

SUBMISSION

Submission to Treasury —
Treasury Laws
Amendment (2024
Measures No. 1) Bill 2024

6 December 2023

The Association of Superannuation
Funds of Australia Limited

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File: 2023/40

Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: financialadvice@treasury.gov.au

6 December 2023

Dear Sir/Madam

Treasury Laws Amendment (2024 Measures No. 1) Bill 2024

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the draft *Treasury Laws Amendment (2024 Measures No. 1) Bill 2024* (the draft Bill). This legislation is the first tranche of the *Delivering Better Financial Outcomes* package of reforms released by the Government in response to the Quality of Advice Review (the Review).

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.5 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Harvey Russell, Senior Policy Adviser on [REDACTED] or by email [REDACTED]

Yours sincerely

[REDACTED]

Julian Cabarrus

Director – Policy Operations, Member Engagement & External Relations

Introduction

ASFA is committed to supporting the Government's announced 'Delivering Better Financial Outcomes' package and to ensuring Australians have access to quality and affordable advice.

With respect to the overall response to the review, ASFA is supportive of:

- The retention of the Best Interests Duty with the removal of the safe harbour steps.
- The introduction of a principles-based approach to the development of Statements of Advice.
- Increasing the number of advisers providing advice to superannuation fund members by setting suitable qualifications and standards for non-relevant providers.
- Expansion of the allowable types of advice that can be collectively charged to support retirement planning.

There was some expectation that the tranche 1 reforms may have included consideration of, in particular, the first two points above. ASFA looks forward to considering these components of the reforms as the Government releases its further responses to the Review. It will be important to understand how these elements will integrate into the enhanced legislative framework to allow superannuation funds to expand the provision of advice to their members.

Superannuation funds are a trusted partner to millions of Australians and are currently providing education and advice to help their members as they approach retirement. The governing legislation around superannuation funds is robust and member focused, ensuring funds are well-placed to support an increase in the number of members receiving simple, affordable, and accessible advice.

ASFA has engaged constructively with both the Quality of Advice Review process and Treasury's subsequent consultation processes to date. We are committed to improving retirement outcomes for consumers through increasing access to quality and affordable advice, including through superannuation.

Executive Summary

ASFA broadly supports the draft Bill (tranche one), which includes amendments to address the reduction of red tape in the delivery of financial advice to consumers and legal certainty for the payment of adviser fees from a member's superannuation account. We provide the following feedback below, which relates broadly to matters where we think the approach to implementing the recommendations could be further improved.

These comments focus on the proposed approach to streamlining the provision of Financial Services Guides (FSGs), some aspects relating to the deduction of fees for advice from superannuation accounts and certain technical drafting matters for consideration.

General Discussion

Flexibility in providing a Financial Services Guide (FSG)

ASFA welcomes the proposed legislative change to update Division 2 of Part 7.7 of the Corporations Act to deliver recommendation 10 (FSG) of the Quality of Advice Review. This updated provision allows an advice provider to choose to continue providing a FSG in accordance with the current requirements (a provider of a financial service to a retail client must give them a FSG), or alternatively provide the FSG on their website.

To rely on the 'alternative option',¹ to make a FSG available on the provider's website, rather than giving the FSG to the client, the following requirements must be met:

- The financial service provided to the client is personal advice
- At the time the advice is provided, the client has not requested a copy of the FSG and the information that would have been in the FSG is available on the provider's website; and
- At the time the advice is provided, each web page displaying the information is readily accessible, up-to-date, and records the date the page was prepared or last updated.

ASFA questions the need for the webpage to record the day/date the page was prepared or last updated as part of this alternative option. The drafting appears limited to extracting the information (under Corporations Act sections 942B and 942C) that would otherwise be required to be included in a FSG being available on the website, and the page on which that information appears bearing the date upon which that information was last updated.

There does not appear to be an alternative means of delivery apart from ensuring access to the latest FSG on the website. From a practical perspective, providers will (and should expect to be able to) rely on the provision of their latest FSG on the website rather than create a separate document or amend existing documents to meet the specific details of this new requirement. Providers already have an obligation to ensure that a FSG is up-to-date and so dating the relevant webpage (with date last updated) itself is not required and may only introduce complexity and confusion for consumers.

Recommendation

- The proposal requiring that each webpage, on which the relevant FSG information is displayed, must specify the day on which it was prepared, should be removed from proposed sub-section 941C(5A) of the Corporations Act. This modification is appropriate given existing obligations and the means by which FSGs are provided. Should Treasury consider amendments to this effect ASFA would be pleased to assist by providing suggested drafting to achieve this outcome.

Flexibility for FSG requirements

ASFA supports the proposal to allow personal advice providers to deliver a FSG either physically or publicly on their website ('the alternative option'). However, we note this is not proposed to extend to financial services provided through general advice as well. Whilst the future reach of personal advice (including personal advice delivered by super funds) may be determined by future tranches of the Government's overall response to the Review, and is therefore not certain at this point in time, ASFA expects

¹ Explanatory Memorandum to the draft Bill, paragraph 1.144

superannuation funds to continue to assist many members with valuable support through the provision of general advice. If the option of making FSG information available on a website is not universally applicable to all advice situations, it may create confusion and reduce the benefits of this reform.

Recommendation

- Extend the 'alternative option' for the provision of a FSG to financial services provided under general advice

One-off (non-ongoing) arrangements for the deduction of advice fees from superannuation accounts

The proposed new section 99FA of SIS is broadly intended to implement recommendation 7 of the Review to facilitate better access to superannuation and retirement advice by clarifying the legal basis of existing practices in which superannuation trustees pay advice fees from a member's super account at the request of a member.

With reference to one-off advice fee deductions, the intention appears that ASIC will have the power to approve the format of a form/request by the member to have one-off advice fees deducted from their superannuation account. This is contained in the proposed changes to sub-section 99FA(2) of the SIS Act. The legislative intent is to ensure there is consistency in approach to content across the industry. ASFA supports the aim of industry consistency.

However, the operative provision, as proposed, appears too narrow to achieve the proposed ASIC approval in an effective form. Under proposed sub-section 99FA(3) ASIC may approve a form relating to a member's request or consent for "*the cost of providing the advice to be paid by the trustee and charged against the member's interest in the fund*" (sub-section 99FA(2)(e)). Industry assumes the intent is for ASIC to specify how the 'form' comes together to reflect each of the components of proposed sub-section 99FA(2) of SIS. We suggest this section be amended to make it clear that the approval of a form would include all relevant matters under sub-section (2).

In addition, the use of 'may' in proposed sub-section 99FA(3) of SIS reads as though a licensee may apply to ASIC for individual approval to use a particular form. A better approach is for ASIC (for example – by Instrument) to approve and/or publish a form which may be applied across the industry for consistency. This would not preclude the use of a bespoke or existing 'form' created or used by a provider as long as the content requirements are met.

Recommendation

- Amend section 99FA to clarify that the approval of a form by ASIC under sub-section 99FA(3) covers all relevant matters under sub-section 99FA(2) with reference to the deduction of one-off advice fees from superannuation accounts. Consider providing ASIC the power to publish a form (of the required content), approved for this purpose.

Consent to advice fees – ongoing fee arrangements

The Review recommended that the Corporations Act be amended to the effect that a product issuer (for example a superannuation fund) is entitled to rely on a prescribed form of consent in relation to ongoing fee arrangements. This would be a useful assurance for superannuation fund trustees administering the deduction of fees on superannuation accounts where the relevant obligations are met. However, this change has not been reflected in the proposed drafting. ASFA considers Treasury should modify the proposed provisions to permit product issuers to rely on a client's consent under the Corporations Act.

Technical drafting observations

ASFA highlights the following drafting issues for consideration:

- i) When consent covers ongoing fee arrangement

Under proposed sub-section 962E(3)(f) of the Corporations Act, should the words “deduction of the” be inserted as highlighted: “(f) the frequency of the deduction of the ongoing fees during the period. This may provide for greater clarity relating to the coverage of the matters to be covered under the consent.

- ii) When consent ceases to have effect

Under section 962V of the Corporations Act, proposed new sub-section (1)(A) is to be inserted under the amendments. Following on from this insertion, in sub-section 962V(3), the reference to inserting “(1A)” after the word “subsection” needs to make clear that it is the second iteration of “subsection” to which this insertion is applicable.

- iii) Requirements for consent (Section 962T)

In moving to a consolidated form (to replace the three forms that exist now when renewing an ongoing fee arrangement) there appears to be a requirement that each of the content requirements are captured in the consolidated form - and yet each can stand alone, including the need to capture the client's consent and the date of the form (twice). Is it intended that clients need to sign and date the consolidated form in two places? Or should a modification be applied to the content, or clarification provided, when all three sections are to be captured on the one form?