

# SUBMISSION

Submission to Senate  
Economics Legislation  
Committee — Treasury  
Laws Amendment  
(Delivering Better  
Financial Outcomes &  
Other Measures) Bill 2024

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26 April 2024

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Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

26 April 2024

Dear Sir/Madam

***Treasury Laws Amendment (Delivering Better Financial Outcomes & Other Measures) Bill 2024***

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the *Treasury Laws Amendment (Delivering Better Financial Outcomes & Other Measures) Bill 2024*.

**About ASFA**

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

If you have any queries or comments in relation to the content of our submission, please contact Harvey Russell, Senior Policy Advisor on (02) 8079 0803 or by email [HRussell@superannuation.asn.au](mailto:HRussell@superannuation.asn.au).

Yours sincerely

James Koval

Head of Policy and Advocacy

## A. General comments and executive summary

ASFA's submission focuses on Schedule 1 of the Bill – 'Delivering better financial outcomes – reducing red tape' with some additional comments on aspects of Schedule 5 'Miscellaneous and technical amendments'.

### Delivering better financial outcomes

ASFA is committed to supporting the Government's announced 'Delivering Better Financial Outcomes' package and to ensuring Australians have access to quality and affordable financial advice. ASFA supports the swift passage of these reforms through the Parliament.

With respect to the overall response to the Quality of Advice 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.

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 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 relevant sections of the Bill (responding to Tranche 1 of the reforms), 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.

Our submission on the Exposure Draft Bill made certain technical or administrative suggestions which we consider would improve the delivery of advice through superannuation through consistency of disclosure and consent requirements, and can be accessed [here](#).

In this submission to the Committee ASFA provides further comment on considerations to ensure clarity relating to trustee obligations on the deduction of advice fees from a member's superannuation account. In giving effect to this measure, ASFA appreciates the Bill's focus on "[facilitating] 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...account at the request of the member."<sup>1</sup> Importantly, trustees should have certainty that codifying obligations in this way does not unintentionally impact existing practices they employ in meeting those obligations.

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<sup>1</sup> Paragraph 1.8; Explanatory Memorandum to the Bill

In relation to Schedule 5, ASFA strongly supports the amendments proposed to ensure that all members of regulated superannuation funds can automatically maintain their insurance following a successor fund transfer.

## B. Comments on Schedule 1 – delivering better financial outcomes

### Deduction of adviser fees from superannuation

ASFA strongly supports the policy goal of enhancing the availability of financial advice for superannuation members. ASFA member organisations are interested to ensure there are measures in place that allow for increased access to advice while providing necessary consumer protections.

ASFA supports the aim of the Bill in legislating recommendation 7 of the Quality of Advice Review, to clarify in law the legal basis in the *Superannuation Industry (Supervision) Act 1993* (SIS) for superannuation trustees to charge members for financial advice from their superannuation account. In doing so, ASFA understands the intention of the Bill is to codify existing obligations with respect to trustee oversight of advice fee deductions from members' superannuation accounts.

In June 2021 a joint letter to trustees from APRA and ASIC set regulatory expectations on the oversight of advice fees charged to members' superannuation accounts. Broadly, this guidance outlined a proactive, risk-based approach. In addition, in recent years trustees have focused on strengthening governance and control frameworks that provide consumers with protection in regard to the financial consequences of advice fee deductions. ASFA considers a measured, risk-based approach by trustees, centred around reasonable expectations to compliance monitoring and assurance relating to the deduction of advice fees, remains important to protect consumers while supporting access to cost-effective advice.

With this in mind, superannuation trustees are concerned to ensure they have certainty in continuing to discharge their oversight obligations around the deduction of advice fees from members' accounts, and that no unintended consequences result from the introduction of these provisions. To provide comfort for trustees in this regard, ASFA would support clarification in the form of a clear statement to this effect in the Explanatory Memorandum. ASFA will work constructively with government and regulators to achieve the clarity trustees require to discharge their obligations.

#### Recommendation

To ensure certainty for trustees regarding their oversight of the deduction of advice fees from members' superannuation accounts, an additional statement in the Explanatory Memorandum to the Bill should clarify there are no unintended impacts on trustee obligations.

#### Recommendation

That the Bill is passed without delay.

## C. Comments on aspects of Schedule 5 – miscellaneous and technical amendments

### **Support for amendments to address issues in relation to successor fund transfers**

ASFA has a keen focus on matters that impact the outcomes achieved by individuals through the superannuation system, their experiences with the system, and issues that impede the industry's operational effectiveness.

There are instances where superannuation and/or taxation laws fail to address – or adequately address – the implications arising from a successor fund transfer (SFT).

Some issues are substantial and act as impediments to the completion of an SFT. In other cases, while the SFT is able to proceed, the application of the legislation prevents a seamless transition, creating confusion for transferred members and often requiring extensive communications from the transferor and transferee funds. These can lead to poor member experience and outcomes, creating the risk that individual fund members may disregard or misunderstand notifications about actions they may need to take in relation to their superannuation interest.

ASFA, in consultation with our members, has developed an extensive list of issues that detrimentally affect the outcomes and/or experience of individual fund members when they are transferred via an SFT, or increase the risk and cost associated with an SFT. We have, over recent years, raised these with policy makers and regulators. The proposed amendments to sections 68AAB and 68AAC of the *Superannuation Industry (Supervision) Act 1993*, set out in Division 5 of Schedule 5 of the Bill, address one of the issues we have identified.

### **Proposed amendments to sections 68AAB and 68AAC**

ASFA welcomes the proposed amendment to ensure that all members of regulated superannuation funds can automatically maintain their insurance following an SFT.

Following the 'Putting Members' Interests First' reforms in 2019, funds generally cannot provide insurance to a new member who is under age 25, or has a balance less than \$6,000, unless the member elects to receive that insurance. In effect, the reforms limited the provision of 'default' insurance. In 2020, the legislation was amended to ensure elections about default insurance given by members to their original fund continue in force in the event of an SFT.

The 2020 amendment did not address the situation where a member was not required to make an election to maintain their insurance cover in their original fund but would not, when transferred as part of an SFT, satisfy the minimum age and balance requirements in the successor fund. For example:

- an individual with an account balance less than \$6,000 who had a balance of \$6,000 or more on or after 1 November 2019 was not required to elect to continue their insurance in their original fund
- the individual may have received communication from their original fund confirming their continued eligibility for insurance, and may even have specifically sought such confirmation
- if that individual is transferred to a successor fund with a balance still (or again) under \$6,000, the successor fund cannot, under the current legislation, continue the insurance unless the individual elects to be covered
- the individual is likely to assume their insurance would continue as part of a seamless fund transfer and may be confused by – or even disregard – notices from the successor fund about the need to make an election

- if the individual fails to elect to hold insurance in the successor fund, an insured benefit will be unavailable in the event of their disablement or death. This may have severely adverse implications for the individual and/or their dependants.

The proposed amendments to sections 68AAB and 68AAC will address this unintended consequence of the Putting Members' Interests First reforms and ensure impacted individuals can continue to automatically receive insurance in the successor fund without making an election. ASFA welcomes the amendment and recommends its introduction and passage as soon as practicable.

### Recommendation

The proposed amendments to sections 68AAB and 68AAC of the *Superannuation Industry (Supervision) Act 1993* should be legislated without delay.