19 February 2026

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
Via email: economics.sen@aph.gov.au

RE: Inquiry into Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025

The Financial Services Council (FSC) welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee's (the Committee's) inquiry into the *Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025* (the Bill). This submission only comments on Schedule 2 of the Bill, which includes a general ban on advertising superannuation products during employee onboarding.

The FSC supports the Federal Government's intent, as expressed in the Explanatory Memorandum, that Schedule 2 of the Bill should "make it easier for employees to see, consider, and select their existing fund when they start a new job if they choose to do so," while also reducing unintended duplicate accounts and providing employees with more timely and accurate information.[1]

However, we are concerned that a consequence of seeking to address unintended duplicate accounts by providing a general prohibition on advertising alternative superannuation funds at onboarding, subject to limited exceptions, is the creation of an uneven playing field between superannuation funds. The Bill creates an inconsistent situation where it only permits the advertisement of superannuation funds during onboarding if the employee's stapled fund is displayed, except where the employers default fund is solely being advertised. That is, an *onboarding platform does not have to display an employee's stapled fund if the fund being advertised is the employer's default fund*. We understand that this exemption has been provided to align with existing legal obligations that require that modern awards include a default fund term, ensuring contributions go to a specific, compliant fund[2], and the requirement that employers provide new employees with a Standard Choice Form including the information of the employer's chosen default fund.[3] Thus, the Government has determined that it would be inconsistent with these existing provisions that an onboarding platform be prevented from displaying the employer default fund unless the employee's existing stapled fund is displayed.

In the Government's attempt to seek to harmonise this Bill with these existing provisions, the result is a situation where competitive neutrality at the point of onboarding is undermined, and **runs counter to the Bill's stated policy objective of reducing unintended duplicate accounts**. In having this exception, the risk remains that duplicate accounts will be created because a person is still being a shown an alternative fund to their current, stapled fund, albeit in this instance it is the employers default fund, as opposed to an alternative choice. This could lead to an employee inadvertently opening a duplicative account and being subject to multiple sets of fees and unnecessary duplicate insurance premiums, which would be a demonstrably poor consumer outcome.

In our view, having a consistent approach to the stapled fund being displayed across all circumstances in which an exception to the advertising ban applies would better support informed employee decision-making in relation to superannuation, and better align with the Government's policy aim of preventing duplicate accounts. To the extent that fair and consistent treatment between

[1] Explanatory Memorandum, *Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025*, p.8.
[2] *Fair Work Act 2009,* Section 149C and Section 149D.
[3] *Superannuation Guarantee (Administration) Act 1992,* Section 32N.

funds and fulfilling the Government's policy aim of preventing duplicate accounts conflicts with existing law around default fund identification, we encourage the Committee to consider the best way to harmonise these aims or to recommend that further work be done to seek to harmonise these aims before the Bill is passed.

In addition, we have identified a number of technical implementation issues that, if left unaddressed, will also contribute to the ongoing creation of unintended duplicate accounts and generate compliance uncertainty for onboarding platforms and superannuation trustees. The FSC recommends that the Committee resolve these technical issues prior to its passage through the Parliament so that the Government's stated policy intent is not undermined. A summary of our recommendations can be found below, and Attachment A contains the rationale behind each of the recommendations.

About the Financial Services Council

The FSC is a peak body which sets mandatory standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, financial advice licensees and investment platforms.

The financial services industry is responsible for investing more than $3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world."

Summary of Recommendations

1. **Recommendation #1:** The FSC recommends that the Bill be amended to include a targeted carve-out to allow for the display of verified existing funds through fund-identification services in circumstances where a stapled fund lookup cannot be completed. This would ensure employees are provided with the maximum relevant information at the point of onboarding and is consistent with the policy intent of reducing the creation of unintended duplicate accounts.
2. **Recommendation #2:** The FSC recommends that the Committee consider the effect on competition, consumer choice, and fair treatment of funds under the exception in proposed s992AB(3) so that the Government's stated policy aim of preventing the creation of duplicate accounts is not undermined. We support exploring whether the Bill can be crafted in a way that preserves the ability for employers to continue presenting their default fund consistent with existing legal obligations, while also ensuring the stapling regime operates as intended and employees are given visibility of their existing superannuation arrangements.
3. **Recommendation #3:** The FSC considers that greater clarity is needed to ensure the prohibition operates as intended and provides certainty for affected entities.
    a. If the policy intent is to apply the advertising ban broadly beyond employee onboarding software platforms, the Explanatory Memorandum should be amended to:
        i. explicitly acknowledge that trustees, employers and other non-platform entities may be captured; and
        ii. include worked examples illustrating how the prohibition is expected to apply in those contexts.
    b. Alternatively, if the intent is to target paid promotional activity by onboarding software providers, consideration should be given to clarifying the scope of "person" through:
        i. more explicit guidance in the Explanatory Memorandum; or
        ii. refinement of the operative provisions to better align the legal scope with the stated policy intent.
4. **Recommendation #4:** The FSC recommends that the Explanatory Memorandum explicitly address scenarios in which employers maintain multiple default funds and provide clarity on how the default-fund exception is intended to operate in those circumstances. Providing worked examples would assist employers and onboarding platforms to apply the framework consistently and with greater certainty.
5. **Recommendation #5:** To avoid confusion and ensure the Bill is implemented as intended, the FSC recommends that the Explanatory Memorandum be amended to align with the Bill. In

particular, references to MySuper products having “passed” the performance test should be replaced with language that reflects the statutory test (namely, that the product has not failed the most recent performance test).

We would be pleased to provide the Committee with additional information in support of this submission on request. If you would like to discuss this submission further, please contact Julia Hukka, Policy Manager for Superannuation and Investment Platforms at jhukka@fsc.org.au.

Yours sincerely,

Chaneg Torres
Executive Director, Policy

Attachment A: FSC Feedback on Schedule 2 of the *Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025*

1. ATO authorisation requirements for the stapled fund lookup

Issue
Current ATO authorisation requirements may, in practice, prevent onboarding platforms from performing stapled fund lookups for a significant proportion of employees.

Context
To conduct a stapled fund lookup, an onboarding platform must be formally authorised by the employer through the 'ATO Access Manager'. This authorisation can generally only be granted by a limited class of individuals (typically a company director) who must hold a myID and personally log into the ATO system to complete the process.

In practice, this presents a material barrier. Many directors do not yet have a myID, are unfamiliar with the ATO Access Manager, or delegate onboarding responsibilities to payroll or HR staff who are not permitted to grant the necessary authorisation themselves.

When considered at scale, the impact is significant. The two largest onboarding platforms collectively service approximately 200,000 businesses. However, industry estimates that only around 10-15 per cent of employers typically complete the required ATO authorisation for onboarding platforms to conduct the stapled fund lookup.

Impact on Employees
If an employer does not complete this authorisation, the onboarding platform is unable to perform a stapled fund lookup. In those circumstances, the only remaining lawful option for the onboarding platform is to present the employer's default fund to the employee.

As a result, it is likely that the majority of employees being onboarded via onboarding platforms will not be shown their stapled fund, or any other fund in which they already hold a beneficial interest. Instead, they will be solely presented with the employer's default fund. For disengaged members in particular, this materially increases the likelihood of the creation of unintended additional superannuation accounts. This outcome runs counter to the Bill's stated policy objectives of reducing unintended duplicate accounts and providing employees with more timely and accurate information.

2. Restrictions on retention and fund-identification services

Issue
Closely related to the issue outlined above, restrictions on the use of retention and fund-identification services may, in practice, increase the incidence of unintended duplicate accounts and limit the quality of information available to employees at onboarding.

Context
Modern onboarding platforms are capable of identifying multiple verified existing superannuation funds held by an employee through existing data-matching and verification processes. In practice, these processes enable onboarding platforms to identify an employee's stapled fund in approximately 89% of cases, as well as any other funds in which the employee holds a beneficial interest.[4] As a result, these fund-identification services can deliver a substantively similar outcome to the stapling lookup process, by surfacing an employee's existing fund in around nine out of ten cases.

However, as the legislation is currently drafted, where an onboarding platform is unable to perform the formal stapled fund lookup, it is restricted from displaying any verified existing superannuation funds to the employee - even in circumstances where it is highly likely that one of those funds is the employee's stapled fund.

[4] Note: Onboarding platforms conduct this process through data integrations with partner superannuation funds. Where an onboarding platform has established an API connection with a fund, it can securely access and match relevant member data held by that fund to identify existing accounts associated with the employee.

As a result, onboarding platforms are prevented from presenting information that they already hold and have verified, solely because they have not yet been authorised to conduct the stapled fund lookup.

Impact on Employees
In circumstances where an employer has not authorised the onboarding platform to undertake a stapled fund lookup (as described above), the employee will, in practice, be presented only with the employer's default fund. The employee will not be shown their stapled fund, nor any other superannuation funds in which they hold a beneficial interest, despite that information being otherwise available and verified by the onboarding platform.

For disengaged members in particular, this materially increases the likelihood of the creation of unintended additional superannuation accounts. This outcome runs counter to the Bill's stated policy objectives of reducing unintended duplicative accounts and providing employees with more timely and accurate information. It also withholds information that would assist employees to make a more informed choice, including visibility of their existing superannuation arrangements.

Recommendation #1: The FSC recommends that the Bill be amended to include a targeted carve-out to allow for the display of verified existing funds through fund-identification services in circumstances where a stapled fund lookup cannot be completed. This would ensure employees are provided with the maximum relevant information at the point of onboarding and is consistent with the policy intent of reducing the creation of unintended duplicate accounts.

3. The exception from displaying a stapled fund where the employer's default fund is being advertised

Issue
The Bill's exception from displaying a stapled fund where the employer's default fund is being advertised may weaken the effectiveness of the stapling regime and reduce the extent to which employees are supported to make informed and active choices about their superannuation.

Context
Proposed s992AB(3) of the Bill provides an exception from the general prohibition on advertising superannuation products during onboarding in cases where the advertised product is the employer's default fund. Under this provision, onboarding platforms are not required to display an employee's stapled fund where only the employer's default fund is being promoted.

Treasury has indicated that this exception is intended to reflect the current status quo, under which employers may present their default fund to new employees without reference to the employee's existing stapled fund. This exception is essentially an attempt to allow the general prohibition and limited circumstance where a fund can be advertised under the Bill to remain consistent with existing provisions under the *Fair Work Act 2009* (Section 149C and Section 149D) and *Superannuation Guarantee (Administration) Act 1992* (Section 32N).

However, creating these new restrictions on advertising with limited exceptions creates a materially different regulatory environment. In this new context, retaining an exception that allows employer default funds to be promoted without also showcasing the employee's stapled fund risks the proliferation of unintended duplicate superannuation accounts and withholds useful information from members that would assist them in making an informed decision about their superannuation. In other words, it creates an additional advantage for a particular class of employer default funds.

By way of illustration, Fund A is the default fund of Employer A under the relevant modern award. Under the current law, Employer A must notify an employee of Fund A, but is also permitted to advertise another fund (Fund B). This is a competitive situation. Under this Bill, the legitimate aim of reducing the risk of duplicate accounts is pursued in a way that the playing field is made uneven and competition is reduced. In a situation where a new employee is starting a job with Employer A and Fund A is their current fund, Fund B is not permitted to be advertised unless the employee is notified

as to their existing interest in Fund A. However, if Fund B is the new employee's existing fund, upon starting at Employer A, Fund A is permitted to be advertised to the new employee without the reciprocal requirement to notify the employee of their existing interest in Fund B. This inconsistent treatment undermines the policy intent of the Bill, reduces competition and choice for the consumer, and the risk of duplicate accounts remains.

Impact on Employees
In practice, this exception is likely to result in poorer outcomes for employees, including:

- reduced visibility of the employees' existing superannuation arrangements,
- a higher risk of unintended duplicate accounts being created, particularly for disengaged or time-poor employees; and
- less effective competition at the point of onboarding, as employer default funds benefit from heightened prominence without comparison to an employee's stapled fund.

Recommendation #2: The FSC recommends that the Committee consider the effect on competition, consumer choice, and fair treatment of funds under the exception in proposed s992AB(3) so that the Government's stated policy aim of preventing the creation of duplicate accounts is not undermined. We support exploring whether the Bill can be crafted in a way that preserves the ability for employers to continue presenting their default fund consistent with existing legal obligations, while also ensuring the stapling regime operates as intended and employees are given visibility of their existing superannuation arrangements.

4. Breadth of "Person" Captured by the Advertising Ban

Issue
If the policy intent of the advertising ban is to address paid promotional arrangements in employee onboarding software, the drafting should reflect that targeted objective. As currently framed, the breadth of the term "person" in the operative provisions may extend beyond that intent, creating regulatory uncertainty and risking unintended consequences.

Context
The Explanatory Memorandum frames the policy rationale for the advertising ban as a response to concerns about "employee onboarding software paid to advertise superannuation products."[5] This framing suggests a targeted measure aimed primarily at third-party onboarding platforms and paid promotional arrangements occurring during the employee onboarding process.

However, the operative provision in the Bill applies to any "person". As drafted, this captures a much broader range of entities beyond onboarding platform providers. While we are not aware of arrangements outside of onboarding platforms where superannuation funds are actively promoted during this period, the breadth of the drafting creates uncertainty as to whether neutral, factual or educational communications could also fall within scope.

If the policy objective is directed at specific paid promotional conduct, a more precisely targeted drafting approach could provide greater certainty and reduce the risk of over-reach.

Impact on Employees
The breadth of the term "persons" might inadvertently limit employee access to clear, neutral information rather than preventing genuinely problematic promotional conduct.

[5] Explanatory Memorandum, *Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025*, p.98.

Recommendation #3: The FSC considers that greater clarity is needed to ensure the prohibition operates as intended and provides certainty for affected entities.

If the policy intent is to apply the advertising ban broadly beyond employee onboarding software platforms, the Explanatory Memorandum should be amended to:

- explicitly acknowledge that trustees, employers and other non-platform entities may be captured; and
- include worked examples illustrating how the prohibition is expected to apply in those contexts.

Alternatively, if the intent is to target paid promotional activity by onboarding software providers, consideration should be given to clarifying the scope of "person" through:

- more explicit guidance in the Explanatory Memorandum; or
- refinement of the operative provisions to better align the legal scope with the stated policy intent.

These final two issues are minor suggested edits to the Explanatory Memorandum to improve clarity around the intent and implementation of the Bill.

5. Clarity around how the default fund exception applies to employers with multiple default funds

Issue
The operation of the default-fund exception may be unclear and difficult to apply in circumstances where an employer maintains more than one default superannuation fund.

Context
Some employers legitimately maintain multiple default superannuation funds, for example to accommodate different cohorts of employees or as a result of legacy arrangements following mergers or acquisitions. Where a single employee onboarding software platform is used across the business, it may be operationally challenging to ensure that only the relevant default fund applicable to a particular employee is displayed at the appropriate time.

In these circumstances, the default-fund exception may be difficult to rely on in practice, even where the employer is otherwise complying with its choice-of-fund obligations.

Recommendation #4: The FSC recommends that the Explanatory Memorandum explicitly address scenarios in which employers maintain multiple default funds and provide clarity on how the default-fund exception is intended to operate in those circumstances. Providing worked examples would assist employers and onboarding platforms to apply the framework consistently and with greater certainty.

6. Misleading wording around the MySuper exception in the Explanatory Memorandum

Issue
The wording used in the Explanatory Memorandum to describe the MySuper exception does not accurately reflect the legislative test set out in the Bill, creating a risk of misinterpretation as to the intended scope of the exception.

Context
The Explanatory Memorandum refers to MySuper products that have "passed" the performance test. However, the operative provisions in the Bill adopt a broader and more precise formulation, requiring only that the most recent determination under s60C(2) of the SIS Act is not a fail.

This divergence between the language of the Explanatory Memorandum and the statutory test creates a disconnect between the policy explanation and the legal effect of the provision, which may lead to uncertainty for trustees, employers and onboarding platforms seeking to apply the exception correctly.

Recommendation #5: To avoid confusion and ensure the Bill is implemented as intended, the FSC recommends that the Explanatory Memorandum be amended to align with the Bill. In particular, references to MySuper products having "passed" the performance test should be replaced with language that reflects the statutory test (namely, that the product has not failed the most recent performance test).