

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

Dear Director,

RE: Superannuation Performance Test Regulations 2023

Trustees should be held accountable for the performance of the products they offer to their members.

Super Consumers supports the introduction of the Superannuation Performance Test Regulations 2023. The updated regulations will make modest amendments and clarifications to the performance test methodology, and improve the clarity of test failure notifications to members. Our comments will focus on performance test product coverage and failure notifications, and areas of the Your Future, Your Super (**YFYS**) review which remain unaddressed. In summary:

- The performance test should be extended to all APRA-regulated accumulation products and account-based pensions immediately, and the Government should establish a process for designing equivalent consumer protections for other retirement products,
- Improvements to the performance test fail letters are welcome, but funds should be prohibited from adding extraneous communications to the letters,
- It is essential that the Federal Government progress other areas of the YFYS review as a matter of priority, so that consumers get the most out of these important reforms. This includes fixing stapling so that it is easier for employees to nominate an existing fund when switching employers, and progressing improvements to the ATO YourSuper Comparison Tool.

Product coverage

We welcome the Government's commitment to extending the performance test to trustee directed products (**TDPs**) this year. However, as we indicated in our initial submission to the

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email enquiries@superconsumers.com.au

ACN 163 636 566 ABN 34 163 636 566

YFYS review, we are concerned that large swathes of choice products and retirement income products will remain untested.

We urge the Government to commit to a timeline for extending the performance test (or an equivalent test) to all APRA-regulated accumulation super products, and to retirement super products.

Alarming, APRA's 2022 Choice Heatmap found that 1 in 5 choice investment options were significantly underperforming, covering \$10 billion worth of member benefits.¹ However, the Heatmap reported on less than half of total member benefits sitting in choice products. This means that there are still hundreds of billions of people's retirement savings held in non-TDP accumulation products, yet to be assessed or subjected to the performance test.

Additionally, 83% of accounts in the retirement phase are invested in account-based pensions, meaning millions of older people are also in untested products.² There are no barriers to extending the test to these products, given they are structurally similar to products already being tested. Many people's retirement savings peak as they are entering these products, so they have the most to gain from the lower fees that the performance test has been driving. Right now, Australian retirees are left unprotected and face the consequences of having to work longer, or contribute more to super, to meet their retirement needs.

The Government should extend the performance test to all APRA-regulated accumulation funds and account-based pensions immediately, to ensure everyone benefits from a stronger superannuation system.

We recognise some types of retirement products (e.g. those that provide some longevity risk protection) may require a different approach to testing, but it is equally important that these products are also subject to a basic fitness test. The products are complex and, in many cases, people cannot leave them once they've entered. This also makes having safe default settings in retirement very important. Accordingly, the Government should establish a process for designing:

- safe default setting in retirement, and
- an appropriately adapted performance test for retirement products that provide longevity protection, to ensure there is a minimum standard that all products must meet.

¹ APRA 2023, Choice Heatmap Insights Paper, <https://www.apra.gov.au/sites/default/files/2023-04/Choice%20Heatmap%20Insights%20Paper.pdf>

² Retirement Income Review, p. 439

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email enquiries@superconsumers.com.au

ACN 163 636 566 ABN 34 163 636 566

Trustee notifications to beneficiaries

We commend Treasury for proposing plain English amendments to the notification that members in underperforming products receive. We support the development of separate notification text for members whose product has failed the performance test a second time. These amendments will improve the readability of the ‘fail letters’ and assist members to understand the value of moving their money to a better performing super product.

There is still room for improvement in the proposed Performance Test Regulations because trustees are still permitted to include superfluous information in their fail letters, alongside the prescribed notification text. This oversight allows trustees to distract from the true purpose of the failure notification, and confuse members with unnecessary and biased information surrounding the failed product. This is at complete odds with the intent of the regulations.

Both ASIC and Super Consumers have conducted reviews of funds’ fail letters. These reviews found that some funds’ letters were not balanced,³ and instead undermined the fact that their product failed the test – this is despite extensive guidance from ASIC that directed trustees to ensure fail letters are member centric.⁴ For example, Super Consumers found that some funds used their fail letters to:

- discredit the performance test’s methodology,
- emphasise their product’s performance using other, less credible metrics, and
- spruik member perks and benefits to distract from the core purpose of the fail letter, including discounted access to water parks.⁵

It is clear a more prescriptive approach is needed to ensure that poor and potentially misleading fail letters are curtailed. Failing funds have demonstrated that they shouldn’t be permitted to add additional content to their letters. Relying on regulators to routinely review the quality of the fail

³ ASIC 2023, *Super trustees told to focus more on their members in communications about performance test failure*, media release
<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-093mr-super-trustees-told-to-focus-more-on-their-members-in-communications-about-performance-test-failure/>

⁴ ASIC 2022, *Review of trustee communications about the MySuper performance test*,
<https://download.asic.gov.au/media/k1chrsc4/rep729-published-24-june-2022.pdf>

⁵ Super Consumers Australia 2022, *Are our funds being honest? A fact check on underperforming super fund communications*,
<https://www.superconsumers.com.au/are-our-funds-being-honest-a-fact-check-on-underperforming-super-fund-communications>

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email enquiries@superconsumers.com.au

ACN 163 636 566 ABN 34 163 636 566

letters, and keep watch for unbalanced, inconsistent or misleading communications, is inefficient.

We urge the Federal Government to implement the following:

- **Section 9AB.19 of the Superannuation Performance Regulations should be amended to explicitly prohibit trustees from including any communications in their fail letters other than the prescribed text in Schedule 2A,**
- Failing funds should be required to display a prominent notice about their product's failure on their website homepage until the product has passed the test, or is no longer offered, and
- People in underperforming funds should be notified that their fund has failed the test via a message in their MyGov inbox.

It must also be acknowledged that relying on disclosure is only a partial solution to poor performance. Despite notifications being sent out in previous years, far too many consumers remain in poor performing products. As of January 2022, only 100,000 member accounts in underperforming products had been closed.⁶ Disclosure is a poor consumer protection for a number of reasons. In this instance, many people don't even receive test failure notifications because their super fund doesn't have up-to-date contact details. Super Consumers' national consumer survey found that just over half of Australians read the communications their super fund sends them.⁷

The proposed plain English amendments will improve consumer comprehension, but ultimately more people stand to benefit from wider implementation of the performance test backed by strong regulator action to shut down underperforming products. We welcome the increased regulatory scrutiny that has been promised to crack down on underperformers, but there are still people who remain in these products due to a lack of awareness or understanding of their product's fail status. We expect APRA to use their regulatory toolkit to help get people out of underperforming, including legacy, products.

⁶ Treasury 2022, *Your Future Your Super review*,
https://treasury.gov.au/sites/default/files/2022-09/c2022-313936_0.pdf

⁷ Super Consumers Australia 2023, *Super Consumer Pulse Wave 0*,
<https://www.superconsumers.com.au/super-consumer-pulse-blog>

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email enquiries@superconsumers.com.au

ACN 163 636 566 ABN 34 163 636 566

Stapling and the YourSuper Comparison Tool

We note that issues to do with the implementation of stapling and the ATO's YourSuper Comparison Tool have been acknowledged in the Federal Government's response to the YFYS review.⁸

The review found that some employers avoid stapling requirements by encouraging new employees to make a particular choice of super fund during onboarding. This creates a loophole that employers or onboarding software providers can exploit by funnelling new employees into a certain fund.

The YFYS review also found the ATO's YourSuper Comparison Tool could be improved by including additional features and extending to choice products. We agree, and refer to our qualitative research on consumers' use of the YourSuper comparison tool.⁹ It found that better explanation of key concepts, a more accessible design, and well-executed expansion to choice products would help people get more out of the tool.

At this stage, proposals to address these areas of the YFYS review have not been comprehensively addressed. We urge the Federal Government to progress reforms on these issues, and we reiterate our recommendations from our submission to the review:¹⁰

- **Make it easier for employees to nominate their existing fund when switching employers:** The ATO's Standard Choice Form should be drastically streamlined and updated with a simple check-a-box function for employees wanting to nominate their existing fund. Importantly, adoption of the ATO's new payroll-integrated stapling solution should be mandated for digital service providers, and adoption should be audited to prevent gaming. In 12 months' time Treasury should again review the implementation of stapling by auditing how the second phase of stapling solutions have been adopted, and investigating the sources at which multiple member accounts are being created.
- **Work in consultation with consumer groups to extend the ATO YourSuper Comparison Tool's product coverage to TDPs, and ensure the tool complies with the Australian Government's digital service standards:** Changes to the tool should build upon the learnings from BETA's survey and must be supported by thorough

⁸ Treasury 2023, *Your Future, Your Super review: Summary of issues*, <https://treasury.gov.au/sites/default/files/2023-04/c2022-313936-yfys-review.pdf>

⁹ <https://www.superconsumers.com.au/new-page-50>



consumer testing, for example, choice experiments.¹¹ These changes should be progressed ahead of the release of the 2023 performance test.

Please do not hesitate to get in touch with Policy Manager Rebekah Sarkoezy at rsarkoezy@superconsumers.com.au if you wish to discuss our views further.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Xavier O'Halloran".

Xavier O'Halloran
Director
Super Consumers Australia

¹⁰ Super Consumers 2022, *Your Future, Your Super Review: Submission by Super Consumers Australia*, https://static1.squarespace.com/static/5d2828f4ce1ef00001f592bb/t/6351cc3148afca68bd4309cf/1666305074456/Your+Future%2C+Your+Super+Review_++Submission+by+Super+Consumers+Australia.pdf

¹¹ BETA and the ATO 2022, *YourSuper Comparison Tool: Results from a survey and two survey experiments*, <https://behaviouraleconomics.pmc.gov.au/projects/yoursuper-comparison-tool-results-survey-and-two-survey-experiments>

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email enquiries@superconsumers.com.au

ACN 163 636 566 ABN 34 163 636 566