

12 October 2022

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Submission on Treasury Laws Amendment (2022 Measures No.3) Bill 2022	Schedule 5 - Faith-based products
--	-----------------------------------

Dear Committee Secretary

Ethical Super Australia Limited (ESA) is a not-for-profit trade association whose membership includes high-conviction ethical and faith-based superannuation funds. These funds include, Future Super, Verve Super, Cruelty Free Super and Crescent Wealth.

ESA advocates for a greater understanding of the ethical superannuation movement in Australia, which is growing at over 2.5 times the industry average. Further, this cohort is overrepresented in APRA's sustainability metrics. Of the 13 funds identified by APRA as meeting all three of its sustainability metrics, at least two come from this cohort. In other words, a material proportion of the fastest growing and financially viable funds in Australia are ethical funds.

While ESA supports the principles of the Your Future Your Super regime, its implementation has resulted in unintended consequences for our members. In particular, the performance test settings produce unintended existential risks. This outcome is an example of the need for a greater understanding of the ethical superannuation subsector. ESA looks forward to engaging with relevant stakeholders to address these unintended outcomes.

Overview

ESA supports the *Treasury Laws Amendment (2022 Measures No.3) Bill 2022 [Provisions] Schedule 5 - Faith-based products* (the Bill).

Faith-based products are a subset of values-based / ethical products. These products have high conviction investment strategies that are based on specific beliefs on either religion, the environment or social issues, which result in a material restriction of the investable universe that is available to invest in.

However, the benchmarks utilised in Your Future Your Super performance test provisions are generic in nature, which results in a mismatch between the investment return profiles of this cohort of products and the performance test, sometimes called 'tracking error'. Combined with the consequence of underperforming the performance test, such as being closed to new members, this related cohort of products face unintended existential risk. The performance test architecture proposed within the Bill offers a practical way to mitigate this unintended risk for faith-based products. ESA therefore believes that the Bill should be expanded to include values-based/ethical products within its scope.

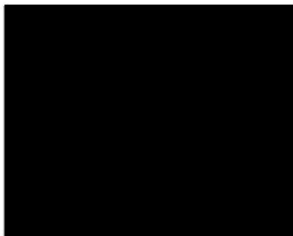
● Ethical Super Australia

Specifics

- The Bill could be expanded to include high conviction values-based / ethical products by adopting specific definitional parameters. Utilisation of an overarching ‘values-based’ product definition that appropriately captures products that have clear investment mandates based on specific beliefs on either religion, the environment or social issues would cover relevant products where the investable universe is materially restricted.
- The appendix to this submission details how such definitional parameters could be drafted. The structure mirrors that of the current Bill.
- Our proposed definitional structure has been designed to ensure product coverage is clear. ESA is conscious of ‘greenwashing’ and the potential to game the requirements of the Bill. We believe our definitional structure is sufficiently clear and robust to effectively mitigate against these risks.
- Our analysis indicates that the expansion of the Bill to include values-based products would be limited to under one percent of total superannuation assets under management and around 45-50 products (if all qualifying products were to apply for values-based product status).

Finally, ESA notes that the majority of the submissions made during the consultation process of the Bill highlighted the overlap between faith-based products and values-based / ethical products as a supporting reason to expand the Bill to include the latter. In other words, there is significant support beyond ESA to expand the Bill to include values-based / ethical products.

Yours sincerely



Fahmi Hosain
Chair



APPENDIX - definition structure that could be incorporated into the faith-based product bill

values-based mandate means the translation of a set of values-based principles into an investment strategy that materially restricts the investable universe, such as through company, asset and sector selection that is applied across the product's investment portfolio.

values-based principles mean beliefs that relate to any of the following:

- (a) the protection of the environment (including, for example, by reference to one or more issues such as biodiversity, climate change and sustainability);
- (b) the amelioration of social issues (including, for example, by reference to one or more issues such as the abuse of human rights, perpetuation of social inequalities, animal exploitation and abuse, and commercial predation on vulnerable communities through addictive substances); and
- (c) religion.

values-based product, in relation to a financial year, is a Part 6A product that is specified in the determination made by APRA under subsection 60L(4) in relation to the financial year.

values-based product determination by APRA

(1) The trustee or trustees of an entity that offers a Part 6A product may apply to APRA for the product to be specified in a determination under subsection (4) in relation to a financial year.

(2) The application must:

- (a) be in writing and in the approved form; and
- (b) contain a declaration by the trustee or trustees that:
 - (i) the investment strategy in respect of that financial year for the product has a clear values-based mandate; and
 - (ii) the values-based mandate has been translated into the investment strategy in respect of that financial year; and
 - (iii) that investment strategy has been disclosed in a document required under this Act or the *Corporations Act 2001* to be given to each beneficiary of the entity who holds the product in that financial year; and
 - (iv) that investment strategy has been disclosed, and in the future will be disclosed, in the entity's marketing materials; and
- (c) set out one or more indices that APRA could use in making a determination under subsection 60C(2) for the product in relation to the financial year and later financial years; and
- (d) if regulations made for the purposes of this paragraph specify information—contain that information.

(3) Regulations made for the purposes of paragraph (2)(d) may:

(a) specify information by reference to information specified in a legislative instrument; and

(b) empower APRA to make a legislative instrument for the purposes of paragraph (a).

(4) If the trustee or trustees give APRA the application within the period specified in subsection (5), APRA may make a determination in writing specifying the product in relation to the financial year.

(4A) APRA may only make a determination under subsection (4) if APRA considers that the matters set out in the declaration required by paragraph (2)(b) are correct and that the product accords with values-based principles and has been designed in good faith to do so.

(4B) Subsection (4A) does not limit APRA's power to refuse to make a determination under subsection (4) in relation to a product.

(4C) APRA may, by legislative instrument, set out matters to be taken into account in deciding whether to make a determination under subsection (4).