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

Email: economics.sen@aph.gov.au

Dear Mr Fitt,

TREASURY LAWS AMENDMENT (YOUR FUTURE YOUR SUPER) BILL 2021 [PROVISIONS]

The Investor Group on Climate Change (IGCC) welcomes the opportunity to provide feedback on the Treasury Laws Amendment (Your Future, Your Super) Bill 2021 (the Bill).

ABOUT IGCC

The Investor Group on Climate Change (IGCC) is a collaboration of Australian and New Zealand investors focused on the impact that climate change has on investment. IGCC represents institutional investors with total funds under management of over $2 trillion, and others in the investment community interested in the impact of climate change. IGCC members cover over 7.5 million people in Australia and New Zealand. IGCC aims to encourage government policies and investment practices that address the risks and opportunities of climate change, for the ultimate benefit of superannuants and unit holders.

CLIMATE RISK AND FIDUCIARY DUTIES

As trustees of members' retirement savings, super funds have a legal obligation to act in the best interest of their members and to grow their retirement funds responsibly, including managing material risks to its investment portfolio. Climate change is a systemic threat to the financial system and presents a material risk to the investment returns of long-term asset owners and their underlying superannuation members.

In particular, the landmark Memorandum of Opinion by Barrister Noel Hutley SC, *Superannuation Fund Trustee Duties and Climate Change Risk*, found that, with reference to the Superannuation Industry (Supervision) Act, trustee directors, 'in an appropriate case, [are] to consider climate change risk in order to satisfy the requirements at section 52A(2)(b), in relation to care, skill and diligence, section 52A(2)(c) in relation to the best interests of beneficiaries, and section 52A(2)(f) in relation to ensuring a corporate trustee carries out the section 52 covenants'.[1] Increasing climate litigation against directors and trustees, globally and in Australia,[2] is further driving home investors' legal obligations to manage material climate change risks.[3]

The Reserve Bank of Australia's (RBA) October 2020 Financial Stability Review states that 'climate change is exposing financial institutions, and the financial system more broadly, to risks that will rise over time and, if not addressed, could become considerable... Addressing these early will help to both mitigate the transition risks and reduce the scale of the challenge that physical risk poses to financial stability in future.'

Recognising the financial and economic significance of climate change, the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the ASX Corporate Governance Council have published specific regulatory guidelines and recommendations in relation to managing and reporting on climate-related financial risk.[4]

IGCC POSITION AND COMMENTS ON THE BILL

IGCC supports the introduction of further measures to increase transparency and accountability. However, the Bill in its current form presents issues which may have unintended and perverse outcomes for trustees' ability to act in the best interests of the beneficiaries of their funds, including in relation to effective long-term management of material climate-related financial risk and opportunity.

Best Financial Interests Obligation

We share the concerns raised by the Australian Council of Superannuation Investors (ACSI) and Responsible Investment Association Australasia (RIAA) in their submissions, among others,[5] that these changes could generate significant adverse consequences that undermine the very intent of the Bill, by eroding trustees' ability to act in the best interests of the beneficiaries of their funds.

For example, establishing a broad-reaching and undefined regulation making power for the government to prohibit certain payments and investments will increase market uncertainty and could have detrimental impacts on active investment in the Australian economy, including in clean energy and other technologies and infrastructure required to generate sustainable, long-term returns for beneficiaries and manage the financial stability of Australia's economy. These goals are also set out in the Federal Government's *Technology Investment Roadmap.*[6]

We refer to submissions by ACSI and RIAA in relation to Schedule 3, Best Financial Interest Obligation, and do not seek to repeat them here.

Benchmarking

Superannuation investment requires a long-term approach to deliver returns in members' financial interests over their working lives, often referred to as "patient capital". This encompasses a long-term view to effectively manage climate-related financial risk and opportunity, as increasingly required by financial regulators.

In relation to comparative benchmarking under Schedule 2 of the Bill, we urge consideration of potential unintended negative consequences, including encouraging short-termism, challenges for investors to explicitly address systemic risks like climate change, as raised by the RBA, APRA and ASIC, and potentially diminished ability to invest in new technologies that would otherwise provide long-term financial benefits to members. These issues are outlined in a recent paper by the Queensland Investment Corporation (QIC).[7] While this paper was prepared in November 2020, we consider these issues to remain relevant to the current Bill.[8]

We welcome the opportunity to discuss these matters further.

Yours sincerely,

Emma Herd
Chief Executive Officer
Investor Group on Climate Change

[1] Noel Hutley and James Mack (commissioned by Market Forces) (2017), 'Superannuation Fund Trustee Duties and Climate Change Risk' (Memorandum of Opinion, Environmental Justice Australia, 2017) 5: https://www.marketforces.org.au/wp-content/uploads/2020/01/170615-Market-Forces-Memorandum-Superannuation-Trustee-Duties-and-Climate-Change-Risk-Hutley-Mack-.pdf; Also see Baker McKenzie and PRI (2018): https://www.unpri.org/download?ac=4396.

[2] See for example Mcveigh vs Retail Employees Superannuation Trust (2020): https://climate-laws.org/geographies/australia/litigation_cases/mcveigh-v-retail-employees-superannuation-trust.

[3] See further First Sentier Investors (2019): https://www.firstsentierinvestors.com.au/au/en/adviser/insights/latest-insights/Climate-Change-Fiduciary-Directors-duties.html.

[4] See IGCC (2019): https://igcc.org.au/wp-content/uploads/2020/06/IGCC_Policy-Briefing_Fiduciary-Duty_FINAL_1.pdf.

[5] Such as the Australian Institute of Superannuation Trustees (AIST).

[6] See Department of Industry, Science, Energy and Resources (2020), 'Technology Investment Roadmap: First low Emissions Technology Statement 2020' https://www.industry.gov.au/data-and-publications/technology-investment-roadmap-first-low-emissions-technology-statement-2020.

[7] QIC (2020): https://www.qic.com.au/knowledge-centre/apra-benchmark-20201104.

[8] See further, for example, comments on benchmarking in Australian Super Submission on 'Your Future, Your Super' Exposure Draft Legislation, p.4:

https://treasury.gov.au/sites/default/files/2021-02/c2020-124304_australiansuper.pdf.