return his SMSF made during the relevant period.

Case D18-19\042 SF

Don't forget the Senate

Jody Fassina

Managing Director,
Insight Strategy

For the superannuation industry 2018 was a challenging year, led of course by the Royal Commission's spotlight shining bright and exposing significant failures across the entirety of the financial services sector.

Superannuation was again subject to ongoing legislative and regulatory reform from Canberra that never seems to end.

On this point it is worth noting there were a number of significant pieces of proposed superannuation legislation, including the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017 and Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018*, that were not even dealt with by the Senate.

As the nation prepares to go the polls (most likely in May) and attention and debate focuses on whether Scott Morrison continues as Prime Minister or Bill Shorten becomes Prime Minister, it is important to remember the role and influence of the Senate.

Regardless of who forms Government, neither the ALP or Coalition will control the Senate.

A re-elected Morrison Government or a Shorten Labor Government will still have to deal with a motley crew of Senate crossbenchers.

The Senate currently comprises 26 ALP Senators, 31 Coalition, 9 Greens, 2 One Nation, 2 Centre Alliance (formerly Nick Xenophon Party) and 6 assorted independent crossbenchers.

Of 76 Senators, there are currently 19 on the crossbench — the largest number ever since Federation. Of these 19 crossbenchers, 12 will go to the polls in May and 7 will not be up for re-election.

Before considering how many crossbenchers will either be re-elected or how many new crossbenchers will be elected, the starting position is an initial crossbench of 7.

In a normal election, only half the Senate faces the electorate, and this will be the case in 2019. But in 2016 then Prime Minister Turnbull called a double dissolution election, meaning all of the Senate went to the polls.

With each state electing 12 Senators and the territories electing 2 Senators each, it means of the 12 Senators per state, half got 6-year terms and the other half 3-year terms. Territory Senators go to the polls every 3 years as a matter of course.

It is those Senators that got 3-year terms that will face the electorate in May.

The changed Senate voting system in 2016 was meant to see the end of minor party Senators but this obviously didn't occur.

So, what can stakeholders expect from the 2019 Senate election and why does it matter?

Quite simply, the Senate crossbench is here to stay. The only question is, how many will there be and what will be their ideological leanings?

Despite the changed Senate voting system, more and more people are voting for anybody other than the two major parties in the Senate.

On average 1 in 3 voters or 33 per cent now vote for anybody other than Labor or Liberal. Of this 33 per cent depending upon the state, the Greens tend to attract between 6 per cent and 10 per cent, meaning over 20 per cent of the Senate vote is going to other minor and micro party candidates.

This is significant because to get elected to the Senate in a normal half Senate election requires 14 per cent of the vote.

Hence there is more than enough votes to see the continued election of micro party Senators.

The key message here is — regardless of who becomes Prime Minister in May — stakeholders would be wise to invest the time and effort in seeking to understand what makes the Senate crossbench tick.

The superannuation industry already saw a number of Bills held up and that was mainly because the Senate crossbench did not support them.

A government can have the best of intent and desire to implement its policies, but that doesn't amount to much at all if it can't get its legislation passed by the Senate.

While it is always hard to predict any electoral outcome, and the Senate even moreso, based on current analysis the new Senate on 1 July 2019 will likely be comprised of 27-28 ALP, 31-32 Coalition, 6-8 Greens, 2-3 One Nation, 2-3 Centre Alliance and 2-6 others. SF