



Environmental Defenders Office

Our Ref: KR:AK:S6521

23 April 2024

Australian Securities and Investments Commission

Complaint regarding potentially misleading representations by UniSuper

1. We act for Christopher Standen who is a member of UniSuper.
2. Our client is concerned that UniSuper may have engaged in conduct that is misleading or deceptive or likely to mislead or deceive, by making certain statements about its 'Sustainable Balanced' and 'Sustainable High Growth' funds (the **Funds**) which are inconsistent with investments held by the Funds, including in Transurban Group.
3. We note that misleading conduct in relation to sustainable finance including greenwashing is a current enforcement priority for the Australian Securities and Investments Commission (**ASIC**).¹ ASIC Deputy Chair Sarah Court recently commented that ASIC's focus in this space includes 'the use of inaccurate labelling or vague terms in sustainability-related funds'.²
4. Our client submitted a complaint to UniSuper on 25 January 2024 expressing concerns about UniSuper's investment in Transurban Group. UniSuper's response dated 1 February 2024 is attached at **Annexure A**. We note that our client no longer has a copy of the original complaint as it was lodged via an online portal on UniSuper's website.
5. Our client considers UniSuper's response to be unsatisfactory and now requests that ASIC investigate whether UniSuper's conduct may amount to misleading or deceptive or conduct that is likely to mislead or deceive, in contravention of the *Australian Securities and Investments*

¹ ASIC, 'ASIC enforcement priorities' <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-enforcement-priorities/> (accessed 23 April 2024).

² ASIC, 'ASIC's 2024 enforcement priorities in the superannuation sector' (1 February 2024) <https://asic.gov.au/about-asic/news-centre/speeches/asic-s-2024-enforcement-priorities-in-the-superannuation-sector/>.

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Commission Act 2001 (Cth) (ASIC Act) and/or the Corporations Act 2001 (Cth) (Corporations Act).

Background

6. UniSuper is an Australian superannuation fund, with over 615,000 members and approximately \$124 billion in funds under management.³
7. UniSuper offers various portfolio options, including seven pre-mixed and nine sector-specific options. UniSuper also offers three options described as ‘sustainable and environmental branded options’.⁴ These include the ‘Sustainable Balanced’ and ‘Sustainable High Growth’ options.

Summary of concerns

8. Our client is concerned by UniSuper’s use of vague and inaccurate terminology in describing the Funds, which may be characterised as headline claims.
9. UniSuper’s conduct of concern to our client includes:
 - a. the branding of the Funds as ‘sustainable’ i.e. in the names ‘Sustainable Balanced’ and ‘Sustainable High Growth’; and
 - b. the presentation of the Funds on UniSuper’s website under the heading of ‘sustainable and environmental branded options’.⁵
10. Images of UniSuper’s website where these statements are made are at **Annexure B**.
11. For the reasons that follow, our client considers that, in making these headline claims, UniSuper may have engaged in misleading or deceptive conduct or conduct that it likely to mislead or deceive.

Why the conduct may be misleading or deceptive

12. UniSuper uses vague terminology such as ‘sustainable’ and ‘environmental’ to describe the Funds. This terminology is displayed prominently and repeated extensively on UniSuper’s website, for example in the Funds’ names.
13. We note that the Australian Competition and Consumer Commission includes ‘sustainable’ as an example of an overly broad and vague term, and states that it is ‘overly general and risks misleading consumers into thinking that a product, service, or business only uses resources at

³ UniSuper, ‘Who We Are’ <https://www.unisuper.com.au/about-us/who-we-are> (accessed 23 April 2024).

⁴ UniSuper, ‘Our sustainable and environmental branded options’ <https://www.unisuper.com.au/investments/how-we-invest/responsible-and-sustainable-investing/our-sustainable-and-environmental-options> (accessed 23 April 2024).

⁵ UniSuper, ‘Our sustainable and environmental branded options’ <https://www.unisuper.com.au/investments/how-we-invest/responsible-and-sustainable-investing/our-sustainable-and-environmental-options> (accessed 23 April 2024).

a rate that will not contribute to environmental harm’ and that ‘[a]lmost all products have an adverse impact on the environment in some way through their use of resources.’⁶

14. Our client considers that certain of the investments held by the Funds are inconsistent with what a reasonable person would understand the terms ‘sustainable’ and/or ‘environmental’ to mean.
15. Of particular concern to our client is UniSuper’s investment in Transurban Group.
16. Transurban Group is one of the world’s largest and leading toll-road operators. Its main business is building and operating toll roads in Australia, Canada and the United States. It is listed on the Australian Securities Exchange.⁷
17. As at 31 December 2023, the holdings of Transurban Group shares form 1.7% of the Sustainable Balanced investment option by weight and 1.3% of the Sustainable High Growth option.⁸
18. Our client considers Transurban’s operations and business strategy are inconsistent with what a reasonable person would understand ‘sustainable’ and ‘environmental’ to mean.
19. Urban road expansion has direct and indirect environmental, social and health impacts. These impacts include significantly contributing to global greenhouse emissions from the construction of roads, and from the growing number of vehicles that travel on these roads.
20. Australia’s transport sector accounted for 19% of Australia’s greenhouse gas emissions in 2022.⁹ Without intervention, the transport sector is projected to be Australia’s largest source of emissions by 2030.¹⁰ Passenger cars and light commercial vehicles alone contributed 60% of transport emissions and over 10% of Australia’s total emissions. Road developers are also significant drivers of demand for construction materials and equipment that have a substantial emissions footprint, as well as deriving the bulk of their income from the use of the roads themselves by vehicles.
21. Developing toll roads also encourages the use of private motor vehicles, which has negative environmental, health and equity impacts. These impacts include, for example, resource consumption for vehicle manufacturing and parking facilities, road trauma, noise and air pollution including greenhouse gas emissions, physical inactivity and vehicle dependency. Transitioning to electric vehicles will not necessarily mitigate all of these environmental and health impacts.

⁶ ACCC, ‘Environmental and sustainability claims’ <https://www.accc.gov.au/consumers/advertising-and-promotions/environmental-and-sustainability-claims> (accessed 23 April 2024).

⁷ Transurban, ‘About’ <https://www.transurban.com/about-us> (accessed 23 April 2024).

⁸ <https://www.unisuper.com.au/investments/our-investment-options/option-holdings>

⁹ Australian Government Department of Climate Change, Energy, the Environment and Water, ‘Reducing transport emissions’ <https://www.dcceew.gov.au/energy/transport> (accessed 23 April 2024).

¹⁰ Australian Government Department of Climate Change, Energy, the Environment and Water, ‘Australia’s emissions projections 2022’ <https://www.dcceew.gov.au/climate-change/publications/australias-emissions-projections-2022> (accessed 23 April 2024).

22. For these reasons, our client considers that UniSuper's investment in Transurban Group under the concerned investment options cannot be described as 'sustainable', contrary to UniSuper's headline claims.
23. In contrast to UniSuper, another superannuation company, Australian Ethical, excluded Transurban Group from its investment portfolio in 2022, citing 'inadequate governance to safeguard the development of high impact infrastructure in the public interest'.¹¹

Disclosure is insufficient

24. To the extent UniSuper discloses its approach to screening investments held by the Funds, it is insufficient to dispel the misleading impression created by UniSuper's headline claims. For example, UniSuper states on its website that 'sustainability can mean different things to different people' and in a footnote refers readers to its 'How we invest your money booklet' to 'find out what sustainable and environmental investing means to us and what our investment options invest in'.¹²
25. UniSuper's website summarises at a high level the screens applied in respect of the Funds and again refers readers to its 'How we invest your money' booklet.¹³
26. In this regard, we note that ASIC's Information Sheet 271 (How to avoid greenwashing when offering or promoting sustainability-related products) states that a headline claim about sustainability-related matters 'should not itself be misleading and exceptions and qualifications should not be used to rectify an otherwise misleading impression' and that '[s]tatements referring the investor to another website or webpage, or a document (such as a PDS, prospectus or contract), to find out information may not be sufficient to correct a misleading or deceptive impression'.¹⁴
27. In summary, UniSuper applies the following screens:
 - a. *Negative screen:* UniSuper states that the Funds do not include investments in companies with reported revenue of more than:
 - i. 10% of it is from fossil fuel exploration and production;
 - ii. 5% of it is from gambling, alcohol or tobacco;
 - iii. 1% of it is from the manufacture and sale of weapons; or

¹¹ Australian Ethical, *Sustainability Report 2022* https://www.australianethical.com.au/globalassets/pdf-files/sustainability-reports/2022/AE-SustainabilityReport-2022_Full-Web.pdf p 17.

¹² See, for example, UniSuper, 'Our sustainable and environmental branded options' <https://www.unisuper.com.au/investments/how-we-invest/responsible-and-sustainable-investing/our-sustainable-and-environmental-options> (accessed 23 April 2024).

¹³ UniSuper, 'Our sustainable and environmental branded options' <https://www.unisuper.com.au/investments/how-we-invest/responsible-and-sustainable-investing/our-sustainable-and-environmental-options> (accessed 23 April 2024).

¹⁴ ASIC, 'Information Sheet 271 (How to avoid greenwashing when offering or promoting sustainability-related products)' <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>.

iv. 10% of it is from these above sectors on aggregate.¹⁵

UniSuper also states that it applies a fund-wide exclusion of companies considered to be manufacturers of cigarettes and other tobacco products and companies with reported revenues greater than 10% deriving from the exploration and/or production of thermal coal.

There are no negative screens for other high emissions industries such as the construction and transport industry.

b. *Positive screen:* UniSuper's positive screen is assessed internally and externally and is said to involve consideration of 'a range of ESG issues'.¹⁶ There is no uniform methodology for this assessment, with the booklet noting that 'the extent to which ESG issues and risks are taken into consideration—together with the methodology used to take account of ESG issues and risks—will vary between investment managers, and also between companies themselves depending on the nature of their operations'.¹⁷

28. These screening processes are inconsistent with the headline statements made by UniSuper. For example, the overarching impression created by the description of the Funds as 'sustainable' is likely inconsistent with *any* investment in industries such as fossil fuels, weapons and gambling. There is likely to also be an expectation that the Funds would not include investments in other high emissions industries, including industries generating significant and growing transport emissions.

29. Moreover, there is insufficient clarity and transparency regarding the methodology for assessing investments against UniSuper's positive screens. For example, UniSuper's response to our client's initial complaint (at Annexure A) noted Transurban's 'considered approach to environmental, social and governance (ESG) issues... and strong business standards and practices'. It also noted Transurban's net zero by 2050 commitment. However, Transurban does not include customer emissions in its scope 3 emissions, despite more than 2 million vehicles using its roads daily and generating more than 1.2 million tCO₂e annually.¹⁸ It is difficult to see how Transurban can take a sustainable approach to use of its infrastructure, as opposed to construction of new infrastructure, as in simple terms, the more people use its toll roads, the more return it obtains.

Request to investigate

30. For these reasons, our client requests that ASIC investigate whether UniSuper may have engaged in misleading or deceptive conduct or conduct that is likely to mislead or deceive in contravention of section 12DA of ASIC Act and/or Section 1041H of the Corporations Act.

31. We also bring these issues to ASIC's attention to highlight the need for clearer guidance regarding environmental and sustainability claims in respect of superannuation funds,

¹⁵ UniSuper, 'How we invest your money' (17 March 2024) <https://www.unisuper.com.au/-/media/files/pds/ibr/how-we-invest-your-money.pdf>.

¹⁶ Ibid, p 27.

¹⁷ Ibid, p 27.

¹⁸ Transurban, 'Transurban is committed to achieving net zero by 2050' <https://www.transurban.com/netzero> (accessed 23 April 2024).

particularly broad headline claims such as 'sustainable' in the absence of a uniform definition or assessment framework.

32. We note that the issues raised here fall within ASIC's current enforcement priorities and are aligned with recent enforcement action taken by ASIC including against Vanguard Investments Australia,¹⁹ Mercer Superannuation (Australia) Limited,²⁰ and LGSS Pty Limited (Active Super).²¹
33. If you have any further queries, please do not hesitate to contact me at (02) 2 7229 0031 or kirsty.ruddock@edo.org.au.

Yours faithfully

Environmental Defenders Office



Kirsty Ruddock

Managing Lawyer

Safe Climate (Corporate and Commercial)

¹⁹ See, for example, ASIC, 'ASIC wins first greenwashing civil penalty action against Vanguard' (28 March 2024) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-061mr-asic-wins-first-greenwashing-civil-penalty-action-against-vanguard/>; ASIC, 'ASIC issues infringement notices against investment manager for greenwashing' (2 December 2023) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-336mr-asic-issues-infringement-notices-against-investment-manager-for-greenwashing/>.

²⁰ See, for example, ASIC, 'ASIC launches first Court proceedings alleging greenwashing' (28 February 2023) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-043mr-asic-launches-first-court-proceedings-alleging-greenwashing/>.

²¹ See, for example, ASIC, 'ASIC commences greenwashing case against Active Super' (11 August 2023) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-215mr-asic-commences-greenwashing-case-against-active-super/>.

Annexure A – UniSuper’s response to initial complaint



Chris Standen <chris2037@gmail.com>

13837716/UniSuper - Responding to your complaint

1 message

Complaints Team <Complaints.Team@unisuper.com.au>
To: "chris2037@gmail.com" <chris2037@gmail.com>

1 February 2024 at 13:33

Commercial - For external use

Dear Christopher,

Member number: 13837716

Date of decision: 1 February 2024

We're writing in response to your 25 January 2024 complaint expressing concern and dissatisfaction with the inclusion of Transurban in our Sustainable Balanced and Sustainable High Growth options.

Our response

UniSuper recognises that sustainable and environmental investing mean different things to different people – we define what it means to us on our [website](#) and in our [Product Disclosure Statement \(PDS\)](#).

Our sustainable branded options exclude companies whose reported revenues from certain industries exceed the materiality thresholds that we set, see our [website](#) for more details on our screening process. These options are certified by the Responsible Investment Association Australasia (RIAA), which shows that we meet RIAA's strict operational and disclosure practices.

Transurban is eligible for inclusion in the sustainable branded options based on the company's considered approach to environmental, social and governance (ESG) issues (e.g., climate change and road safety) and strong business standards and practices. It also meets the sustainable branded options' screening criteria. In addition, we have assessed the company's approach to emissions reduction, which includes an interim target of a 50% reduction in emissions by 2030 (achieved in financial year 2023) and net zero emissions by 2050. We are comfortable based on the above that Transurban is eligible for inclusion in these options.

In closing

If you have any further enquiries, please contact us on **1800 331 685** or complaints.team@unisuper.com.au.

If you are not satisfied, you have the option to lodge your concerns with the Australian Financial Complaints Authority (**AFCA**). Their details are as follows:

Australian Financial Complaints Authority

GPO Box 3

MELBOURNE VIC 3001

1800 931 678

[Afca.org.au](https://afca.org.au)

info@afca.org.au

Time limits may apply to complain to AFCA and so you should act promptly or otherwise consult the AFCA website to find out if or when the time limit relevant to your circumstances expires.

Yours sincerely

Sarah C

Customer Care



T. 1800 331 685 E. complaints.team@unisuper.com.au

W. unisuper.com.au A. Level 1, 385 Bourke Street, Melbourne VIC 3000



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The information provided is of a general nature only and does not take into account your individual objectives, financial situation or needs. Consider the PDS and TMD on our website and your circumstances before making decisions, because we haven't. Please consider the appropriateness of the information having regard to your personal circumstances and consider a licensed financial adviser before making an investment decision based on the information provided above. Visit unisuper.com.au to read the full disclaimer.

Comments on the companies we invest in aren't intended as a recommendation of those companies for inclusion in personal portfolios. Our portfolios have been designed to suit us, and may not be appropriate for others. Holdings are at 31 December 2023 and are subject to change without notice.

We do not accept responsibility for any errors in the data provided or calculations performed by any third parties on whom we have relied. In determining exposures to such sectors, a variety of external information sources are considered, including but not limited to assessment by specialist ESG research providers. Issued by UniSuper Limited ABN 54 006 027 121 the trustee of the fund UniSuper ABN 91 385 943 850.

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Annexure B – UniSuper’s claims of concern

The screenshot shows the UniSuper website's 'Our sustainable and environmental branded options' page. The page features a blue header with the UniSuper logo and navigation links. Below the header, a large blue banner contains the title 'Our sustainable and environmental branded options' and the subtitle 'Giving you more choice in how your super is invested'. The main content area is white and features the heading 'Align your super with your values'. Below this heading, there is a paragraph explaining that UniSuper offers three sustainable and environmental branded options to allow members to limit their exposure to certain sectors and/or invest in companies whose business activities seek to address global environmental issues and opportunities. A second paragraph states that these options are certified by the Responsible Investment Association Australasia and provides a link to the 'Responsible investment strategy (PDF, 165 KB)'. At the bottom of the main content area, there is a section titled 'Three options for sustainable and environmental investing' with a 'Chat now' button.

The screenshot shows the 'Three options for sustainable and environmental investing' section of the UniSuper website. The section is titled 'Three options for sustainable and environmental investing' and features three cards, each with an icon and a 'More info' link. The first card is 'Sustainable Balanced', which includes a mix of asset classes and limits exposure to certain sectors. The second card is 'Sustainable High Growth', which invests based on the same criteria as Sustainable Balanced but with different asset allocations. The third card is 'Global Environmental Opportunities (GEO)', which is a portfolio of global shares in companies whose business activities seek to address environmental issues and opportunities. Below the cards, there is a section titled 'Our sustainable and environmental branded options limit exposure to:' with a 'Chat now' button.


Our sustainable and environmen... x +

https://www.unisuper.com.au/investments/how-we-invest/responsible-and-sustainable-investing...


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LO:




Fossil fuels
(10% revenue threshold)




Weapons
(1% revenue threshold)




Gambling
(5% revenue threshold)



Alcohol
(5% revenue threshold)



Tobacco
(5% revenue threshold)



Human rights violations
(see footnote⁵)

We also exclude companies with aggregated revenue of over 10% from any of the above.

In addition to the above screening criteria, we seek to include companies which meet certain positive criteria. Every six months, we screen our investments to determine whether they still meet the criteria of our sustainable branded options.⁵

This negative screening criteria is in addition to our Fund-wide exclusion of companies considered to be manufacturers of cigarettes and other tobacco products (as classified by third party providers) and companies with reported revenues greater than 10%⁶ deriving from the exploration and/or production of thermal coal.

For more information about how we screen investments and the criteria that we use, download our [How we invest your money \(PDF, 1.27 MB\)](#) booklet.

Chat now

Sustainable Balanced investmen... x +

https://www.unisuper.com.au/investments/our-investment-options/sustainable-balanced

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Suitability and risk

Suits members who want exposure to a range of asset classes, are comfortable with the value of their investments fluctuating, are comfortable with greater volatility because of sustainable screens, and are comfortable with the explanation of listed property exposures in the [How we invest your money booklet \(PDF, 1.1MB\)](#) and the returns being different from (and more volatile than) returns from owning real property.

6 years <small>Suggested minimum investment time frame</small>	High <small>Summary risk level</small>	Pre-Mixed <small>Option type</small>	\$6.7 billion <small>Option size¹ As at 31 December 2023</small>
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Expected frequency of negative annual return: Four to less than six in 20 years

Total investment fees and costs and transaction costs (%): Super 0.30% | Pension 0.31%

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Objective and performance

Sustainable High Growth Invest: x

https://www.unisuper.com.au/investments/our-investment-options/sustainable-high-growth

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Suitability and risk

Suits members who want exposure to a range of higher risk asset classes, are comfortable with the value of their investments fluctuating, are comfortable with greater volatility because of sustainable screens, and are comfortable with the explanation of listed property exposures in our [How we invest your money booklet \(PDF, 1.1MB\)](#) and the returns being different from (and more volatile than) returns from owning real property.

7 years Suggested minimum investment time frame	High Summary risk level	Pre-Mixed Option type	\$6.4 billion Option size As at 31 December 2023
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Expected frequency of negative annual return: Four to less than six in 20 years
Total investment fees and costs and transaction costs (%): Super: 0.45% | Pension: 0.37%

Chat now

Objective and performance

Type here to search

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