Members' best financial interests

Is well-being banned?

Simon Russell

Superannuation fund member engagement and, in particular, anything tagged as being well-being-related appears to be in the legislative headlights. This is because as part of the Your Future, Your Super reforms, superannuation fund trustees must now act in their members' best financial interests. This duty was inserted into section 52(2)(c) of the *Superannuation Industry (Supervision) Act 1993* amending the previous best interests duty.

So, with trustees now banned from incurring expenditure that provides only non-financial benefits to their members, what does this mean for member engagement?

No more 'well-being' initiatives?

Interestingly, two of the three case study examples provided in the Exposure Draft Explanatory Materials to Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Best Financial Interests Obligation, referred to superannuation funds that provided well-being-related services.

In the first case study example:

Yellow Super has decided to spend an amount of beneficiaries' funds in wellbeing and counselling services due to its preference for providing beneficiaries with a holistic retirement experience.

The expenditure was not permitted under the new rules because:

While beneficiaries derive some benefits from these services, they are not financial benefits and offering the services comes at financial cost to the fund.

In the second example, Red Super decides to invest in a health insurance company that: "offers its members access to an online health and well-being information tool."

In this case, the fund's investment was only justified by its returns, regardless of any value ascribed to the tool. This demonstrates that it's ok for a fund to provide well-being-related services, so long as it comes at no cost.

Well-being has value, right?

One interpretation of these new rules is that they suggest that members' well-being has no value. But even an economic rationalist would disagree with this proposition; economists seek to maximise 'utility', which is a concept that stretches beyond financial gain. Even to an economist, it is not just about money.

In the context of superannuation, is this suggesting that there is no value in the subjective sense of well-being that members gain from feeling that they have sufficient income to cover their retirement? Or in the comfort they gain from knowing that their family will be financially secure if they were they to die prematurely? These feelings are partly driven by the amount a member has invested and by the terms of their insurance cover, but they are mediated by how the member thinks about those things. In psychological terms, not all dollars are created equal.

An even more vigorous defence of the value of well-being would suggest that, in the end, money is merely a means to greater well-being. Money has no intrinsic value – it is a stepping stone to lived experiences, and to the rich psycho-social benefits that those experiences entail. In this case, a superannuation fund that focuses solely on financial benefits at the exclusion of well-being is akin to Kodak focusing solely on producing photos at the exclusion of capturing memories. Each is misaligned with its customers' underlying needs.

But theory diverges from practice

Despite these concerns, I have some sympathy for what the new regulations are trying to achieve. Too often 'well-being'—along with 'member engagement'—is a woolly concept that is used to justify all manner of initiatives that have intuitive appeal but lack empirical rigour. In these cases, it is not that the idea of enhancing members' well-being is wrong, it is just that the approaches taken to do so are flawed.

Much members' money has been wasted on creating 'information tools' that members do not use, investment charts that members do not view, financial products that members do not select, financial education programs that members do not enrol in, and explanatory brochures that members do not read or understand.

It is therefore understandable that what legislators hear when they read the words 'well-being' is 'a waste of members' money'. Arguably, given the poor track record of these types of initiatives, requiring funds to quantify their benefits is appropriate.

How can funds better engage with members within the new rules?

Enhance core functions

The Explanatory Materials note that:

So long as the expenditure is essential to the prudent operation of a superannuation entity … then the expenditure decision would likely be regarded to be in the best financial interests of the beneficiaries.

The types of expenditures that fall into this 'essential' category include:

… investments in systems, risk management, governance and the engagement of sufficient resources to operate the trustee's business operations.

Arguably, certain aspects of the way a fund engages with its members are essential to the fund's business operations. For example, funds need to have a website that is easy for their members to navigate and that helps them make financial choices that are in their best interests. Funds need to provide their members statements that communicate effectively and that nudge members towards the actions that will help them reach their retirement goals. Also, funds need to have forms and processes that facilitate members taking actions and achieving associated financial outcomes. Expenditures related to each of these things could therefore be considered 'essential'.

Relatedly, so too would be expenditures on developing the skills within a superannuation fund's employees that help them to better understand, influence and engage with their members. Surely the new rules are not intended to require funds to employ poorly trained staff, to force them to follow labyrinthine processes and to give their members unwieldy forms for them to ignore.

No additional cost

As discussed, client engagement that genuinely enhances members' well-being—that is, provides a non-financial benefit—is ok, so long as it does so at no additional cost.

Beware though: because "the best financial interests obligation is not subject to any materiality threshold", not a single extra dollar can be spent. This rules out a lot of things, but not everything.

If an email campaign is already planned to go to members, then applying behavioural insights to tinker with the words on the page, or the order information is presented, or the scale on an investment chart, or the list of members who are going to receive the email can each increase the impact of that engagement without increasing the cost. You do not necessarily need a big budget and a fancy marketing campaign to positively influence member behaviour. Rather, you just need employees with the necessary behavioural skills and frameworks.

No additional NET cost

Even if additional costs need to be borne, that could also be ok so long as there was an expectation that those costs would be offset. The Explanatory Materials provide an example in which expenditure on a marketing campaign to promote a fund is permitted where "the trustee believes that this will allow them to reduce their fees by 0.01 percentage points by spreading the fixed costs of the fund across more members".

There are a number of real-world examples where this type of situation is possible, for instance a campaign to encourage members to:

- contribute more to superannuation
- consolidate their multiple superannuation accounts
- retain their existing account rather than establishing an SMSF
- retain their money in a pension account at retirement rather than taking a lump sum
- top up their life insurance.

These types of initiatives are potentially permissible even if the financial benefits to members are difficult to quantify.

Quantify the financial benefits

Of course, some of the financial benefits from the types of member engagement initiatives listed above are quantifiable. For example, every dollar contributed to

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The quote

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superannuation has an expected value at retirement. Every dollar that qualifies for a government co-contribution has an even greater value. Every dollar retained in a pension account at retirement rather than being deposited into a low-interest savings account has an incremental value too.

Other engagement initiatives also have quantifiable financial benefits. A campaign to encourage younger members to invest in a relatively high-growth option can be expected to lead to them having substantially greater wealth at retirement. As would a campaign to encourage members to reconsider their investment choices after they switched their investments to a cash option in response to recent market volatility. Sure, there are risks involved, but for investors with a long-term investment horizon the benefits of higher growth are likely to justify taking those risks.

Employ empirical rigour

When assessing whether to incur expenditures on member engagement (or otherwise), the Explanatory Materials state:

Trustees will need to have robust quantitative and qualitative evidence to support their expenditures and use a business case supported by technical analysis … and quantifiable metrics to reflect expected financial outcomes.

Trustees need to articulate the risks associated with achieving the outcome along with any mitigation strategy.

This assessment requires a combination of financial information, member data and behavioural insights. It requires a willingness to experiment, to measure, to analyse and to be guided by the evidence. It requires being able to demonstrate that the fund "acted reasonably in forming the view that the expenditure was in the best financial interests of beneficiaries," based on the information that was available at the time. As discussed, this does not mean that funds should now ignore their members' well-being. But it does mean they need to make sure that woolly thinking does not result in detrimental financial outcomes for members.

The good news for superannuation funds is given these are now legislative requirements, presumably any costs incurred in developing businesses cases and in gathering evidence is considered an essential function! **FS**