

2 May 2023

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

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Dear Sir/Madam

## Consultation: Superannuation Performance Test Regulations 2023

The Actuaries Institute ('the Institute') welcomes the opportunity to comment on the Superannuation Industry (Supervision) Amendment (Your Future, Your Super – Addressing Underperformance in Superannuation) Regulations 2023 ('Updated Regulations').

The Institute is the peak professional body for actuaries in Australia. Our members have had significant involvement in the development and management of superannuation in Australia.

### Proposed changes enhance existing Regulations

The Institute supports the Updated Regulations as compared to the existing Regulations. In particular, we support:

- An extension of the lookback period from eight to ten years.
- No changes to the treatment of administration fees.
- More granular covered asset classes, with corresponding adjustment to the meaning of Trustee-Directed Products ('TDPs') to allow for this disaggregation of covered asset classes.
- Changes to the notice to members in products that are deemed underperforming under the Superannuation Performance Test ('Test').

However, we continue to have very significant concerns relating to the Test, and that the Test can act to reduce member outcomes. These are set out in our previous submissions to The Treasury on the Test, and were acknowledged in The Treasury *Your Future, Your Super Review – Summary of issues* released in April 2023<sup>1</sup>. Our concerns are exacerbated when the Test is extended to TDPs, as will occur on adoption of the Updated Regulations.

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<sup>1</sup> Refer <https://treasury.gov.au/sites/default/files/2023-04/c2022-313936-yfys-review.pdf>



### **Potential negative impact on member outcomes**

The Government has indicated it wants to provide confidence that returns on savings will be maximised to support a dignified retirement<sup>2</sup>. On its own, the Test does not achieve this goal and can be improved. It focuses on implementation of strategy, not outcomes, and does not consider risk. In particular, it requires trustees to manage shorter-term tracking error against benchmarks for products subject to the Test, thereby constraining investment decisions. It also ignores any taxation consequences when moving investment product for members invested through superannuation platform wrap accounts where taxation is unbundled from the unit price and disclosed separately. As a result, the Test can have a potential negative impact on member outcomes.

### **Test should be different for Trustee-Directed Products**

We strongly believe that the Test should be different for TDPs since:

- In our experience, members typically consider the overall superannuation fund they have joined as their primary choice, rather than choice of specific investment option(s) within the fund. Those members who have actively selected options other than the default MySuper option are often invested in several choice investment options in the superannuation fund. It may be confusing for a member who is invested in these multiple options to be separately advised that one or more investment option they hold has failed the Test (particularly when relative performance of the option has been good compared to its investment objectives and peer performance). This confusion is exacerbated by the proposed notice to members (see below).
- Many TDPs are constructed with very different benchmarks from those adopted by the Test, and members have selected these options cognisant of these tailored benchmarks. These include faith-based and ESG options. If the Updated Regulations are adopted without amending the consequences, this could see the closure of these products even if they deliver their stated objectives when members chose these investment options.
- There are potential taxation and other consequences for those members in superannuation platform wrap accounts if they are encouraged to move product if the product fails the Test. For example, if capital gains are realised, this can significantly reduce member outcomes.
- Unlike MySuper products where there are standardised product features and fee rules, TDPs are less homogenous in their design and levels of associated member servicing.

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<sup>2</sup> Refer <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/your-future-your-super-review-outcomes>



This greater optionality leads to much more variability in features between superannuation funds, and fees between members in the same investment option. This makes it difficult to calculate appropriate Representative Administration Fees and Expenses ('RAFE') for TDPs.

As a consequence, we recommend that:

- The consequences of failing the Test are different for TDPs and, as mentioned above, may not even be applicable to the members' decisions to invest in that TDP (for example, in a case where the TDP benchmarks are intentionally different to the Test benchmarks). Consequently, at the very least the communication must be changed to allowing for the different consumer preferences when choosing a TDP.
- Superannuation platform wrap account TDPs are treated differently from other superannuation products when applying the Test.
- The Test should ignore administration fees for TDPs, at least until the RAFE is better calibrated to address differences in the associated administration services, or to accommodate member-level fee differences.

In the circumstances, we believe there is merit in application of the Test being deferred for TDPs until the above issues are addressed.

### **Updated asset classes**

We broadly support the changes made to accommodate more granular covered asset classes, but make the following recommendations:

- Fixed income
  - The Australian fixed interest asset class be further disaggregated into Index linked bonds and floating rate bonds, with corresponding changes to the index benchmark;
- Infrastructure
  - The Listed infrastructure asset classes be benchmarked to the FTSE Global Core Infrastructure 50/50 index;
- Equities
  - The Australian equities asset class be further disaggregated to separate out Australian small cap stocks, benchmarked against a small-micro cap index.

Given the significant amount of feedback provided and review needed to confirm the more granular asset classes and their application to TDPs, this adds further weight to the need to defer the application of the Test to TDPs.

### **Notice to members**

Although the notice is significantly improved as compared to the existing notice, it still has the following issues:

- We do not believe the notice sufficiently allows for members who are invested in more than one superannuation product in a fund. It is likely to lead to separate notices for each failed product and may create confusion.



- The references to switching product do not consider switching product within the member's existing fund. Outside MySuper options, this is likely to be the member's preferred course of action. In particular, including a reference to consider MySuper options for a member invested in a TDP would create confusion and be unlikely to provide an appropriately similar investment strategy (given the member already chose to invest in a TDP).
- It does not provide a taxation warning for members in superannuation platform wrap accounts – action to move an investment can significantly and detrimentally impact member outcomes.

We recommend that the regulations are adjusted to accommodate two separate notices – one for members solely in a MySuper product, and another for those who invest in TDPs.

We would be pleased to discuss this submission or to provide further information. If you would like to do so, please contact Elayne Grace, Chief Executive Officer of the Actuaries Institute, on (02) 9239 6100 or [elayne.grace@actuaries.asn.au](mailto:elayne.grace@actuaries.asn.au).

Yours sincerely

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President