



# SUBMISSION

Submission to Senate  
Standing Committees on  
Economics — Inquiry into  
the provisions of the  
*Treasury Laws  
Amendment (2022  
Measures No. 3) Bill 2022*

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12 October 2022

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Canberra ACT 2600

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12 October 2022

Dear Sir/Madam,

### **Inquiry into the provisions of the *Treasury Laws Amendment (2022 Measures No. 3) Bill 2022 (Bill)***

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission to the Committee's inquiry into the provisions of the *Treasury Laws Amendment (2022 Measures No. 3) Bill 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 \$3.3 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 super 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 with the proposition that trustees should be required to apply to APRA, in respect of their product status, as a condition precedent to their performance test being adjusted.

We do, however, have some specific suggestions with respect to the Bill and the proposed performance test treatment of faith-based products, as outlined below.

#### **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 it employs a 'values-based', or 'principles-based', investment strategy
- that is disclosed to its members in its regulated disclosures and marketing materials
- the trustee has, as a question of fact, employed particular filters/screens.

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

The Bill proposes a 'supplementary' performance test that allows investment in accordance with faith-based principles to be taken into account when assessing a product against its performance benchmark.

While we appreciate that this approach is likely to have been adopted to minimise work for APRA, as adjustment of the benchmark 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, 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 to be made.

If products are to be assessed as to 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. This is an appropriate outcome for members of that product.

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 benchmark comprised from an index that includes the performance of those assets. Instead, the benchmark should be adjusted by removing the performance of 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 index should be adjusted by removing the performance of those products from that index.

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 when determining whether the product has succeeded in delivering an appropriate outcome to its members.

Given this we suggest, 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
- whether that product has passed or failed in delivering appropriate outcomes to its members is determined on the basis of that single assessment.

## 3. Current review of Your Future, Your Super laws

Treasury currently is reviewing the operation of the Your Future, Your Super laws.

The Government has 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 this stated intention, we submit that the current performance test 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  
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