

# SUBMISSION

## Submission to Treasury — Advice fees in superannuation

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28 February 2020

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The Manager  
Retirement Income Policy Division  
Treasury  
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Via email: [FSRCconsultations@treasury.gov.au](mailto:FSRCconsultations@treasury.gov.au)

28 February 2020

Dear Sir/Madam

**Royal Commission Recommendations 2.1, 3.2 & 3.3 – Advice fees in superannuation**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation on advice fees in superannuation.

**About ASFA**

ASFA is a non-profit, non-political 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 \$2.9 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 16 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Maggie Kaczmarek, Senior Policy Advisor, on (02) 8079 0849 or by email [mkaczmarek@superannuation.asn.au](mailto:mkaczmarek@superannuation.asn.au), or me on (02) 8079 0815 or by email [jcabarrus@superannuation.asn.au](mailto:jcabarrus@superannuation.asn.au). We acknowledge that the deadlines for this consultation are tight but we would welcome the opportunity to discuss our submission with you if time permits.

Yours sincerely



Julian Cabarrus  
Director of External Affairs and Strategy

## Rec 3.2 – No deducting advice fees from MySuper accounts

ASFA does not support recommendation 3.2 and considers that all Australians with a superannuation account should have reasonable opportunity to access financial advice. There is a material risk that Australians will no longer seek advice relating to their retirement if we restrict their access to advice. A practical reality for many Australians is that there is often limited capacity to fund financial advice from take home pay.

As an alternative to the proposed prohibition in recommendation 3.2, ASFA proposes that the deduction of advice fees from MySuper be limited to the provision of non-ongoing advice. That is, this alternative proposal would prohibit fee deductions from MySuper for ongoing advice arrangements.

MySuper products are strictly regulated, simple and cost-effective superannuation accumulation products. Limiting personal advice to non-ongoing advice for MySuper members will serve as an integrity measure and provide strong protection for these members, but also ensure that they can continue to stay in this environment and receive financial advice when they need it.

Financial advice is vital to superannuation fund members as they consider financial decisions both in the accumulation phase and in retirement. Many members seek advice in the lead up to retirement, including those in MySuper products, and reducing access to this advice would be detrimental to retirement outcomes.

MySuper members, including default members and those with relatively simple financial arrangements, may seek advice in relation to their superannuation interest or apply for life insurance in addition to the default level of cover they receive. Members should retain the option of paying for a non-ongoing financial advice from their MySuper interest in these circumstances.

There is a risk of inadvertently incentivising movement away from MySuper with the complete removal of the ability to deduct advice fees, as members will be required to move in order to receive advice, in circumstances where they do not have the means or inclination to pay for the advice out of pocket.

It would also be inequitable to determine whether advice can be accessed based on the type of account or investment option a member has their superannuation invested in. Many consumers are likely to view MySuper as an investment option within their total superannuation account. Practically speaking, from a consumer's perspective, the effect of the Bill is to hinder access to advice and the retirement outcomes they aspire to.

### **MySuper members will increasingly want and need advice**

As the ASIC report on what consumers really think about advice<sup>1</sup> noted, two of the three most common topics that survey participants said they had either received, or were interested in receiving, financial advice on were retirement income planning and growing their superannuation. One of the key barriers to getting financial advice identified in the report was cost.

If cost continues to be a significant barrier to getting financial advice, prohibiting the deduction of advice fees from MySuper may result in poor consumer outcomes. A growing number of consumers will not receive advice at all or will move to other investment options or products in order to fund the financial advice.

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<sup>1</sup> ASIC Report 627, Financial advice: What consumers really think, August 2019, <https://download.asic.gov.au/media/5243978/rep627-published-26-august-2019.pdf>

Decisions made early in a member's lifecycle can have a significant bearing on the member's retirement outcomes and as a member's circumstances change through their lifecycle, they may wish to receive advice to ensure they remain on track and optimise their retirement outcome. Therefore, this measure will detrimentally impact consumers across the spectrum, from young people entering the workforce to retirees.

### Recommendation

**That the deduction of personal advice fees be limited to non-ongoing advice in MySuper.**

- The consent requirements contained in the Royal Commission's recommendation 3.3 should also apply to advice fees deducted from MySuper.

## Rec 3.3 – Limitations on deducting advice fees from choice accounts

### Application and transitional provisions

In relation to the transition timeframes provided for existing arrangements, ASFA recommends 1 July 2021 be the single application date for the proposed amendments. In practice, RSE licensees do not have visibility of whether an ongoing fee arrangement (OFA) was entered into pre or post the Future of Financial Advice (FOFA) reforms. As such, RSE licensees will be required to implement the amendments to all existing arrangements on the same date. A shortened six-month transitional timeframe to 1 January 2021 may not provide advisors with sufficient time to meet with clients to renew existing arrangements for this purpose.

In terms of new fee arrangements, ASFA proposes an implementation timeframe of 6 months after Royal Assent. The exposure draft currently proposes 1 July 2020 as the implementation date. There is insufficient time to ensure the specifications for the system changes are implemented by 1 July 2020, even more so if there are any changes made to the legislation as it passes through Parliament.

### Revised consent requirements (recommendation 2.1 – annual renewal and payment)

ASIC is expected to provide, by legislative instrument, the requirements for the giving of consent to deduct from an account. There is need for immediate ASIC guidance on the requirements for 'consent' under section 962T and 99FA if entities are required to comply by 1 July 2020. There is need to change product disclosure statements (PDS), IT systems and business processes to comply with these changes.

ASFA understands that the legislative instrument is ASIC's priority and that updates to RG 245 (Fee disclosure statements) will follow. RG 245 makes clear to all parties how to practically implement the law and, therefore, helps ensure compliance. As such, updating RG 245 to reflect the proposed amendments will facilitate compliance.

The RSE licensee is the 'account provider' and is required to have the written consent (or a copy of written consent) in order to make any deductions to a member's account. The 'fee recipient' is required to provide this consent to the 'account provider'. As such, it is implied that the form in which the 'fee recipient' receives consent should be acceptable to the 'account provider', unless ASIC's legislative instrument states otherwise. Generally, the 'account holder' nominates the amount and account from which the fee is to be deducted. The 'account holder' would be confirming that the requested fees are in line with the terms of the arrangement entered into with the 'fee recipient'.

Where an 'account holder' withdraws their consent for an OFA and the 'fee recipient' has received an amount in relation to the OFA from the 'account provider', the 'fee recipient' must ensure that amount is refunded into the client's account within 5 business days or be in contravention of the relevant provisions. In practice, it can take longer than 5 business days for payment to pass from the 'fee recipient' to the 'account provider' (and vice versa) and then for this amount to be remediated by the 'account provider' into the 'account holder's' account. ASFA recommends the timeframe be extended to 8 business days.

Section 962U implies that withdrawal of consent can only occur between the 'account holder' and the 'fee recipient'. There may be situations where the 'account holder' might contact the 'account provider' directly to withdraw their consent for fees being deducted from their account. RSE licensees will assume contact directly by the 'account holder' to withdraw consent will be sufficient to terminate the withdrawal of amounts. It would be helpful if this was confirmed in the explanatory memorandum.

## Variations and new ongoing fee arrangements (OFA)

It would be beneficial to provide guidance on at what point does a variation become a new OFA. An 'account provider' would be reliant on the 'fee recipient' to advise when a new OFA has been entered into.

## Requirements for an OFA and RSE licensees – explanatory memorandum

Paragraph 1.34 of the Explanatory Memorandum (EM) refers to the need for trustees to have appropriate processes in place to determine whether the requirements for an OFA are met. No reference is made to proposed legislative provisions in this paragraph or existing obligations. ASFA is concerned about these unclear 'expectations' that are to be imposed on trustees without the appropriate reference to existing or proposed law, and recommends the EM is revised accordingly.

The proposed legislative provisions provide that the 'fee recipient' is essentially responsible for ensuring the appropriate consent is in place for any fee deductions and will be in breach if not. As mentioned above, once consent is provided the 'account holder' would be confirming that the requested fees are in line with the terms of the arrangement entered into with the 'fee recipient'. Trustees should not be expected to ensure that all the correct components of an OFA are in place for each deduction as this is the 'fee recipient's' responsibility. While trustees are required to ensure the deduction is consistent with the sole purpose test, comprehensive oversight of the OFA is not the trustee's responsibility.

### Recommendations

- The single application date for the proposed amendments to existing arrangements should be 1 July 2021.
- The commencement date for new fee arrangements should be 6 months after Royal Assent.
- Updating RG 245 to reflect the proposed legislative changes should be done as soon as practicable.
- The explanatory memorandum should make clear that direct contact by the 'account holder' with the RSE licensee to withdraw consent is sufficient.
- The timeframe for fee refunds in circumstances where consent is withdrawn be extended to 8 days.
- Paragraph 1.34 of the explanatory memorandum should be revised to reflect that RSE licensees are not responsible for overseeing OFAs.