

# FIT & PROPER REQUIREMENTS FOR TRUSTEES: WHERE DO WE SET THE BAR?

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# A FAIR ASSESSMENT?

*“Trusteeship today requires significant expertise, yet many have identified trustees as being the weakest link in the value chain”*

(NAPF Discussion Paper, 2005)



# A FAIR ASSESSMENT?

*“Trustees are a mass of well-intentioned but not necessarily expert folk” and have represented a “residual enclave of amateurism in . . . business life”*

(John Plender, Financial Times, January 2005)



# A FAIR ASSESSMENT?

*“If standards around trustee tables are to rise more quickly, then recruitment, selection and reward need to be addressed”*

(NAPF Discussion Paper, 2005)



# THE BROAD NOTION OF 'FIT & PROPER'

- Fitness
  - *Ability* to fulfil the role
  - Knowledge, skill, experience, competence etc
- Propriety ('proper')
  - Having a suitable *character* to occupy a position of trust
  - Integrity, honesty, good faith etc



# RECENT AMENDMENTS

- S7A of the Pension Funds Act requires board members (\*new):
  - To attain the level of skill & training as *may* be prescribed by the registrar within 6 months from date of appointment
  - To retain the prescribed level of skills & training throughout the board member's term of appointment



# RECENT AMENDMENTS

- Current S7C requires board members:
  - Take reasonable steps to ensure that the member's interests to the rules are protected;
  - Act with due care, diligence & good faith, and avoid conflicts of interest
  - Act with impartiality iro all members & beneficiaries
- **New amendments**
  - Act independently
  - Fiduciary duty to members & beneficiaries to accrued benefits, and fiduciary duty to fund to ensure that it is financially sound and responsibly managed & governed to the rules
  - *To comply with any other prescribed requirements*



# The SA environment

- Registrar not prescribing requirements in a vacuum
- SA environment :
  - Low levels of financial literacy
  - Large pool without formal qualifications
  - Small pool of experienced trustees
  - At least 50% member elected trustees in occupational funds
  - High turnover of trustees
  - Remunerative incentives generally only for independent trustees



# WHERE DO WE SET THE BAR?

- How do we set the bar on fitness requirements given our circumstances?
- How do we put in place standards that are appropriate but not unnecessarily exclusionary or burdensome for funds or trustees?
- How do we deliver suitable and effective training?



*Let's take a tour . . .*



# OECD\* Guidelines

*Trustees “should be subject to **minimum suitability (or non-suitability) standards** in order to ensure a **high level of integrity, competence, experience and professionalism** in the administration of the pension fund. The **governing body should collectively have the necessary skills and knowledge** to oversee all the functions performed by a pension fund, and to monitor those delegates and advisors to whom such functions have been delegated.”*

[\*Organisation for Economic Co-ordination and Development]



# APPLICATION

- Some countries require *necessary* skills & knowledge but board assesses & enforces this
- Some set out broad *competencies* but don't prescribe qualifications or credentials
- Some are very *prescriptive* about qualifications
- Some focus on levels of skills at time of appointment, others after appointment, others on both
- Some require same skills for all trustees, other require collective skills
- Some have high degree of regulator oversight, others leave it to the funds to monitor



# POLAND

- *Law on the Organisation and Operation of Pension Funds (1997)* – fit & proper requirements include:
  - Propriety requirements apply to all trustees
  - Management Board
    - At least 2/3 must have 7 year employment history
    - At least 2/3 must speak Polish
    - At least 1/3 must have degree in law, economics or be on a list of investment advisors
  - Supervisory Board (50% member elected)
    - As above BUT ½ must have degree in law or economics



# USA

- “Duties imposed by law on fiduciaries have been viewed as sufficiently rigorous to ensure, in most cases, that qualified individuals are appointees”
- Prescribing specific degrees or training viewed as unnecessary because trustees usually drawn from senior company management or delegated experts & advisors

[Stewart & Yermo, *Pension Fund Governance: Challenges and Potential Solutions*, 2008]



# GERMANY

- *German Insurance Supervision Act*
  - Trustees must be qualified, reliable & suitable for job
  - “sufficient theoretical & practical knowledge”
  - German Insurance Supervision Act
- Usually means managers having management experience within insurance co or pension fund for at least three years & knowledge of their portfolio
- Specific propriety requirements must be satisfied before license can be issued:
  - CV & clearance certificate
  - Extract from central trade register & negative pledge re any criminal, misdemeanor or insolvency proceeding
  - Disclosure of relationships with anyone of the supervisory board



# UNITED KINGDOM

- “Appropriate knowledge & understanding of the law relating to pensions & trusts, principles relating to funding and investment of assets”
- “Conversant” with certain specified scheme documents (trust deed, rules, IPS, most recent financials) & other documents regarding current policy on administration
- Note: ‘conversant’ means “familiar by use or study; intimately associated or acquainted”
- Applicable to all trustees and any individual that represents a corporate trustee



# UNITED KINGDOM

- *Code of Practice on Trustee Knowledge & Understanding (TKU)*
  - Guidance on the degree of knowledge and understanding of legislation that is required
  - Time within which new trustees must complete TKU
  - How to determine what K&U is relevant for them
  - How to do all this and be satisfied that have done so
- *Trustee Toolkit*
  - On-line learning facility run through Pensions Regulator
  - Free of charge
  - Issues that regulator considers they should be familiar with



# AUSTRALIA

- 50:50 board composition
- Can have independent trustees
- Based on trust law
- Fund is the trustee & the individuals are the 'responsible persons' (RPs)
- 2006 - Fit & Proper requirements became part of the licensing requirement for funds as overseen by APRA



# AUSTRALIA

- Fitness requirements
  - Met on collective basis
  - Working knowledge of law & its application
  - Basic investment knowledge
  - Proven professional & managerial competence
- Proper requirements
  - Met on individual basis
  - Honesty, integrity etc



# AUSTRALIA

- Focus is on ensuring adequate skill while performing function instead of ensuring they meet set of expectations before appointment.
- If don't have expertise, knowledge or experience initially, APRA expects them to undergo sufficient training within 'reasonable period of time' (usually not more than one year)
- Core skills required:
  - Understanding & ability to implement certain specified docs
  - Working knowledge of relevant legislation & basic knowledge of trust law
  - Working knowledge of accounting, auditing & operating processes
  - Basic investment knowledge
  - Awareness of which areas additional technical, professional or expert advice could be sought



# AUSTRALIA

- Does not require specific tertiary or other qualifications. Focus is instead on need for continuing education and appropriate training.
- Funds must have policy to address how ongoing training needs are identified & satisfied – and a formally documented training register.
- Trustee skill assessed collectively – but each RP must make a contribution toward satisfying that collective requirement
- Succession mechanism necessary where high dependence on one board member



# AUSTRALIA

- Propriety Standards
  - Have minimum statutory test; grounds for disqualification (eg conviction for offence involving dishonesty, insolvency)
  - Sound character, honesty, integrity, diligence & judgment etc
  - APRA can approach court to have trustee disqualified for failure to meet fit & proper standards



# AUSTRALIA

- APRA examines the policies and procedures that the fund has developed to ensure that fit & proper standards are met
- Can ask to see the performance assessments
- Funds required to have fit and proper policy as part of risk management strategy. Minimum requirements for that policy:
  - Identify & articulate the skills & competencies required for the fund to carry out its functions
  - Do the same for each RP



# AUSTRALIA

- Set out the process to identify gaps in the collective skills base
- Who will conduct the fit & proper assessments
- What information is needed for the assessments
- What will be considered
- Processes to ensure that policy is being adhered to



# AUSTRALIA

- Process to deal with persons who are not fit & proper
- Process for regular review of the policy
- Self-assessments
- Specify own standards for training of new and continuing RPs
- Specify whistle-blowing obligations if person believes that RP or fund is not fit & proper.
- Disclose to regulator reasons for termination of appointment



# QUESTIONS FOR SA

- How do we set the bar on fitness requirements given our circumstances?
- How do we put in place standards that are appropriate but not unnecessarily exclusionary or burdensome for funds or trustees?
- How do we deliver training?



# BEAR IN MIND . . .

- Unique SA environment with:
  - Low levels of financial literacy
  - Large pool without formal qualifications
  - High turnover of trustees
  - Small pool of experienced trustees
  - At least 50% member elected trustees in occupational funds
  - Remunerative incentives generally only for independent trustees



# CURRENT STATE OF PLAY IN SA

- Broad statements in our legislation re fit & proper requirements
- Body of common law around fit & proper requirements
- Performance appraisals done at board level
- Registrar does not approve the appointment of trustees but can remove them if not fit & proper
- No minimum qualification needed
- Independent trustees seen more in retail funds & umbrella funds



# CURRENT STATE OF PLAY IN SA (cont)

- No formal requirement that there be training or how often
- FSB Trustee Toolkit – free & voluntary
- Industry training by various bodies – some issues around independence and standards
- No accreditation of training providers
- No core curriculum
- No requirement re when or how often training takes place
- POA Guidelines – aimed at POs, does not add to what is stipulated in legislation but clarifies processes around enforcement
- Other?



# DISCUSSION POINTS

- Should we prescribe & assess skills at an individual or collective level?
- How much should be monitored by the registrar and how much by the fund?
- Should fit & proper requirements be part of a fund's licensing requirement (as in Australia)?
- How much focus should there be on skill level at the time of appointment vs skills to be acquired and maintained after appointment?
- Should there be a minimum qualification or skill level or knowledge or experience that one needs in order to be even be appointed as a trustee? (eg a matric certificate)
- Is formal education a sufficient measure of skill in our context?



# DISCUSSION POINTS

- Training
  - Should it be compulsory and, if so, how often? (the Irish example)
  - Regulator vs private vs private but accredited?
  - Cost of providing training?
  - Cost of attending training? Time-off to attend training?
- Performance assessments
  - Improvements and changes needed?
  - Internal or external?



# SOME RECOMMENDATIONS

- Fitness Requirements at Individual Level
  - (a) Core competency requirements
    - (i) Law
      - Working knowledge of key provisions of specified statutes, eg PFA, ITA
      - Trustee duties
      - Tax
      - Other?
    - (ii) Risk management
    - (iii) Accounting
      - Be able to understand basic set of financials



# SOME RECOMMENDATIONS

(iv) Investments (basics that will enable trustee to follow a standard investment report back)

- Whose who in the world of investments
- Types of investment vehicles
- Pricing structure
- Benchmarks

(v) Other?



# SOME RECOMMENDATIONS

- Fitness Requirements at Collective Level
  - Specific skills that expect board as a whole to have
  - Eg investment, legal, actuarial, accounting, administration
  - Guided by the nature of the fund
- Proper Requirements
  - Compulsory & applicable to all trustees
  - Similar standards and process as applicable to POs



# SOME RECOMMENDATIONS

- Other
  - Skills matrix needed by all funds
  - Fit & Proper policies by all funds
  - Compulsory training on core skills within 6 months of appointment unless exempt
  - Assessment as part of training
  - Compulsory structured training every year - board determines needs & reports to registrar on this
  - Independent performance assessments. Registrar can have access to these.
  - Some remuneration for member-elected trustees



# Thank you



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