



16 August 2022

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

Dear Sir/Madam

## **Consultation: Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Faith-based products**

The Actuaries Institute ('Institute') welcomes the opportunity to comment on exposure draft (ED) legislation released on 20 July 2022 to adjust the treatment of faith-based products under the annual performance test.

The Institute is the sole professional body for actuaries in Australia. Our members have a long track record of actively contributing to the development and management of superannuation within Australia.

### **1 General support for further amendments to annual performance test ...**

The Institute believes the annual performance test, as introduced, has a number of weaknesses that can lead to sub-optimal member outcomes. We therefore strongly support the Government making modifications to the test. Our 25 May 2021 submission refers <https://www.actuaries.asn.au/Library/Submissions/2021/20210525SubmissionYFYS.pdf>

### **2 But any amendment should be part of broader changes**

The ED proposal delivers on an election commitment in recognising that the performance benchmarks introduced by the annual performance test do not take into account the design of those faith-based superannuation funds where filters preclude certain investments. The ED proposes a supplementary test for those faith-based funds that fail the original test. However, we recommend the Government does not make this amendment in isolation, and instead includes any amendment as part of addressing the broader problems with the annual performance test.

If the Government proceeds with a supplementary test as part of its review of the performance test, we question:

- Whether it is possible to set the alternative investment benchmarks for the supplementary test in an effective manner. The ED proposal requires trustees who apply for the faith-based product supplementary test to set out one or more indices that APRA could prescribe for use in making this secondary test determination. It may prove difficult for a trustee to provide indices that APRA finds acceptable, given the nature of the faith-based investment filters that have been applied (currently and historically



over the relevant performance period). This potentially makes the secondary test ineffective and/or places APRA in a difficult position when making its determination.

*We therefore suggest an alternative of retaining the existing test and instead amending the consequence of failing the performance test for faith-based products. Our alternative suggestion is that current and future members of a “failed” faith-based product are permitted to continue to invest in the product, but that the trustee of the “failed” product is required to inform members that better performing products are available, although these may not meet their faith-based principles.*

- Whether applying the supplementary test solely to faith-based products is equitable. Rather, we recommend the scope is extended to include broader ideological principles (e.g. ‘sustainability’, ‘fossil fuel free’, other ESG filters, etc.), as many other investment products apply filters that also render the annual performance test benchmark indices inappropriate.
- Whether a supplementary test will add to the unforeseen consequences of the annual performance test, given it will create an uneven playing field, allowing some providers but not others to filter their products for performance test purposes. We recommend a supplementary test is only introduced after considering the broader product implications.

### 3 Clarification of aspects of ED proposal

Should the Government proceed with the ED proposal ahead of a substantive review to the annual performance test, we recommend clarification of certain aspects of the ED proposal before its introduction. These include:

- **Definition of faith-based product** – We recommend that the legislation and regulations should give explicit guidance on expectations of a faith-based product. Where this is limited to religious principles (as noted in the accompanying Media Release), this should be made explicit. The ED and accompanying Explanatory Memorandum (EM) indicate that this will not be a reviewable decision, given the SIS Act (and yet to be released regulations) will set out the basis for faith-based determination. Given faith-based products are expected to apply faith-based filters, we recommend quantifiable criteria form part of APRA’s determination. (For example, the criteria could consider on a look-through basis whether the products invest in companies that earn above a certain percentage of their revenue from activities not inconsistent with their faith-based filters.)
- **Publication of original test fail result** – The APRA Heatmaps publish the results of the original test as the Performance test metric. We recommend that APRA includes clear flags to prevent unintended use of the metric in the media unless it is accompanied by the supplementary test result.

### 4 Timing

The ED proposal, if adopted, will only amend the annual performance test for MySuper products after the next application (i.e. at 30 June 2022). Therefore, the amendment will not apply to any faith-based MySuper product that fails the test as at 30 June 2022. In the case of a faith-based MySuper product that fails for the first time, assuming the same regulator actions



as at 30 June 2021, this will place severe pressure on the fund's survivability. In the case of a faith-based MySuper product that fails the test for a second time, this will likely be terminal for the fund. Consequently, we believe that the proposed amendment is too late to be effective for any existing faith-based MySuper products that are at risk of failing in 2022, indicating that the Government can take more time before making the amendments in the ED proposal.

Deferral allows the proposed amendment to form part of a broader review of application of the performance test that the Government has flagged for trustee-directed products in the next 12 months. This would recognise that nearly all faith-based and other ideologically driven investment products are trustee-directed products.

## **5 Further information**

We would be pleased to discuss this submission or to provide further information. Please contact our office if you wish to clarify any aspects of this submission.

Yours sincerely

Acting President