

SUBMISSION

Submission to Treasury – Sustainable Investment Product Labelling

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To whom it may concern,

Sustainable Investment Product Labelling

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation on Sustainable Investment Product Labelling.

About ASFA

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

ASFA is keenly focussed on ensuring operational effectiveness of the superannuation system – in particular, that it delivers, at a reasonable cost, services of a type and standard that meet the needs and expectations of fund members and fosters trust and confidence in the system.

If you have any queries or comments in relation to our submission, please contact Andrew Craston, Economic Specialist, by email acraston@superannuation.asn.au.

Yours sincerely

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Chief Policy & Advocacy Officer

Sustainable Investment Product Labelling

ASFA supports the Government's work agenda to develop and implement its Sustainable Finance Roadmap. ASFA agrees that, when implemented, the Roadmap will provide legislative frameworks and market structures to facilitate the Australian economy's necessary transition to a more sustainable growth path.

As part of the Roadmap, ASFA supports development of a regime for sustainable investment product labelling. A standardised, consumer-orientated labelling regime would help consumers make confident, informed investment decisions about sustainable investment products, and reduce the incidence of greenwashing. Directing financial capital to sustainable activities in the real economy should not be a policy objective of the regime – other elements of the Roadmap are better suited to achieving this outcome.

In broad terms, ASFA considers that the regime for sustainable investment product labelling should be principles-based where possible, rather the prescriptive: one that provides transparency for consumers, while not unduly limiting innovation by product issuers.

ASFA considers that – in the interests of regulatory consistency – a labelling regime should apply to those investment products marketed as sustainable, or similar, to retail investors, including superannuation products, managed investment schemes, and exchange-traded funds.

Consultation paper questions

Policy Problem

1. In the context of existing regulatory settings and disclosure requirements, what is the role for sustainable financial product labels?

ASFA agrees that the existing financial product disclosure obligations do not support simple comparisons, by Australian consumers, of the sustainability claims and characteristics of financial products.

On the one hand, among product issuers, there is a lack of standard terminology and approach for communicating sustainability claims and characteristics to consumers. On the other hand, among consumers, the notion of 'sustainability' as it relates to financial products, and to goods and services more broadly, can mean different things to different people and can often vary between particular issues and between particular goods and services.

Together, this can make it difficult for individual consumers to determine the basis for sustainability claims of investment products, and to compare the sustainability characteristics of investment products. The Consultation Paper notes that consumers typically do not have the skills, resources or time to independently verify sustainability claims made by product issuers.

Key roles for sustainable investment product labelling are:

- for consumers, to help make informed, confident investment decisions: in particular, to determine whether sustainability claims and characteristics align with preferences, and to compare products based on sustainability claims and characteristics – including products *not* marketed as sustainable.
- for product issuers, to provide greater certainty and confidence in naming, describing and marketing sustainable investment products.
- for regulators, to provide an effective safeguard against greenwashing activity.

ASFA agrees that when adopted, a well-designed labelling regime would facilitate a growing market of sustainable investment products, although this should not be a policy objective of the regime.

- Greater confidence among consumers that sustainable investment products are ‘true to label’ is likely to be reflected in higher consumer demand for sustainable investment products.
- A regime that provides greater certainty for product issuers – e.g. around making sustainability claims – would be expected to reduce concerns of being liable for misleading or deceptive conduct.

Likewise, a regime for sustainable investment product labelling can be regarded as supporting the Government’s broader policy agenda that seeks to facilitate the flow of financial capital to more sustainable activities in the Australian economy – however, this should not be a policy objective of the regime.

Ultimately, at any point in time, the quantum of ‘sustainable’ activities within the economy is fixed. The Government is/has been implementing a range of policies that seek to expand the universe of sustainable activities in the Australian economy at a faster rate than otherwise would be the case. This includes, for example, policy that incentivises a larger quantum of funding for renewable energy generation, at the expense of fossil-fuel energy generation. Any regime for sustainable investment product labelling should be viewed as supporting the availability of sustainable investments for retail investors, rather than driving the underlying quantum of sustainable activities in the Australian economy.

In addition, the ultimate scope of the regime for sustainable investment product labelling will be broader than other elements of the Government’s Sustainable Finance Roadmap: for example, Priority 1 (climate-related financial disclosures) and Priority 3 (transition planning guidance) largely relate to Australia’s net-zero transition. These core elements of the Sustainable Finance Roadmap naturally align with only a sub-set of factors that are relevant to sustainable investing.

2. Should any new requirements apply to all financial products that make a claim or state a sustainability or similar objective other than, or in addition to, maximising financial returns?

ASFA considers that sustainable investment product labelling should apply only to products marketed as sustainable, or similar, to retail investors – that is, products that specifically promote sustainability as a key characteristic/objective, and so consider objectives beyond investment returns. The regime should encompass the broad range of investment products marketed to retail investors – including superannuation products, managed investment schemes, and exchange-traded funds.

- ASFA considers that the regime should not apply to products that only incorporate ESG integration/stewardship into the investment approach.

This would provide consumers with a consistent framework for identifying and comparing products that make sustainability claims, regardless of the form of those products.

An approach that excluded particular types of products – that are marketed as sustainable, or similar, to retail investors – would risk undermining confidence among consumers in the labelling regime where it *is* applied. While the incidence of ‘greenwashing’ activity still would be expected to fall within that portion of the market covered by the regime, a concomitant impact may not occur elsewhere. This could feedback into concerns among consumers whether products that *are* subject to the labelling regime are indeed ‘true to label’.

ASFA considers that the regime should not apply to financial products that do not promote sustainability as a key characteristic/objective (currently, the bulk of investment products on the market). See Question 8 for more details.

Importantly, the regime should not pose a barrier to ESG integration and stewardship generally – whether at the fund, option, or asset-class level – including for products *not* marketed as sustainable.

International context

3. What aspects of international regimes should the Government consider for Australian application?

When designing Australia’s regime for sustainable investment product labelling, there is merit in assessing developments in other jurisdictions. It is worth emphasising that, as the Consultation Paper rightly states, most regimes for sustainable investment product labelling are in their infancy. Internationally, there is no common standard, and jurisdictions are taking different approaches to labelling practices. As such, it is difficult to determine with any certainty the relative efficacy of the various regimes.

A key learning from the international experience are the risks of a prescriptive, rather than a principles-based approach. For example, under the European Securities and Markets Authority’s relatively prescriptive guidelines, ESG funds cannot hold shares of natural gas producers. This is despite the fact that, globally, it is generally accepted that natural gas will play a key role as transition fuel.

4. Is international interoperability important for Australian sustainable investment product labelling?

For policy makers, while international interoperability is relevant, the priority should be to design a regime that best supports Australian consumers, and can operate effectively within the existing domestic legal and regulatory frameworks.

Designing standardised labelling: investment approaches

5. Do the Responsible Investment Approaches (identified in Table A), UNSDG and PRI cover the field for sustainable investment approaches? Are there others that should be considered?

The key purpose of defining ‘responsible investment approaches’ is to provide a universal reference for the typical tools that institutional investors use (in relation to responsible investment), and so provide a basis for global consistency. The proposed labelling regime should not seek to define specific investment approaches.

ASFA considers that the other frameworks that are referenced in the Consultation Paper – specifically the United Nation’s Sustainable Development Goals and the Principles for Responsible Investment – do not represent appropriate investment approaches.

6. Should allowable investment approaches be prescribed in legislation, or left for industry to define?

Allowable investment approaches should be left to industry. Generally, the costs of prescribing allowable investment approaches would outweigh the benefits.

The Consultation Paper states that prescribing allowable investment approaches would “... confirm and formalise already established responsible investment practices for financial products. It could encourage ongoing sustainable investment activities and create clarity for future sustainable investment products about which approaches are considered ‘sustainable’ or similar.” Within the superannuation and broader funds-management industry, various approaches to sustainable investing are well-known and well-understood.

On the other hand, prescribing allowable investment approaches could stifle innovation. There are risks that product issuers would not be able to use a new, unprescribed investment approach – that did not strictly conform to an existing prescribed approach – until incorporated in legislation. This would tend to limit exploration of new investment approaches in the first instance, which could have significant real-world

implications. For example, so-called ‘brown to green’ strategies may not conform to explicit categories of investment approach, but can be particularly impactful for net-zero transition.

7. Which approach can best improve the confidence of Australian investors? Which options best help investors to identify, compare, and make informed decisions about sustainable investment products?

A standardised, consumer-orientated labelling regime would help consumers make confident, informed investment decisions about sustainable investment products. To this end, the regime should increase accountability and transparency among product issuers and protect against greenwashing. Product names and marketing should be aligned with, and proportionate to, product sustainability-related objectives and strategy.

There is range of potential design approaches for a labelling regime. Regardless, ASFA considers that Government should take a principles-based approach to regime design where possible.

One approach could involve consumer-orientated disclosure documentation that would be subject to the existing prohibition against misleading and deceptive conduct. For an investment product, standardised consumer-oriented disclosure could cover:

- the product’s sustainability objective
- the investment approach(es) employed to achieve that objective, e.g. how the fund’s engagement strategy is aligned to the objective
- the proportion of assets that are invested in accordance with the objective
- indicators of progress to achieving the objective
- references to additional supporting information.

Disclosures would need to be presented in a manner that is accessible and meaningful to consumers, using objective, descriptive language.

Under this approach, the role of third-party entities that assess and certify sustainability claims and characteristics (of products) would be as voluntary service-providers. It is envisaged that product issuers typically would engage such third-party entities to ensure that consumer-oriented disclosures meet legislative requirements – crucially, the prohibition against misleading and deceptive conduct.

A key advantage of this approach is that it would use existing, familiar frameworks for product disclosure.

An alternative approach could involve a ‘set’ of specific categories that would distinguish between sustainable investment products – on the basis some criterion – and products that do not make sustainability claims. Regime design would need to give consideration a range of factors, including which ‘set’ of categories would best inform consumers. Categories that comprised multiple criteria (e.g. investment objective *and* proportion of assets invested in accordance with the objective) would provide consumers with more information, but would be more complex to interpret. Regime design would require consumer testing.

Under this approach, the framework for categorisation would need to be prescribed in legislation and could involve a ‘check list’ of criteria that a product would need to meet in order for it to qualify for a particular sustainability category. It is envisaged that third-party certification of products would be required. The existing disclosure settings also would apply.

Compared with the former approach, the categorisation approach could be easier for consumers to use. However, this approach could be more restrictive on innovation by product issuers.

Designing standardised labelling: triggering the requirement

8. What should determine when product labels apply to a financial product?

ASFA considers that sustainable investment product labelling should apply only to products marketed as sustainable, or similar, to retail investors. The regime should apply at the product level (as opposed to the fund level).

As stated above, the regime should help consumers make informed, confident investment decisions: in particular, to determine whether product claims and characteristics align with preferences, and to compare products based on sustainability claims and characteristics – including products *not* marketed as sustainable.

For product issuers, adherence to a labelling regime – regardless of the form – will incur costs. This highlights the importance of a regime that seeks to achieve its objectives with the least regulatory burden.

ASFA considers that the regime should not apply to financial products that do not promote sustainability as a key characteristic/objective. In the Consultation Paper, the rationale for doing so – to raise the cost base of products *not* marketed as sustainable, in order to level the playing field – is perverse. The focus of regime design when considering the cost burden on product issuers should be on regulatory efficiency.

The notion that products *not* making sustainability claims should be penalised – for causing harm to the environment and/or society – underplays the intended outworkings of the other elements of the Government's Sustainable Finance Roadmap. For example, the regimes for climate-related financial disclosure and the sustainable finance taxonomy are expected to lead to better pricing of climate and sustainability risks.

9. Which approach would best address issues of greenwashing and/or greenhushing?

A labelling regime that is well-understood by consumers, where products are easily comparable, and is underpinned by robust requirements on product issuers – regarding their sustainability claims – would be expected to reduce instances of products in the market that make misleading sustainability claims. However, it is difficult to assess the efficacy of potential regimes to reduce the incidence of greenwashing and/or greenhushing.

10. What features of a financial product should trigger a labelling requirement?

In terms of the trigger for adherence to the regime, the consultation paper proposes either:

- particular words or terms to be specified, or
- based on a threshold.

Across industry, terminology varies according to product-specific objectives, and which terms product-issuers consider to be the most effective to communicate those objectives to consumers. That said, the universe of terminology that relates to sustainable investments is limited.

Depending on the ultimate design of the regime, it would be appropriate for specific terms – that would trigger adherence to the regime – to be specified in regulation or guidance. While the former would provide greater regulatory certainty, the latter would provide greater flexibility for regulators to alter the set of specific terms. Regardless, this approach would provide certainty to product issuers when naming, describing and marketing sustainable investment products.

The alternative proposed trigger relates to a per cent of product invested under a sustainable investment approach or objective. It is assumed that a key policy objective of this approach would be to ensure that only those products with a relatively high proportion of investments allocated to a sustainable objective, or similar, could be marketed as sustainable. Thus, one advantage of this approach is that it would represent a

stricter set of criteria than specifying specific terms. A disadvantage of this approach is that any threshold is subjective.

Designing standardised labelling: evidence base

11. Should evidentiary requirements underpinning labelling be prescriptive, principled or a mixture of both?

The efficacy of the regime in supporting consumer outcomes will depend on the robustness of requirements on product issuers to substantiate sustainability claims. The form of evidentiary requirements would depend on the nature of the regime.

The existing prohibition on misleading and deceptive conduct provides a basis for the evidential requirements on product issuers. An advantage of this approach is that it is familiar to both industry and regulators.

As discussed in Question 7, an alternative regime could involve a 'set' of specific categories that would distinguish between sustainable investment products. The specific evidentiary requirements would need to be set out in legislation/guidance. Evidentiary requirements could relate to the types of assets/investments and investment thresholds. This approach would provide certainty for product issuers, but would be relatively inflexible to changes in the sustainable investment landscape.

Regardless of the approach, there would be a role for third-party certification of claims made by the product issuers (see Question 7), whether required or on a voluntary basis.

12. Should evidentiary requirements for investment product labels be linked to other policy initiatives being progressed as part of the Roadmap (such as the taxonomy)?

ASFA considers that it is important that the labelling regime is consistent with other elements of the Sustainable Finance Roadmap. However, the evidentiary requirements for investment product labelling should not be explicitly linked to these other elements.

The Australian Sustainable Finance Taxonomy (ASFT) is a voluntary framework to classify domestic economic activities – generally constituted as assets, projects, facilities or measures – that positively contribute to key environmental sustainability objectives. The ASFT covers six environmental objectives, and prioritises one of these – climate change mitigation – in its initial phase. The ASFT applies within Australia only.

ASFA considers that it would be appropriate for product issuers to integrate the ASFT into product development – including products marketed as sustainable or similar. However, use of the ASFT should be voluntary. Given the relatively narrow focus of the ASFT – in terms of investment focus and geographic allocation – compared with the universe of sustainable investments, compulsory use of the ASFT could limit asset allocation.

13. What should be the role of independent third-party certification?

The role of independent third-party certification depends on the ultimate design on the regime. See Question 7.