



21 February 2023

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

Email: superannation@treasury.gov.au

Dear Mr Thomson

Re: Non-arm's length expense rules for superannuation funds

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on the Treasury's *Non-arm's length expense rules for superannuation funds* consultation paper.

The FPA shares the same view as other representative organisations in the financial planning and accounting professions and the superannuation industry that the current NALI/E laws are of considerable concern to superannuation trustees and act in conflict with a number of other superannuation laws including financial best interests. While the purpose of NALI remains sound, the most recent amendments made in 2019 when applied with other tax laws can lead to significant penalties for unintended breaches and jeopardise the ability for Australians to preserve their retirement savings to deliver a dignified retirement.

While the intent of the law was to outlaw a number of behaviours such as in-house bookkeeping and auditing for low or no fees; or services being provided by related entities for little or no mark up, other measures in the Tax Act or through the administrative sanctions available to the ATO (for example Tax Ruling TR 2010/1) provide the ability for the ATO to take penalty and administrative measures to be applied to a super fund and its members for breaches. For this reason, the application of the current and proposed NALI/E provisions have the effect of doubling or more other penalty provisions available to the ATO with little additional protection provided to the tax system.

The FPA therefore recommends 2019 Section 295-550 of ITAA97 be repealed and returned to the terms applicable before they were made. The ATO can then manage risks around non-arm's length income and expenses through the application of TR 2010/1, or through amendments to Section 109 of the SIS Act to prohibit trustees from conducting any transactions with any party other than on arm's length terms.

We would welcome the opportunity to discuss with the Treasury 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, Strategy and Innovation

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) is a professional body with more than 10,500 individual members and affiliates of whom around 8,500 are practising financial planners and 5,000 are CFP professionals. Since 1992, 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 the Future of Financial Advice reforms.
- The FPA was 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.
- 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 built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC ‘gifted’ this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.