



SDA SUBMISSION TO TREASURY CONSULTATION ON Annual Superannuation Performance Test – design options

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About the SDA



The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with over 200,000 members. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%), under 35 years (57%), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a long history of advocating on behalf of members. We do this through enterprise bargaining; making submissions regarding Awards and the NES to provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews.

The SDA has 10 policy principles that guide our engagement in these reviews. For a list of these, see Appendix A.



Executive Summary

The *Annual Superannuation Performance Test – design options Consultation paper March 2024* puts forward options in a very specific context. But there is a wider context too.

The context – unconscionable conduct by “for profits”:

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry exposed egregious behaviour by for profit and bank owned super funds. A range of departmental, commission, and parliamentary reviews and inquiries followed. A vast and ever-changing regulatory landscape was further changed to curtail the poor behaviours which cause poor performance. One of the changes was that APRA is now required to conduct an annual performance test for superannuation products.

To date, the test has managed underperformance.

According to the Treasury, the idea of a performance test is working.

*To date, 14 MySuper products have failed the test, of which 13 have exited the market or have announced plans to do so. This has resulted in over 800,000 member accounts merging with a better performing fund. The remaining MySuper product has since improved its performance.*¹

The test should move towards improving performance.

A revised test should accommodate investment in opportunities to improve the economy in which members live and work, including the global economy. These are unambiguously in the members financial interest given they contribute to their ability to earn superannuation and control the world in which members retire.

There are some principles by which the changes should be measured.

The SDA affirms the view that there is a need for a performance test. It is now time for the performance test to drive up performance in the interests of members.

The revised test should:

1. drive up performance, rather than only punishing poor performance.
2. remove disincentives to investments in economic and security transition, such as renewable energies, housing and seed technologies.
3. accommodate investment in opportunities to improve the economy in which members live and work, such as agricultural, reshoring, strategic international growth.
4. maximise the value of trustee strategy and product design, as outlined in their organisational and investment strategies.

There are a range of ways to handle change.

This submission concludes with some suggestions about options that could be modelled by Treasury.

¹ <https://treasury.gov.au/consultation/c2024-471223>

SDA Submission to the Treasury Consultation on *Annual Superannuation Performance Test – design options*

The context – unconscionable conduct by “for profits”.

The *Annual Superannuation Performance Test – design options Consultation paper March 2024* puts forward options in a very specific context. The options paper appropriately places the assessment of performance in the context of the risk appetite of members, strategic asset allocation, and the nature of the product – an account holding units with product attributes of investment returns, insurance, and advice. The paper grapples with the details of how to balance these attributes in the context of a holistic concept of “performance”. For members, the “performance” of superannuation funds is read through the transactions on their account – the opening balance, the fees deducted for the account, any insurance and any advice, and the attribution of investment returns. That is, a list of transactions in an app and their experience of the product and its attributes.

But there is a wider context too. In April of 2018, the then Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry had its second round of public hearings.

The agenda was clear:

1. *Fees for no service*
2. *Investment platform fees*
3. *Inappropriate financial advice*
4. *Improper conduct by financial advisers, and*
5. *The disciplinary regime for the financial advice profession.*

The questions, based on the research of the Commissioner to date were directed at:

- *AMP Financial Planning Pty Ltd* and
- *AMP* • *ASIC*
- *ANZ* • *Financial Planning Association of Australia Ltd*
- *ANZ and Millennium 3 Financial Services Pty Ltd* • *Association of Financial Advisers Ltd*
- *BT Financial Group* • *Dover Group*
- *CBA*
- *Charter Financial Planning Ltd and*
- *Commonwealth Financial Planning Ltd*
- *Count Financial Planning*
- *Genesys Wealth Advisers Ltd*
- *Hillross Financial Services Ltd*
- *Millennium 3 Financial Services Pty Ltd*
- *NAB*
- *RI Advice Group Pty Ltd*
- *Westpac*

That is, for-profit and Bank owned providers of superannuation and wealth management services and their regulators and advocates were being questioned about some of the most egregious of conduct by banks.

Later that year, in August of 2018, the likely outcomes of the Royal Commission became clearer.

Australia's \$2.6 trillion superannuation industry is shrouded in darkness due to a lack of regulation of the conduct of the trustees running funds, the royal commission has heard.

The criticism of the lack of regulation of the sector was delivered by counsel assisting the royal commission, Michael Hodge, QC, at the start of two weeks of hearings into misconduct within the sector.

...

Mr Hodge said retail funds operated by the big banks had a far greater number of problems than industry superannuation funds.

Mr Hodge said the examples of misconduct filed by industry super funds were "extremely minimalist" when compared to issues identified by retail superannuation funds.²

To date, the test has managed underperformance.

The Royal Commission concluded, and a range of departmental, commission, and parliamentary reviews and inquiries followed. A vast and ever-changing regulatory landscape was further changed to curtail the poor behaviours which cause poor performance.

One of the changes was that APRA is now required to conduct an annual performance test for superannuation products. And, according to the Treasury, the idea of a performance test is working.

To date, 14 MySuper products have failed the test, of which 13 have exited the market or have announced plans to do so. This has resulted in over 800,000 member accounts merging with a better performing fund. The remaining MySuper product has since improved its performance.³

In the absence of an appetite to ban for-profit provision of superannuation trusts, the SDA affirms the view that there is a need for a performance test. Banks and other large for profit providers failed their members, and the performance test has gone a long way to dealing with that problem.

The test should move towards improving performance.

It is now time for the performance test to shift from one that punishes poor performers to being a test that drives up good performance in the interests of members. Those interests are clearly financial. For example, a revised test should accommodate investment in opportunities to improve the economy in which members live and work, including the global economy.

If the economy in which members live and work is strong, the test will assist the Australian Government to achieve its objective of Decent Work and Economic Growth as outlined by the sustainable development goal 8, *Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all*. For Australian retail, warehousing and fast food workers, achieving decent work requires that workers get -

² <https://www.smh.com.au/business/banking-and-finance/heart-of-darkness-opaque-super-industry-slammed-at-royal-commission-20180806-p4zvpc.html>

³ <https://treasury.gov.au/consultation/c2024-471223>

- a safe environment,
- a wage you can live on,
- stable, predictable, and secure hours of work,
- a supportive workplace conditions such as parental leave, and
- a regular and consistent income.

And, with decent work in Australia, comes a superannuation entitlement which is irrefutably in the financial interests of members. Further, a strong economy into which members retire is also a financial benefit.

There are some principles by which the changes should be measured.

SDA submits that there continues to be a need for a performance test, the test should focus on members interests, and to achieve that the Government should adjust the test.

The revised test should:

5. drive up performance, and continue to regulate poor performance.
6. remove disincentives to investments in economic and security transition, such as renewable energies, housing and seed technologies.
7. accommodate investment in opportunities to improve the economy in which members live and work, such as agricultural, reshoring, strategic international growth.
8. maximise the value of trustee strategy and product design, as outlined in their organisational and investment strategies.

There are a range of ways to handle change.

The SDA concludes that there are a range of ways the government might choose to achieve this shift. They include:

9. requiring funds to declare at the start of each period the measure against which they will held to account, with some options on menu of tests including:
 - 9.1. fund performance being measured against what the fund tells their members they are aiming for (which may be especially appropriate for the retirement phase, but seems a reasonable suggestion for all products)
 - 9.2. fund performance being measured against a single metric, such as risk adjusted returns (which may be appropriate for newer products and the consensus of the industry is that such a measure could not be applied to all products), or
 - 9.3. fund performance being measured against an amended version of the current test (which may be appropriate for those whose investment strategies have been responding to the test for some time).

The current formation of the test could be amended by

- 9.3.1. adding new “alternative real assets class”, a “special priority real assets class”, or adjusting the current “alternatives” asset class to allow for some investments to be measured against the commitment to the members for returns. This would mean assessing growth, which is appropriate for long term investments. This could

include investments responding to a new expectation within the investment strategy covenant – this might give more ability to invest in assets like housing,

- 9.3.2. creating a simple reference portfolio, against which funds can compete. This may reduce the ability to bring competitive benefits for some areas and may be appropriate for others,
 - 9.3.3. assessing performance against a \$10,000 balance or average balance of the fund rounded to the nearest ten thousand dollars, rather than \$50,000 which is a wealth and tax management measure rather than safety net measure,
 - 9.3.4. assessing fees and returns within the same period, rather than only in the most recent year. There might be an option to phased in a return to the intention to compare fees on the basis in which members experience them – the same year.
10. using a new Council of Superannuation Custodians to provide advice to Parliament on the alignment of legislation and regulation with the objective of superannuation and assess funds based on heatmaps.
 11. referring the power to close a fund to new members due to performance concerns to a new regulator of superannuation that combines the functions of APRA and ASIC, and acts on the basis of the heatmap assessment of the new Council of Superannuation Custodians. The creation of such a body allows for partnership between the custodians and regulators in the context of a compulsory system – where disclosure required by ASIC is less effective – and there is very little debt – like other institutions under APRA's guise.

Appendix A: Principles underpinning SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by an industrial system that has been reformed, but had failed them for decades.

Australians need to be supported by an economic system that has working people at its centre. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to utilise the reformed industrial framework for the current and future generations. Decades of concerted attacks on our industrial relations system saw inequality grow, and economic and political power has further concentrated in the hands of a few.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But there has been growth in insecure work, digitalisation is now a matter of course, safety concerns have persisted, and automated, digital and generative technologies must be shaped to enhance, not undermine, decent work.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will be fit for purpose in the emerging world of work.

The SDA engages in topics that help drive this agenda and we are guided by ten principles that we believe will create value for our members.

Those principles are:

1. Address Inequality & Enshrine Fairness

Minimum expectations must be set and adhered to.

2. Equity & Empowerment

All workers must be supported to progress so that no-one is left behind.

3. Mobility & Security

A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.

4. Delivering Prosperity & Growth For All

A foundation for prosperity and economic growth must be achieved.

5. Protection in Work & Beyond

Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.

6. Workers Capital & Superannuation

Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.

7. A Strong Independent Umpire

A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.

8. Protection & Support for Our Future

Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing decent work and jobs with fair and just remuneration and contributing to the economy including through skilled workers.

9. Work & Community

Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.

10. Institutional Support for Collective Agents

Institutional support must provide for collective agents (registered organisations) in all industries so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

