INSTITUTE OF PUBLIC ACCOUNTANTS®

Submission to the Senate Standing Committees on Economics on Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

April 2024

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The Chair
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Chair

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

The Institute of Public Accountants (IPA) is one of the three professional accounting bodies in Australia, representing over 50,000 members and students in Australia and in over 100 countries. Approximately three-quarters of the IPA's members work in, or are advisers to, small business and small-to-medium enterprises.

Submission on proposed changes to the law

Schedule 1 of the Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024 (Cth) (**Bill**) delivers the first tranche of the Australian Government's Delivering Better Financial Outcomes package. It implements the Government's response to Recommendations 7, 8, 10, 13.1-13.5 and 13.7-13.9 of the Quality of Financial Advice Review (Final Report) (**QAR**) by making various amendments to the *Corporations Act 2001* (Cth) (**Corporations Act**), the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) and other Acts with a view to increasing the accessibility and affordability of personal financial advice.

The IPA broadly supports the amendments made by the Schedule. It does, however, have concerns with the proposed replacement section 99FA of the SIS Act and sections 962Y and 963BB of the Corporations Act.

Proposed section 99FA of the SIS Act

Proposed section 99FA of the SIS Act is the Government's response to Recommendation 7 of the QAR, which is that superannuation fund trustees should be able to pay a fee from a member's superannuation account to an adviser for personal financial advice provided to the member about the member's interest in the fund on the direction of the member.

Under the proposed section 99FA, before a trustee can charge the cost of advice against the member's interest in the fund, it must be satisfied of several factors, including:

- the advice must be personal advice (subsection 99FA(1)(a));
- the advice must be wholly or partly about the member's interest in the fund (subsection 99FA(1)(a));
- the amount charged must not exceed the cost of providing the advice about the member's interest in the fund (subsection 99FA(1)(b)); and
- if the arrangement under which the advice is provided is an ongoing fee arrangement – any applicable requirements of Division 3 of Part 7.7A of the Corporations Act are met in relation to the arrangement and, if relevant, the deduction of ongoing fees (subsection 99FA(1)(d)).

Proposed subsection 99FA(1)(a)

The IPA submits that the requirements under the proposed subsections 99FA(1)(a) and (b) are inappropriate as they are overly burdensome for the superannuation fund trustee (and, in turn, the adviser, which the trustee will necessarily turn to in order to obtain information to be satisfied the requirements are met). This will drive up compliance costs of both the trustee and the adviser and serve as further red tape, slowing down the provision of financial advice.

While the IPA agrees that fees should only be paid from a member's account for personal advice about the member's interest in the fund, the IPA submits that the wording of the proposed subsection 99FA(1)(a) suggests the trustee will breach that subsection if one of requirements is not, in fact, made out – for example, if the trustee makes payment for advice provided to a member and the advice ultimately provided is not actually only personal advice or about the member's interest in the fund. In practice, aside from having the trustee review every piece of advice prepared for a member before making payment for the advice – obviously hugely time consuming and expensive – it will be very difficult for a trustee to categorically satisfy itself of these matters.

Accordingly, the IPA submits that the requirement should be that the trustee has a reasonable basis for being of the view that the advice is personal advice about the member's interest in the fund. This approach would likely enable trustees to have confidence they are complying with the subsection by, for example, having agreements in place with the advisers they pay advice fees to, that the advice will be personal advice about the member's interests in the fund and that gives the trustee the ability to review advice provided from time to time to monitor that this is the case. Giving trustees this confidence is critical, given the trustee would not be required to offer members the ability to direct it to pay advice fees.[1] In other words, if the trustee was not comfortable that it would be complying with the subsection when making payment of advice fees, it would likely not offer this feature to members. This would be a missed opportunity to improve access to affordable personal financial advice.

Taking the above suggested approach would also align with the wording of Recommendation 7 of the QAR, which was that the trustee be 'confident' the personal advice related to the member's interest in the fund and that the trustee be able to confirm this.

[1] Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024 (Cth) cl 99FA, note 1.

Proposed subsection 99FA(1)(b)

The IPA submits the proposed subsection 99FA(1)(b) should be removed. Advice is often provided about numerous overlapping issues. In such circumstances, requiring the adviser to identify and isolate the amount charged in respect of the member's interest in the fund and the superannuation fund trustee to verify the accuracy of the adviser's assessment before making payment of that amount will be very difficult to do and will increase the cost and delay the provision of financial advice.

The requirement will likely operate as a barrier to trustees offering to make payment of advice fees to advisers at the direction of members. Notably, it was also not recommended by the QAR.

Proposed subsection 99FA(1)(d)

The IPA submits that proposed subsection 99FA(1)(d) should be removed. In circumstances where advice is provided under an ongoing fee arrangement, preventing a superannuation fund trustee from charging against a member's interest in the fund the cost of advice provided unless the adviser has complied with the applicable requirements of Division 3 of Part 7.7A of the Corporations Act effectively requires the trustee to ensure that the adviser has complied with these provisions. Clearly, this would be a significant administrative burden for superannuation trustees, as it could arguably require them to make an assessment of the validity of ongoing fee arrangements to which they are not a party, and would materially delay trustees releasing payments for advice, reducing the accessibility of advice. The exercise will also be very costly for the trustee and is likely to be a disincentive to offering members the ability to pay for advice in this way. Other provisions of Division 3 of Part 7.7A already establish the requirement for the fund member to consent to the payment in order for the superannuation trustee, as an account holder, to deduct any advice fees.

Proposed section 962Y of the Corporations Act

Schedule 1 of the Bill introduces section 962Y into Subdivision D of Division 3 of Part 7.7A of the Corporations Act. The IPA supports giving the Minister the ability to approve one or more forms in relation to the circumstances outlined at the proposed subsection (1)(a)-(d). It agrees that introducing an approved form would help standardise information collection requirements, reduce administrative burdens and provide certainty that a consent satisfies regulatory requirements. However, the IPA is concerned that the Minister is not obliged to approve forms and account providers are not required to comply with requests made by an adviser pursuant to a completed form that has used the approved format. That is, in respect of the latter, the Note at subsection 962Y(1) provides:

> *Despite consent being given in an approved form, an account provider (other than the fee recipient) may request additional information from the fee recipient before deducting ongoing fees from an account.*

In the IPA's view, once an approved form has been completed by the account holder and fee recipient to enable ongoing fees to be deducted from the account holder's account, the account provider should not be entitled to request further information from the fee recipient before deducting ongoing fees from the account. Giving account providers this discretion works against the intention behind the provision as described above – to standardise and simplify the consent process – and could result in circumstances where an account provider refuses to make requested payments

and so an ongoing fee arrangement may need to be terminated by the adviser (eg where an adviser or account holder is unwilling to provide further information as they consider all reasonable information has been provided, or they are unable to provide any additional information to satisfy the account provider's request).

Proposed section 963BB of the Corporations Act

The IPA supports the recommendation that a client should provide informed consent before the advice provider can receive a commission tied to the sale of the financial product. This provides a genuine and real opportunity for the client to make an informed decision before deciding to be issued or sold a certain insurance product.

However, the IPA does not support the introduction of the term 'relevant product' as part of these reforms.

Section 910A of the *Corporations Act 2001*, defines relevant financial products to mean financial products other than:

a) basic banking products; or
b) general insurance products; or
c) consumer credit insurance; or
a combination of any of those products.

Proposed section 963BB defines a relevant product as a financial product that is general insurance product, a life insurance product, or consumer credit insurance.

The IPA believes that the proposed definition of a relevant product will create confusion given the overlap between the two definitions. Further, it believes it is unnecessary to introduce this new term and recommends that instead the three relevant insurance products are referenced, being general insurance product, a life insurance product, or consumer credit insurance.

We also note that in proposed section 963BB(1)(a) the term 'relevant financial product' appears to have been used incorrectly, further evidencing the issues with using such like terms.

The IPA recommends that the proposed term 'relevant product' is removed from section 963BB and the specific insurance products are listed or, where appropriate, the term financial product is used.

Conclusion

Aside from these concerns, the IPA is supportive of each of the provisions contained within Schedule 1 of the Bill.

Please contact Vicki Stylianou (vicki.stylianou@publicaccountants.org.au) if you have any questions or require further information.

Yours sincerely

[signed]

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