Property Council of Australia ABN 13 00847 4422
A Level 7, 50 Carrington Street, Sydney NSW 2000
T +61 2 9033 1900
E info@propertycouncil.com.au
W propertycouncil.com.au
@propertycouncil

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

By email: yfys@treasury.gov.au

Superannuation Performance Test Regulations 2023

Dear Sir/Madam

The Property Council of Australia appreciates Treasury's willingness to consult with industry and welcomes the opportunity to provide comments to the review of the Superannuation Performance Test Regulations addressing the outcomes of the consultation into Your Future, Your Super (YFYS) legislation.

The Property Council champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

Our members include some of the largest superfunds, which invest across the property spectrum. The views provided in this submission are primarily focused on the impact the YFYS performance test has had, or could have, on superfund investment into property. We also consider the broader impact of the reforms and how they interact with other superannuation policy frameworks.

Increase Performance Test Period

Items 20 and 21 amend the Principal Regulations to extend the lookback period of the performance test from eight to ten years. Property Council members acknowledge that a longer test period generally aligns well with property investments as a long-term investment proposition. However, an unintended consequence of such a change is the potentially dramatic shift in performance given the addition of 2 extra years. This may be either positive or negative depending on the fund's historical performance. Despite that, the Property Council supports this change in principle.

The International Unlisted Property benchmark

The inclusion of the international benchmark is a positive step forward and recognizes that superannuation funds in Australia will have material investments in international unlisted property. As investment requires certainty in the market, the Property Council recommends the index be frozen rather than unfrozen to remove uncertainty in the Global Benchmark.

As at the release of this consultation, the Property Council and our members are yet to see the details of the benchmark and how it is constructed. We understand that the lack of access is driven by MSCI currently negotiating contracts with funds to allow access in addition to finalising the constituents of the benchmark. Until that is resolved, the Property Council and its members can only provide comments based on their current high-level perspective of the proposed benchmark. At face value, the Property Council believes that the exclusion of pan-Asian + and pan-European may result in a highly concentrated benchmark made up of funds based in the United States of America is also problematic as it then largely becomes a US, United Kingdom and Australia, UK and AU fund series. Whilst the Property Council acknowledges the timing issue of the inclusion of pan-European funds, at a minimum, pan- European funds should also be included to be truly reflective of the investable universe. Furthermore, the Property Council recommends that Australia should be excluded rather than including Australia as it is currently designed. Justification for this is to promote simplicity, as there is already an Australian index and including those funds again in the Global index benchmark is counter-intuitive, further complicates portfolio analysis and may limit the use of the Global index benchmark. Lastly, the Property Council also believes that the maximum gearing restriction is currently too high at 60% and should be lowered to a level more commensurate of the intended risk profile.

The Property Council remains committed in the view that the Government's main objective should remain focused on the importance of removing unnecessary hurdles or roadblocks for superfunds to invest in property. Supporting the property industry at a time when investment is key to deliver homes for all Australians, and the property industry relies on the Government to support investor confidence so that high quality domestic investors are putting capital to work in the market, delivering the homes Australia desperately need.

Continuing the YFYS and broader policy discussion

The introduction of the YFYS reforms has highlighted the potential dislocation that can arise between distinct policy frameworks with competing policy objectives that apply directly and indirectly to the superfund industry. A relevant case in point for superannuation is the interaction of the YFYS measures with ASIC's Regulatory Guide 97 (RG97) on superfund fee and cost disclosure.

RG97 was introduced with the intention of ensuring that superfund members have accurate information regarding superfund fees and costs to help their decision making in choosing superannuation products. The aim was to provide a consistent and transparent approach to fees and costs disclosure to issuers of certain superannuation products, there is no issue on the policy intent behind RG97 from the Property Council.

However, in the property sector superfunds are discouraged away from certain types of investments because of how RG97 accounts for them. A prime example is the treatment of stamp duty under RG97. While state-based stamp duty is widely understood to be an unavoidable tax, it is recorded as a transaction cost under RG97 and therefore required to be disclosed, unlike other types of taxes. This can lead to some funds shying away from investing directly in property, even if the risk-adjusted return on the investment is higher than for other investments which don't incur stamp duty as a cost.

In contrast, stamp duty related to certain infrastructure investments when acquiring real estate holdings isn't required to be disclosed for the purposes of RG97. This anomaly is caused by how RG97's interposed vehicle test and definition have been set, which puts direct property investments at a disadvantage to other types of direct investments in unlisted assets because the same types of costs don't have to be disclosed for those investments.

Conclusion

The Property Council remains committed in the view that the Government's main objective should remain focused on the importance of removing unnecessary hurdles or roadblocks for superfunds to invest in property. Supporting the property industry at a time when investment is key to deliver homes for all Australians, the property industry relies on the Government to bring confidence so that high quality domestic investors are putting capital to work in the market.

If you would like to discuss any aspect of this submission further, please contact Matthew Wales on 0451 146 886 and mwales@propertycouncil.com.au or myself on 0424 547 664 and aknep@propertycouncil.com.au.

Yours sincerely

Antony Knep
Executive Director - Capital Markets