



# SUBMISSION

## Submission to Treasury — Consultation on Performance Test Treatment of Faith-based Products: draft legislation

---

16 August 2022

**The Association of Superannuation  
Funds of Australia Limited**

Level 11, 77 Castlereagh Street  
Sydney NSW 2000

PO Box 1485  
Sydney NSW 2001

**T** +61 2 9264 9300  
1800 812 798 (outside Sydney)

**F** 1300 926 484

**W** [www.superannuation.asn.au](http://www.superannuation.asn.au)

ABN 29 002 786 290 CAN 002 786 290

File: 2022/09

Director, Member Outcomes and Governance Branch  
Retirement, Advice and Investment Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

16 August 2022

Dear Sir/Madam,

### **Performance Test Treatment of Faith-based Products: draft legislation**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to your consultation on the *Performance Test Treatment of Faith-based Products: draft legislation*, released on 20 July 2022.

#### **ABOUT ASFA**

ASFA is a nonprofit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.4 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

#### **GENERAL COMMENTS**

ASFA supports the adjustment of the annual performance test to reflect the faith based orientation of a superannuation fund, where this has had an effect of the investment decisions made by the fund, generally through the use of filters / screening out of particular investments or assets that are not in consistent with the beliefs of the members and the ethos of the fund.

We also agree that the proposition that trustees should be required to apply to APRA with respect to their product status as a condition precedent to their performance test being adjusted.

We do, however, have some concerns with respect to the performance test more generally, as expressed in previous submissions to Treasury and the Senate Economics Committee,<sup>1</sup> and have some specific suggestions with respect to the draft legislation and the proposed performance test treatment of faith-based products, as outlined below.

---

<sup>1</sup> Submission to Treasury—*Consultation on ‘Your Future, Your Super’ exposure draft legislation*, 22 December 2020  
[https://www.superannuation.asn.au/ArticleDocuments/1452/202032\\_Treasury\\_Your\\_Future\\_Your\\_Super\\_Exposure\\_Draft\\_Legislation\\_final.pdf.aspx?Embed=Y](https://www.superannuation.asn.au/ArticleDocuments/1452/202032_Treasury_Your_Future_Your_Super_Exposure_Draft_Legislation_final.pdf.aspx?Embed=Y)  
Submission to the Senate Economics Committee—*Inquiry into the Treasury Laws Amendment (Your Future, Your Super) Bill 2021*, 18 March 2021  
[https://www.superannuation.asn.au/ArticleDocuments/1588/202109\\_Senate\\_Economics\\_Committee\\_Your\\_Future\\_Your\\_Super.pdf.aspx?Embed=Y](https://www.superannuation.asn.au/ArticleDocuments/1588/202109_Senate_Economics_Committee_Your_Future_Your_Super.pdf.aspx?Embed=Y)  
Submission to Treasury—*Consultation on the Your Future, Your Super Regulations and associated measures*, 25 May 2021,  
[https://www.superannuation.asn.au/ArticleDocuments/402/202114\\_Treasury\\_Your\\_Future\\_Your\\_Super\\_Exposure\\_Draft\\_regulations\\_final\\_sans\\_signature.pdf.aspx?Embed=Y](https://www.superannuation.asn.au/ArticleDocuments/402/202114_Treasury_Your_Future_Your_Super_Exposure_Draft_regulations_final_sans_signature.pdf.aspx?Embed=Y)

## SPECIFIC COMMENTS

### 1. Scope should be broadened to all 'values-based' investing, including ethical, ESG & sustainability

Many products employ 'values based' or 'principles-based' investing, including ethical investment products, products that employ Environmental, Social and Governance (ESG) filters and products that otherwise focus on sustainability in addition to investment returns.

These products impose limitations on investments in certain assets in the same way as faith-based products – through utilising filters and screens that preclude investment in assets that meet certain negative specifications or fail to meet specified positive criteria.

In order for their performance test to be adjusted we agree that the trustee should certify that it employs a 'values-based', or 'principles-based' investment strategy, that is disclosed to its members in its regulated disclosures and marketing materials, and has, as a question of fact, employed particular filters/screens.

### 2. Should be an 'adjusted' performance test, not a 'supplementary' performance test

The draft legislation proposes a 'supplementary' performance test that allows investment in accordance with faith-based principles to be taken into account when assessing the performance of a product against investment benchmarks.

While we appreciate that this approach is likely to have been adopted to minimise work for APRA, as adjustment of the benchmark(s) used in the performance test will only be necessary if the product has not passed the initial test, we have some concerns with respect to this approach.

In particular, from a theoretical perspective, if there is acceptance of the premise of benchmarking in the first place then there should be only one, appropriately constructed, benchmark against which any such assessment is made.

If products are to be assessed on whether they have delivered an appropriate outcome to members, any measurement of success should reflect any 'values-based' or 'principles' based objectives underlying the product's investment strategy, including any decisions to filter or screen investments on a specified basis.

If a product has made a 'values-based' or 'principles-based' decision not to invest in one or more assets then it is not appropriate to assess that product against a benchmark that includes the performance of those assets. Instead, the benchmark should be adjusted by removing those assets and the product assessed against the adjusted benchmark.

By way of example, if a product has decided not to invest in tobacco products, or armaments, or gambling, because of the deleterious effect on public and individual health, the relevant benchmark(s) should be adjusted by removing the performance of those products from that benchmark.

Further, establishing a paradigm in which a product 'fails' the original, unadjusted, performance test, and is then assessed against a 'supplementary', adjusted, performance test, creates the impression that the product has 'failed' but has been granted special treatment, in the form of a concession, to be assessed against another test. We submit that this should not be the case – instead a product should be assessed against a single, appropriate, benchmark in the first place to determine whether it has succeeded in delivering appropriate outcomes to members.

Accordingly, we suggest that, in lieu of a 'supplementary' performance test, 'values-based' or 'principles-based' products should be assessed against a performance test that has been adjusted to take into account the filters/screens that the trustee has put in place and whether that product has passed or failed in delivering appropriate outcomes to its members is determined on the basis of that assessment.

### 3. Review of Your Future, Your Super laws

On 7 June 2022 Stephen Jones, the Assistant Treasurer and Minister for Financial Services, issued a Media Release that the Government had asked Treasury to review the operation of the Your Future, Your Super laws after the second round of MySuper performance tests have taken place.

The review is to consider whether the performance test has had any significant unintended consequences for MySuper products and assess how the test should be applied to other superannuation products. The Government stated it would then consider and consult on any changes to ensure the performance test is 'fit for purpose', especially given the significant variety and complexity of superannuation products.

Considering the Government's stated intention to ensure that the performance test is 'fit for purpose', we submit that the scope of the review should incorporate the appropriateness of the current performance test and how it should be adjusted for products that employ 'values-based' or 'principles-based' investing.

\*\*\*\*\*

If you have any queries or comments in relation to the content of our submission, please contact me on (03) 9225 4021 or by email to [fgalbraith@superannuation.asn.au](mailto:fgalbraith@superannuation.asn.au).

Yours sincerely

Fiona Galbraith  
Director, Policy