

# EXPOSURE DRAFT

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

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**Commencement information**

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| <b>Column 1</b>   | <b>Column 2</b>                            | <b>Column 3</b>     |
|-------------------|--|---------------------|
| <b>Provisions</b> | <b>Commencement</b>                        | <b>Date/Details</b> |
| 1.                | The day this Act receives the Royal Assent |                     |
| 2.                |  |                     |
| 3.                |  |                     |

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## Schedule 2—Faith-based products

### *Superannuation Industry (Supervision) Act 1993*

#### 1 Subsection 10(1)

Insert:

*faith-based product* has the meaning given by section 60K.

#### 2 At the end of Part 6A

Add:

#### 60K Faith-based products—meaning of *faith-based product*

A *faith-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.

#### 60L Faith-based products—faith-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 accords with faith-based principles; and
    - (ii) 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
    - (iii) 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.

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- 1 (3) Regulations made for the purposes of paragraph (2)(d) may:  
2 (a) specify information by reference to information specified in a  
3 legislative instrument; and  
4 (b) empower APRA to make a legislative instrument for the  
5 purposes of paragraph (a).
- 6 (4) If the trustee or trustees give APRA the application within the  
7 period specified in subsection (5), APRA may make a  
8 determination in writing specifying the product in relation to the  
9 financial year.
- 10 (5) For the purposes of subsection (4), the period:  
11 (a) starts on 1 February in the previous financial year; and  
12 (b) ends on 31 January in the financial year.
- 13 (6) APRA can only make the determination under subsection (4) on or  
14 before 31 March in the financial year.

## 15 **60M Faith-based products—deemed faith-based product** 16 **determination in following years**

- 17 (1) This section applies if APRA has made a determination (the  
18 *previous determination*) under subsection 60L(4) (including a  
19 determination taken to be made because of subsection (2))  
20 specifying a Part 6A product in relation to a financial year.
- 21 (2) APRA is taken to have made a determination under  
22 subsection 60L(4) specifying the Part 6A product in relation to the  
23 following financial year (the *current year*) unless APRA has  
24 revoked the previous determination.
- 25 (3) A determination that is taken to have been made in accordance  
26 with subsection (2) is taken to have been made on 31 March in the  
27 current year.

## 28 **60N Faith-based products—revocation of APRA’s faith-based** 29 **product determination**

- 30 (1) APRA may revoke a determination under subsection 60L(1)  
31 (including a determination taken to be made because of subsection  
32 60M(2)) specifying a Part 6A product in relation to a financial year  
33 if APRA reasonably considers that:  
34 (a) the investment strategy in respect of that financial year for  
35 the product does not accord with faith-based principles; or
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- 1 (b) that investment strategy has not been disclosed in a document  
2 required under this Act or the *Corporations Act 2001* to be  
3 given to each beneficiary of the entity who holds the product  
4 in that financial year; or  
5 (c) that investment strategy has not been disclosed in the entity's  
6 marketing materials; or  
7 (d) the trustee or trustees of the entity have not complied with  
8 section 60Q (provision of information).
- 9 (2) The revocation must:  
10 (a) be in writing; and  
11 (b) specify the Part 6A product in relation to the financial year.
- 12 (3) The revocation cannot be made after 31 August in the following  
13 financial year.
- 14 (4) This section does not, by implication, limit the application of  
15 subsection 33(3) of the *Acts Interpretation Act 1901* to a  
16 determination under subsection 60L(4) (including a determination  
17 taken to be made because of subsection 60M(2)).

## 18 **60O Faith-based products—modification of process for annual** 19 **performance assessments**

- 20 (1) This section applies if:  
21 (a) APRA is required under subsection 60C(3) to give the trustee  
22 or trustees of an entity a notification of a determination under  
23 subsection 60C(2) (the *original determination*); and  
24 (b) the original determination is that the requirement in  
25 subsection 60D(1) has not been met for a faith-based product  
26 offered by the entity, in relation to a financial year; and  
27 (c) the original determination is not a determination that APRA  
28 is required to make under subsection (3).
- 29 (2) The following provisions do not apply in relation to the original  
30 determination:  
31 (a) subsection 60C(5) (publication on APRA website of  
32 assessment);  
33 (b) section 60E (Trustee to notify beneficiaries of fail  
34 assessment);  
35 (b) section 60F (Consequences of 2 consecutive fail  
36 assessments).

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- 1 (3) In addition to the determination mentioned in subsection (1),  
2 APRA must make another determination (the *supplementary*  
3 *determination*) for the product under subsection 60C(2) in relation  
4 to the financial year.
- 5 (4) Subsection (2) does not apply in relation to the notification given  
6 by APRA under subsection 60C(3) that results from the  
7 supplementary determination.
- 8 Note: This means that:  
9 (a) APRA must ensure the publication of the contents of the notice  
10 in accordance with subsection 60C(5); and  
11 (b) if the notice is a fail notice, the consequences set out in sections  
12 60E and 60F will apply.
- 13 (5) Without limiting subsection 60C(4), regulations made for the  
14 purposes of that subsection may set out special rules for working  
15 out the period within which APRA must:  
16 (a) give the notification under subsection 60C(3) that results  
17 from the original determination; and  
18 (a) make the supplementary determination; and  
19 (b) give the notification under subsection 60C(3) that results  
20 from the supplementary determination.

## 21 **60P Faith-based products—regulations relating to annual** 22 **performance assessments for faith-based products**

- 23 (1) Regulations made for the purposes of subsection 60D(1) may:  
24 (a) specify requirements that relate only to a supplementary  
25 determination mentioned in subsection 60L(3); and  
26 (b) provide that other requirements do not apply to such a  
27 supplementary determination.
- 28 (2) Subsection (1) does not limit the scope of regulations that may be  
29 made for the purposes of subsection 60D(1).
- 30 (3) Without limiting subsection 60D(4), regulations made for the  
31 purposes of subsection 60D(1) may specify requirements that  
32 depend on the exercise of discretion by APRA in determining an  
33 index or indices in respect of a faith-based product, or a class of  
34 faith-based products, for a period.
- 35 (4) Without limiting subsections 60D(4) and (5), regulations made for  
36 the purposes of subsection 60D(1) may provide that a discretion  
37 mentioned in subsection 60D(4) may be exercised in a way that

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1 allows for the determination of a benchmark return for a period  
2 where a relevant Part 6A product:

- 3 (a) is a faith-based product for part or parts of the period; and  
4 (b) is not a faith-based product for the other part or parts of the  
5 period.

## 6 **60Q Faith-based products—provision of information by trustee**

7 (1) Subsection (2) applies if:

- 8 (a) an entity offers a faith-based product in relation to a financial  
9 year; and  
10 (b) information becomes available to a trustee of the entity at a  
11 time; and  
12 (c) that information relates to the extent to which:  
13 (i) the investment strategy in respect of that financial year  
14 for the product accords with faith-based principles; or  
15 (ii) that investment strategy has been disclosed in a  
16 document required under this Act or the *Corporations*  
17 *Act 2001* to be given to each beneficiary of the entity  
18 who holds the product in that financial year; or  
19 (iii) that investment strategy has been disclosed in the  
20 entity's marketing materials; or  
21 (iv) the index or indices mentioned in paragraph 60L(2)(c)  
22 that were contained in the application under subsection  
23 60L(1) in respect of the product are consistent with that  
24 investment strategy.

25 (2) The trustee must give APRA the information as soon as practicable  
26 after the time mentioned in paragraph (1)(b).

27 (3) Subsection (2) is a civil penalty provision as defined by  
28 section 193, and Part 21 therefore provides for civil and criminal  
29 consequences of contravening, or being involved in a  
30 contravention of, that subsection.

## 31 **3 After paragraph 193(ab)**

32 Insert:

- 33 (ac) subsection 60Q(2);

## 34 **4 Application**

35 The amendments made by this Schedule apply on and after the  
36 commencement of this item.