Your Future, Your Super Review

Summary of issues

April 2023

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Background

About this publication

The purpose of this paper is to summarise stakeholder views expressed during the *Your Future, Your Super* (YFYS) review. The views and issues represented in this paper are summarised from all sources of stakeholder feedback throughout the review, including meetings, roundtables, and formal submissions. Whilst Treasury has considered all representations by all stakeholders, this summary does not contain an exhaustive list of all feedback received.

Your Future, Your Super laws

The *Treasury Laws Amendment (Your Future, Your Super) Act 2021* received royal assent on 22 June 2021 with supporting regulations made in August 2021. The YFYS measures are aimed at increasing member engagement, reducing fees, increasing performance, and holding trustees to account for their decisions. The YFYS measures involve four key elements designed to improve the superannuation system:

- **Performance test** — Products are subject to an annual performance test with clear consequences. The test applied to MySuper products from 1 July 2021 and is legislated to extend to 'trustee-directed' products from 1 July 2023. The test was designed to protect members from underperformance by holding trustees accountable for the investment performance they deliver to members and encouraging trustees to reduce fees.
- **YourSuper comparison tool** – MySuper products are displayed on a comparison tool which launched on 1 July 2021 and aims to assist members to choose a well-performing MySuper product. The objective of the tool is to empower members to make informed decisions about who manages their retirement savings.
- **Stapling** – If a new employee does not choose a fund, then employers must check whether they have an existing 'stapled' superannuation fund before opening a new default superannuation account. Stapling started on 1 November 2021 and seeks to prevent the creation of unintended multiple accounts by ensuring superannuation follows individuals as they change jobs.
- **Best financial interests duty (BFID)** – Trustees need to assess whether their spending is in the best financial interests of their members and must provide demonstrable evidence in the event of civil proceedings. Commencing from 1 July 2021, the BFID seeks to increase transparency and accountability for the way trustees manage their business operations to the benefit of members.

Purpose of the review

The purpose of the review was to assess any unintended consequences and implementation issues arising from the YFYS legislation. The review covered all four elements of the YFYS measures. The focus of this review was on ensuring that Australian superannuation funds perform better, deliver dignity in retirement, and avoid perverse outcomes for members.

Review process

Treasury released a consultation paper on 7 September 2022 seeking public feedback on any unintended consequences and implementation issues arising from any of the four elements of the YFYS laws. Consultation was open for six-weeks and closed on 14 October 2022.

Treasury received 66 public submissions in response to the consultation paper. In addition to formal submissions, Treasury held discussions with nearly 100 stakeholders which included:

- 5 roundtables;
- 23 bilateral meetings; and
- 3 technical working group meetings.

The consultation paper, non-confidential submissions and notes from the technical working group meetings can be found on the Treasury website at https://treasury.gov.au/consultation/c2022-313936.

Key issues

Key unintended consequences and implementation issues arising from the review are below.

Performance test	
Impact on investment decisions	The test uses a single measure of performance, based on implementing an investment strategy, as a simple and objective assessment of performance. This can unintentionally affect investment decisions of all funds to reduce the risk of failure and closure by encouraging short-termism and benchmark hugging as well as discouraging certain investments. The existing test can be adjusted in the short term to reduce these unintended consequences, while retaining the integrity of the test. In the longer term, more substantial changes could be considered to address these concerns.
Choice and values-based products	The existing test may not reflect the diversity and objectives of choice products. At the same time, it remains important that funds are held accountable for underperformance in the choice sector. Values-based products were a key example where the investment strategy may deviate from the benchmarks, increasing the risk of failure and constraining the trustee's ability to meet its members' objectives.
YourSuper comparison tool	
Default sorting	Default sorting of products by fees can unintentionally increase the ranking of products with relatively poor investment performance that have temporarily lowered fees.
Tool improvements	The tool could be improved by including additional metrics or features and extending to choice products.
Stapling	
Administrative burden	Stapling is increasing administrative burden on employers' onboarding processes, particularly where an employment link is not already established. Some employers are seeking to avoid stapling by encouraging new employees to make an active choice of superannuation fund as part of their onboarding process.
Insurance	Employees changing jobs may have inappropriate insurance cover within their stapled superannuation account, particularly those moving to high-risk occupations.
Underperforming funds	Employees may be stapled to underperforming products, which could lead to diminished retirement savings.
Best financial interests duty	
Compliance costs	There is uncertainty as to what the new duty means in practice for trustees, given the reverse onus of proof and the absence of a materiality threshold, resulting in compliance costs for funds.

Performance test

Summary

The performance test was intended to reduce underperformance by assessing products against clear and objective benchmarks and imposing strong consequences for failure.

Stakeholders generally supported the policy intent of performance testing. Several noted that the test has improved outcomes for members by encouraging underperforming funds to improve or exit the industry and put pressure on funds to reduce fees.

Consultation highlighted that the performance test, which uses a single metric based on the implementation of an investment strategy, is a somewhat simplistic tool and may cause unintended consequences, including:

- The test is impacting the investment decisions of all funds, not just underperformers. This includes creating an incentive for funds to 'hug' the benchmarks to reduce the risk of closure. This incentive can, at times, conflict with a fund's objective to focus on member outcomes, such as by encouraging short-term decision making, discouraging investments that are not well represented by the benchmarks, and in the long term may reduce choice, diversification, and innovation.
- A risk that the test misidentifies some products as performing (reducing member outcomes) or underperforming (reducing member choice).

Stakeholders proposed several ways to substantially redesign the test to address these broad concerns, including using alternative performance metrics, developing a more subjective (rather than objective) test, altering product coverage, and adjusting the consequences of failure.

Stakeholders also proposed that adjusting components of the existing test methodology — such as lengthening the testing period, calibrating benchmarks, and improving the prescribed notification letter — can go some way to addressing concerns.

Some stakeholders suggested caution for the test's scheduled extension to choice products, raising concerns that the test does not appropriately reflect the diversity and objectives of choice products, including values-based products. Others cited reports of underperformance in the choice sector and argued that these products should not escape the scrutiny of performance testing.

Introduction

The performance test (the test) was introduced to protect Australians' retirement savings by holding trustees to account for the investment performance they deliver and the fees they charge to members. The test is based on the methodology adopted by the Productivity Commission (after consultation with industry) and further refined by APRA in its Heatmap analysis.

The test applied to MySuper products from 1 July 2021. MySuper products are intended to be simple, cost effective and balanced investment options eligible to receive default contributions. The test is scheduled to be extended to a subset of choice (non MySuper) products — defined as trustee directed products (TDPs) — from 1 July 2023.

The Australian Prudential Regulation Authority (APRA) conducts the test each year. The methodology involves calculating a *performance measure* for each product tested:

$$Performance\ measure = (Actual\ return - Benchmark\ return) + (Benchmark\ RAFE - Actual\ RAFE)$$

There are two components to calculating the performance measure.

First, the net investment return of a product over the past eight years (*actual return*) is compared to a *benchmark return*. The benchmark return is a passive investment portfolio of indices tailored to the product's reported strategic asset allocation.

Second, the product's representative administration fees and expenses (*actual RAFE*) for the most recent financial year is compared to the median RAFE (*benchmark RAFE*). RAFE is calculated to represent a member who has an account balance of $50,000. The benchmark RAFE is calculated separately for MySuper products and TDPs.

A product fails the test if the performance measure is lower than -0.005 (or -0.5%). Trustees of products that fail the test must notify affected members. Products that fail the test two years in a row are closed to new members until they pass a future test.

Summary of stakeholder feedback:

The performance test received a considerable amount of attention and feedback during the review.

A technical working group was established as an additional forum for solutions-based discussions on technical issues relating to the test. The technical working group met three times during the consultation period and a summary of the discussions is available on the review consultation website.

Stakeholder views are summarised below as general feedback about the test and more focused feedback on the test methodology, consequences of failure and product coverage.

General feedback

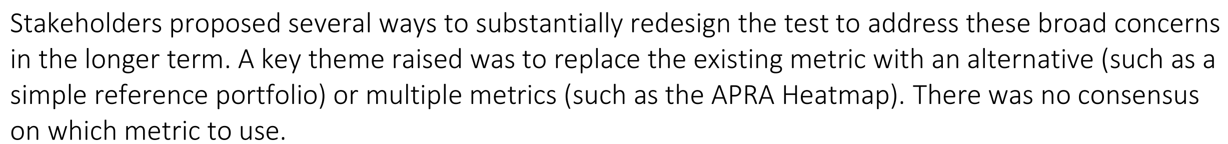
Stakeholders generally supported the policy intent of performance testing. Several noted that the test has improved retirement outcomes for many members by encouraging underperforming funds to improve or exit the industry, as well as putting pressure on funds to reduce fees and focus on investment performance.

Stakeholders noted that the test uses a single metric to assess performance, which captures the implementation of an investment strategy but not the decision to set that strategy or account for risk. Several suggested that this may lead to some performing products failing the test (reducing member choice) and some underperforming products passing (reducing member outcomes).

Several also noted that the test assesses past performance, despite past performance not being a reliable indicator of future performance. Others noted that the existing framework was developed after considerable consultation with industry by the Productivity Commission, APRA, and Treasury.

Many stakeholders suggested that the risk of closure from failing the test has created a strong incentive to 'hug' the benchmarks. Many argued that this affects the investment decision of all funds (not just underperformers) and can potentially reduce long-term returns for members by:

- encouraging shortterm decision making
- discouraging investments that are not well represented by the benchmarks
- reducing choice, diversification, active management, and innovation
- increasing systemic risk.



Stakeholders proposed several ways to substantially redesign the test to address these broad concerns in the longer term. A key theme raised was to replace the existing metric with an alternative (such as a simple reference portfolio) or multiple metrics (such as the APRA Heatmap). There was no consensus on which metric to use.

Some stakeholders suggested that APRA could have discretion to review failed products and exempt them from the consequences of failure. Others argued that introducing subjectivity into an objective test would compromise its integrity and risk gains to members.

Some stakeholders believed that the test is likely to lead to more fund closures, rationalisation of products and deterrence of new entrants, leading to consolidation, concentration, and reduced choice for members. Other stakeholders believed that the test is unlikely to cause as many mergers in the future as funds begin to actively manage the test.

Test methodology

Stakeholders proposed adjusting components of the test methodology.

For *actual returns*, many stakeholders suggested increasing the lookback period from eight to ten years (or longer) as data becomes available to better reflect the long-term nature of superannuation, reduce short-term decision making and align to broader industry disclosures.

Other proposals included: replacing net investment returns with net returns to better reflect member outcomes; testing products across multiple time periods to account for changes to investment governance; and testing products with less than five years history to prevent phoenixing behaviour.

Other issues included the potential for platform products to be misrepresented if returns are reported before tax, and the potential for funds to engage in gaming by adjusting their reported strategic asset allocation to more favourable benchmarks.

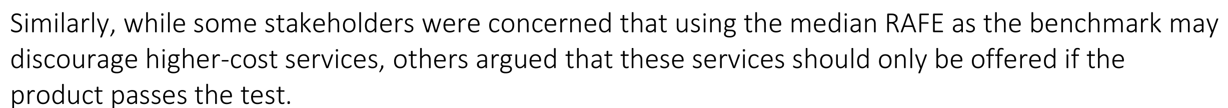
Many stakeholders suggested that the set of benchmark indices do not adequately reflect the investible universe or characteristics of some assets and investment strategies— such as inflation-linked bonds, defensive alternatives, and private equity. They noted that these benchmarks are not appropriately aligned, increasing the risk of 'tracking error' for these investments and therefore constrains funds' investment decisions.[1]

Apart from proposals to substantially redesign the test (see above), some stakeholders suggested that the existing test can be adjusted in the short term without weakening the integrity of the test, to reduce these unintended consequences. Stakeholders suggested selecting alternative market indices for, or disaggregating, certain asset classes (such as unlisted assets, equities, fixed interest, and alternatives) to better reflect the underlying investments. Others noted that it may not always be possible to find a clearly superior alternative market index (particularly with unlisted assets).

Other issues included the cost of purchasing benchmark indices, periodically reviewing the benchmarks to ensure relevance, and reevaluating the tax assumptions used for the benchmark indices.

There were varied views about whether to adjust RAFE. Several stakeholders suggested that RAFE could be assessed over the entire lookback period to better reflect member outcomes. Others suggested that the existing one-year RAFE should be retained as it is more reflective of future fees and has successfully encouraged trustees to reduce fees.

1 Tracking error measures how closely the investment performance of assets track the relevant benchmark index.



Similarly, while some stakeholders were concerned that using the median RAFE as the benchmark may discourage higher-cost services, others argued that these services should only be offered if the product passes the test.

And while some stakeholders suggested the benchmark RAFE should be the same for all products, others suggested they remain separate as choice products tend to offer more sophisticated services.

Other proposals included adjusting RAFE to reflect that some members have multiple investment options, as well as using a reasonable set of fees rather than the median.

Consequences of failure

Many stakeholders suggested that the notification letter has successfully encouraged many members to leave underperforming funds, but more can be done to address various issues. Stakeholders noted that the technical language may cause confusion or disengagement and consumer testing could improve its influence. Several also noted that the letter does not include information about the difference between MySuper and choice products, the impact of switching on insurance coverage, or prospective mergers. Some stakeholders considered the risk that the letter provides investment advice or that funds may game the letter with additional marketing material.

Several stakeholders were concerned that the consequence of closing a product to new members is too severe for choice products which tend to be more diverse and complex than MySuper products. Some stakeholders suggested that a spectrum of consequences is needed for choice products to reduce the immediate severity because those members make an active choice and some products are part of a broader portfolio.

Proposals included delaying or removing the closure consequence, or providing APRA with discretion to review failed products. However, others supported or suggested increasing the consequences, noting that any reduction would reduce the influence of the test.

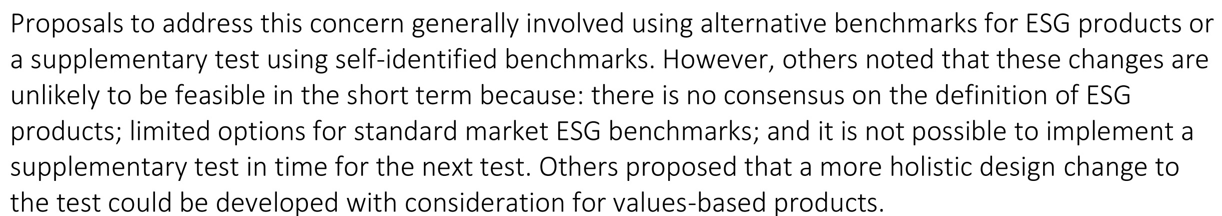
Product coverage

More broadly, stakeholders were concerned that the test does not appropriately reflect the diversity and objectives of choice products and combined with the consequences will unintentionally cause products to fail and close. They noted that this ultimately undermines member choice, undercuts the role of financial advisers and risks pushing some members to self-managed super funds which may not be the right retirement savings vehicle for them.

Proposals to address these concerns ranged from applying a different test for choice products, giving APRA discretion to reassess failed products, or exempting them from testing entirely. A key proposal raised for a different test was the use of multiple metrics (such as the APRA Heatmap) to provide a more comprehensive assessment of performance.

Others cited reports of underperformance in the choice sector and argued that these products should not escape the scrutiny of performance testing. For example, the Productivity Commission found that about 36 per cent of choice investment options underperformed a tailored benchmark. Those stakeholders suggested that TDPs should remain on track for testing and that more products could be tested in the future.

Values-based products, such as environmental, social and governance (ESG) products, were a key example raised where the test creates a risk that these products will fail and close. This is because the investment strategy (such as negative screening) deviates from the benchmark indices, increasing tracking error and constraining the trustees’ ability to meet its members’ objectives.



Proposals to address this concern generally involved using alternative benchmarks for ESG products or a supplementary test using self-identified benchmarks. However, others noted that these changes are unlikely to be feasible in the short term because: there is no consensus on the definition of ESG products; limited options for standard market ESG benchmarks; and it is not possible to implement a supplementary test in time for the next test. Others proposed that a more holistic design change to the test could be developed with consideration for values-based products.

Some stakeholders suggested clarifying the definition of TDPs. Stakeholders noted that some notionally single-sector products may be unintentionally captured if they are largely exposed to one asset class but maintain small exposures to others to manage risk, or if asset classes are disaggregated. Some noted a potential inconsistency whereby the same underlying product is tested as a TDP when offered by a connected entity but not tested when offered by a non-connected entity. Some stakeholders also noted that a trustee may have no influence over a TDP's investment strategy even if it is managed by a connected entity. However, others suggested that trustees should be held accountable for the products they offer to members, even if they do not influence its investment strategy.

Several stakeholders raised issues with extending the test beyond TDPs.

Some suggested that trustees should not be held accountable for the performance of externally-directed products (EDPs) because they have no control over its investment performance, just the decision to offer it to members.

Some suggested that many single-sector products are at risk of failure due to unmanageable tracking error which may be problematic for members that use these products within a broader diversified portfolio.

Several stakeholders considered that the test is unsuitable for retirement products, which have broader objectives than just investment performance, and may deter innovation in product design.

However, some stakeholders considered that these products should still be subject to some form of performance testing to protect members from underperformance.

YourSuper comparison tool

Summary

The YourSuper comparison tool (comparison tool) is an interactive tool intended to help members make better decisions about who manages their retirement savings. The comparison tool received over 1.5 million views in the first 14 months of going live. ATO figures indicate that of the approximately 430,000 members that used the authenticated version of the tool in the 2021-22 financial year, around 158,000 changed superannuation accounts in the same period.

Consultation highlighted the usefulness of an official, objective and trusted source of information to help consumers make decisions about MySuper products. However, it became clear that an unintended consequence of the comparison tool was that:

- The tool's current default sorting of products by fees could lead to products with *temporarily* lowered fees being placed at the top of the comparison tool. This does not reflect the fees members will pay in the future, and in some cases these products may have a poor investment performance.

Stakeholders also suggested further possible improvements to the comparison tool, including further metrics and further products (beyond MySuper products).

Introduction

The comparison tool was launched on 1 July 2021 as an interactive tool intended to help members make better decisions about who manages their retirement savings. The comparison tool was designed to achieve two key objectives. First, to improve member engagement by providing members with simple, clear and trusted information to help them compare and choose a well-performing MySuper product. Second, to encourage funds to compete by lowering fees and increasing returns for members.

Summary of stakeholder positions:

Default sorting

The comparison tool's current default sorting of products by fees, as opposed to net returns, can lead to unintended consequences as temporarily lowering fees could improve a product's ranking in the tool. Stakeholders that supported ranking by net returns as an alternative approach suggested net returns is a simpler representation of product performance that incorporates both fees and returns, and that fees can vary greatly for members depending on age and super balance. Other stakeholders that supported the status quo suggested default sorting by fees encourages fee reduction in the system and is more appropriate as it provides an indication of what a member will pay in the future, whereas returns are an indication of past performance only. It could also be more difficult for members to understand net returns than fees.

Additional metrics

The comparison tool currently displays metrics on product performance, fees and returns. Some stakeholders suggested the tool does not provide members with adequate information and that including additional metrics (such as insurance or risk) would allow for better informed decisions. Other stakeholders, including consumer groups, were concerned that additional metrics could be overwhelming and further contribute to member disengagement.

Extension to other products

The comparison tool currently displays MySuper products only. Some stakeholders supported extending the tool to other products but noted concerns around aspects of the current design that should be updated prior to any expansion. A common concern raised was how to meaningfully display information on the significant amount of choice products available.

Other design changes

Stakeholders raised other design changes that could improve the comparison tool, including further educational prompts and compliance with digital service standards. However, some stakeholders were concerned that simply increasing the level of information and design options available on the tool risked overwhelming consumers.

Stapling

Summary

The purpose of stapling is to prevent the creation of unintended multiple superannuation accounts.

Key unintended consequences and implementation issues arising from the the new stapling process that were flagged during consultation were:

- An increase in the administrative burden on employers' onboarding processes, particularly where an employment link is not established before making a stapling request;
- As a result, some employers are seeking to avoid the stapling process by encouraging new employees to make an active choice of superannuation fund as part of the onboarding process.
- Concerns around members being stapled to underperforming funds and inappropriate insurance.

Introduction

Stapling commenced on 1 November 2021 and seeks to prevent the creation of unintended multiple superannuation accounts when disengaged members change jobs and open a new account by default. Unintended multiple accounts result in members being subject to multiple sets of account fees and potentially duplicate insurance arrangements which ultimately erode retirement savings.

Prior to stapling, when an individual changed jobs and did not choose a preferred superannuation fund, the employer could open a new superannuation account for the employee using the employer's 'default' fund. Stapling adds an additional step for employers who must now check whether an employee has an existing ('stapled') super fund with the Australian Tax Office (ATO) before making super contributions. This is designed to ensure that where an employee does not choose a fund, their existing superannuation account follows them to their new job, rather than opening a new additional default account.

Stapling is intended to be implemented over two 'phases'. Currently under phase 1, employers need to make a stapled fund request through ATO Online Services. Under phase 2 the ATO is developing an IT solution to integrate stapled fund requests in the employer's payroll system. Phase 2 is yet to roll out but is estimated to be available for digital service providers (DSPs) to adopt in April 2023. As phase 2 is voluntary, it is unclear to what extent it will be adopted and implemented by industry.

Summary of stakeholder positions:

Administrative burden

Stakeholders are frustrated by the increased administrative burden caused by the implementation of stapling, which has created an additional step for employers as part of their onboarding processes. Making a stapling request only takes an average of 1.5 minutes per employee to complete. However, for many employers stapling creates a timing issue and works counter to their established payroll processes, which would be costly and time consuming for digital service providers (DSPs) to change. In circumstances where the employment link cannot be verified by the ATO, stakeholders advised the process requires significant workarounds and causes time delays.

Tax secrecy provisions require the ATO to be satisfied that an employment relationship, or 'link', exists before providing stapled fund details. Employers can establish this link by reporting a Single Touch Payroll (STP) event or Tax File Number Declaration prior to submitting the stapled fund request. However, some payroll software have automated systems that require the employer to enter the employee's superannuation details as part of this STP event. This means that for some employers, they need an employee's superannuation details to report the STP event needed to establish the employment before making a stapled fund request.

On the staged rollout of stapling, stakeholders raised concerns about the ATO's stapling bulk service (a temporary service available during phase 1), ranging from eligibility to access the service, formatting issues, and the ATO's plan to decommission the service once phase 2 is implemented. Some employers raised concerns that should their DSP not adopt phase 2, and in the absence of the ATO's bulk service, it would not be practical for them to utilise stapling.

Avoiding stapling

As a consequence of these administrative issues, stakeholders raised that it is more practical for employers to avoid stapling entirely by encouraging new employees to choose a superannuation fund, whether that be the employee's existing fund, a new fund, or the employer's default fund.

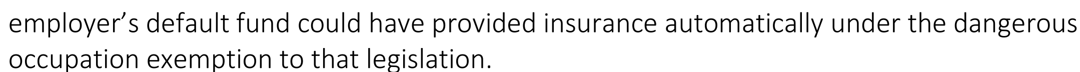
In the current design of the ATO's superannuation standard choice form, if an employee is required to complete the form, then the easiest option for employees is to choose their employer's default fund. Some stakeholders therefore suggested that employees should be able to actively nominate their stapled fund as a valid choice on this form.

Some stakeholders also raised concerns about onboarding software that encourages employees to make a choice, including by presenting employees with the option to choose funds that have paid to be advertised on the platform. A lack of data means that it is impossible to know to what extent employers use the ATO's form, which is not mandatory, versus other methods of collecting choice of fund information.

Insurance

Stakeholders have raised concerns around employees having inappropriate insurance arrangements within their stapled superannuation account when changing jobs, particularly those moving into high-risk occupations. This is due to the following reasons:

- Members under 25 years or with less than $6,000 do not have automatic default insurance coverage under requirements introduced in July 2019 under the *Putting Members' Interests First* (PMIF) legislation, which commenced on 1 April 2020. When moving to a high-risk occupation, their existing stapled fund may not have insurance cover as they did not opt-in. Alternatively, their new



employer’s default fund could have provided insurance automatically under the dangerous occupation exemption to that legislation.

- Occupational exclusions or restrictive definitions which do not provide cover for the new occupation, or inappropriate sum insured amounts for their new occupation.

Underperforming products

Stakeholders raised concerns with employees being stapled to underperforming products, as this could lead to diminished retirement savings. Stakeholders suggested that a fund should have to pass the most recent performance test to be considered a stapled fund. This also precludes funds that have less than five years of performance history, as they are not subject to the test.

Despite concerns by stakeholders, there are implementation issues associated with changes in this area. Stakeholders raised that the ATO only obtains information on what superannuation *fund* an employee has, but not the underlying superannuation *product* (investment option) they are invested in. Without significant changes to data reporting, the ATO cannot determine if an employee has an underperforming *product*.

Further, some stakeholders noted that the performance test is expected to reduce the incidence of underperformance over time because fewer funds are expected to fail going forward and the test has proven to be a strong incentive for failing products to merge with better performing funds.

One stakeholder raised concerns that there is ambiguity around the process for employers to change a default fund that has underperformed and what this means for existing employees that have been defaulted into that fund.

Best financial interests duty

Summary

The introduction of the best financial interests duty (BFID) was intended to clarify that it is the financial interests of members that trustees must be guided by when making decisions.

Consultation found the key unintended consequence of the BFID was uncertainty as to what the new duty meant in practice for trustees, resulting in compliance costs for funds.

Consultation also highlighted previous concerns with the original policy design of the test, including the use of the reverse onus of proof for the duty.

The requirement for a sharper focus on financial outcomes for members has served to strengthen trustee governance arrangements.

Introduction

The BFID came into effect on 1 July 2021. The duty was intended to clarify that it is the financial interests of members that trustees must be guided by when making decisions. This is particularly important given the universal coverage of superannuation. The introduction of the BFID involved three key components:

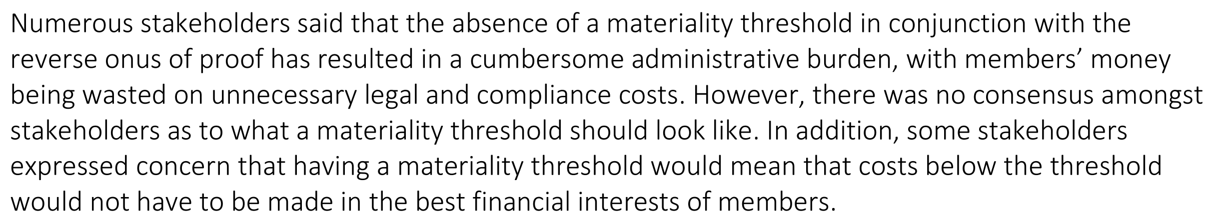
- Require each trustee of a registrable superannuation entity (RSE) or self-managed superannuation fund to perform the trustee's duties and exercise the trustee's powers in the best financial interests of the members.
- Require each director of the corporate trustee of an RSE to perform the director's duties and exercise the director's powers in the best financial interests of the members.
- Reverse the evidential burden of proof so that the onus is on the trustee of an RSE to point to evidence that their actions were consistent with the best financial interests duty in a civil penalty proceeding.

Summary of stakeholder positions:

Some stakeholders suggested that the best financial interests duty (BFID) should be repealed, and the previous best interests duty (BID) should be re-instated. This was on the basis that the previous BID had a long-established meaning amongst the industry as being squarely about the financial interests of members.

It was suggested that the narrow focus on 'financial interests' discourages trustees from deploying sustainable investment strategies. Some stakeholders raised concerns that short-term financial interests and long-term environmental and social outcomes present conflicting fiduciary duties for trustees.

However other stakeholders said that the inclusion of the word 'financial' in the best interest duty is appropriate and the requirement for a sharper focus on financial outcomes for members has served to strengthen trustee governance arrangements.



Numerous stakeholders said that the absence of a materiality threshold in conjunction with the reverse onus of proof has resulted in a cumbersome administrative burden, with members' money being wasted on unnecessary legal and compliance costs. However, there was no consensus amongst stakeholders as to what a materiality threshold should look like. In addition, some stakeholders expressed concern that having a materiality threshold would mean that costs below the threshold would not have to be made in the best financial interests of members.

Most stakeholders signalled their concerns would be alleviated by additional regulatory guidance that reflects the operation of BFID in practice.

It was suggested that there would be benefit in clarifying in the legislation that the reverse onus of proof only applies to civil proceedings commenced by the regulator.