FINANCIAL PLANNING ASSOCIATION of AUSTRALIA

28 February 2020

Mr James Kelly
Division Head
Financial Services Reform Taskforce
Treasury
Langton Cres
Parkes ACT 2600

Email: FSRCconsultations@treasury.gov.au

Dear Mr Kelly

FSRC rec 3.2 and 3.3 (Advice fees in superannuation)

The Financial Planning Association of Australia[1] (FPA) welcomes the opportunity to provide feedback on the draft legislation to implement Commissioner Hayne's recommendation in regard to advice fees in superannuation.

The FPA opposes the prohibition on paying advice fees through MySuper accounts proposed in recommendation 3.2, which would create different rules for different superannuation accounts. The FPA believes that all superannuation accounts should be subject to the same rules for: paying advice fees; disclosure of the fees they are paying; regular and positive consent to paying those fees; and choice in how they pay them.

We would welcome the opportunity to discuss with the Review any matters raised in our submission. If you have any questions, please contact me on 02 9220 4500.

Yours sincerely

Ben Marshan CFP® LRS®
Head of Policy and Professional Standards
Financial Planning Association of Australia

[1] The Financial Planning Association (FPA) has more than 12,919 members and affiliates of whom 10,618 are practising financial planners and 5,540 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:
- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- We are recognised as a professional body by the Tax Practitioners Board.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 188,104 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally.

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Financial Sector Reform Bill:

FSRC Recommendations 3.2 and 3.3

Advice fees in superannuation

28 February 2020

Submitted to:

Treasury

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Summary

The FPA opposes having different rules for deducting advice fees from MySuper and Choice superannuation accounts.

Preventing consumers who wish to access financial advice from paying advice fees from their MySuper investment option will provide an incentive for them to move to a Choice investment option, even where their current MySuper investment option meets their needs in other ways. This is not in the interests of consumers and reduced their choice in accessing advice from their preferred financial planner.

A recent survey of FPA members indicates that around two-thirds of consumers who currently pay advice fees from their MySuper investment option have no alternative method of paying for advice and prohibiting this payment option will effectively prevent them from accessing advice.

Recommendation 3.2 appears to be part of the Royal Commission's response addressing fee-for-no-service issues. While the FPA strongly supports action to eliminate fee-for-no-service and protect consumers, this will effectively be addressed through changes to the requirements for ongoing fee arrangements in recommendation 2.1 which will apply broadly to payments made from the client's superannuation assets, and specifically limited from Choice investment options through recommendation 3.3. There doesn't appear to be a compelling reason why this same approach could not be taken with MySuper investment options with a similar effect.

> Recommendation – The FPA does not support establishing different rules for paying advice fees from MySuper and Choice investment options within the same superannuation fund. The FPA recommends that all superannuation accounts and investment options are subject to the same requirements for paying advice fees, which provide consumers with:
>
> - clear and comparable information on the fees they are paying;
> - regular and positive consent to paying those fees, and
> - choice in how they pay those fees.
>
> The FPA has made separate comments on the requirements for ongoing fee arrangements under recommendation 2.1 and considers that these should apply where fees are paid from all superannuation accounts.

Role of MySuper accounts

The recommendation to prohibit the payment of advice fees from MySuper investment options appears to be based on a number of erroneous assumptions about the nature of the MySuper investment option within a superannuation fund and the people who hold them.

Firstly, the discussion of MySuper in the Royal Commission report implies that these are superannuation that are separate and distinct products or funds from Choice superannuation accounts. This is generally not the case. Most superannuation providers will operate a single fund that has multiple investment options within that fund. These will generally include options such as balanced, growth and conservative investment options. A MySuper investment option will exist alongside these Choice options as a default and comply with the requirements for MySuper in the *Superannuation Industry (Supervision) Act 1993* (Cth). Treating MySuper investment options as a separate product is inconsistent with how it operates in practice.

Secondly, the report considers MySuper investment options to be exclusively held by consumers who are disengaged with their superannuation. This is also not the case. There are many reasons why someone might hold a MySuper investment option. While some consumers will not have turned their minds to their superannuation options and hold MySuper by default, others will have considered their options and found that MySuper is the most appropriate for their circumstances. For example, MySuper can offer a low-fee option that provides the right investment objective and risk profile for a consumer.

It would not be appropriate to describe all consumers who hold MySuper investment options as "default" – many have gone out and sought financial advice on their superannuation; received and agreed to advice which recommended they remain with their MySuper investment option; agreed to an ongoing fee arrangement to pay for their advice from their superannuation account; and provided authorisation to their superannuation fund to release payments. These clients have made an active decision to hold a MySuper investment options because it is the best option for them.

Thirdly, the Royal Commission considered that consumers who hold MySuper investment options do not have a need for financial advice. At 2.3.1, the report states:

> *"It is difficult to imagine circumstances in which a member would require financial advice about their MySuper account. If a member wants financial advice, the cost of that advice should be charged to and paid by the member directly."*

This is also false. Consumers in MySuper investment options can and do seek financial advice. Some, but not all, consumers can access intra-fund advice – a fact that is recognised in the text of recommendation 3.2 in which intrafund advice is excluded from the proposed prohibition. The cost of intra-fund advice is not directly apportioned to a particular client but spread across the whole membership of the superannuation fund (including those in Choice investment options).

Consumers also seek advice from their chosen financial planner outside of their superannuation fund, with fees being deducted from their MySuper investment option. Around 43 percent of FPA members who responded to a recent survey reported that they have clients who pay for advice through MySuper investment options.

There are a variety of issues on which the holder of a MySuper investment option may want to receive advice. These include whether that MySuper investment option remains an appropriate option for them, advice on concessional and non-concessional contributions (including lump-sum contributions resulting from redundancy payments and small business CGT events), consolidation of additional superannuation interests, advice on insurance held within their superannuation, estate planning and beneficiary nominations, advice on transition to retirement and retirement products and deceased estate options. Many of these are outside the limits of what can be considered under intrafund advice charging laws (as per section 99F of the *Superannuation Industry (Supervision) Act 1993* (Cth)), including the need for ongoing advice.

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Paying for advice through superannuation

There are a range of reasons why a client may wish to pay for their financial advice through their superannuation account. In a recent survey, FPA members estimated that around two-thirds of their clients who paid fees through MySuper investment options would have difficulty paying those fees from other sources. The most common reason given was the lack of an alternative cashflow to pay advice fees. This is particularly the case for younger consumers whose income outside of superannuation is often tied up in mortgage repayments and supporting their family, but for whom financial advice has the potential to pay significant long-term dividends in preparing them for retirement.

Payment of advice fees from superannuation also gives clients access to a favourable tax treatment, which is not available if they pay for the advice from directly held cash and can reduce the cost of advice by as much as 40 percent. It is inequitable to provide this strategy for some consumers and not others, based on their preference in superannuation investment option.

Providing different rules for consumers in MySuper and Choice investment options will establish an incentive for consumers to choose one over the other, regardless of other considerations including fee structures, investment suitability and insurance held within superannuation. The ability to access advice should not be a relevant consideration in moving between superannuation investment options, yet this is the outcome that will be realised if different rules are applied.

Limitations on Choice accounts

The FPA supports policies that provide consumers with clear and comparable information on the fees they are paying; regular and positive consent to paying those fees; and choice in how they pay those fees. The arrangements proposed in the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020 appear to achieve this.

The FPA notes that it will be necessary to streamline the process for consumers providing consent to pay fees from their superannuation and there is a role for industry in standardising this process.

The FPA has made a separate submission on the proposed changes to ongoing fee arrangements in recommendation 2.1 Those comments equally apply to the use of ongoing fee arrangements for fees paid from superannuation accounts including the option of using the renewal notice as confirmation of client authorisation to the fund to allow advice fees to be collected.

Transition arrangements

The relevant provisions of the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020 are due to commence on 1 July 2020. Given this Bill is unlikely to be introduced into Parliament until May 2020, this could leave only days after the passage of the Bill for financial planners and their clients to adjust to the new arrangements.

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This includes the substantial number of clients who have ongoing fee arrangements with their financial planner, who will need to consider how and if they can continue their advice relationship and make new arrangements to pay their advice fees.

The FPA recommends that the commencement date for this Bill be adjusted to 1 July 2021 at the earliest, to provide a reasonable opportunity for financial planners and consumers to adjust.