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The Manager
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Online: retirementincomereview@treasury.gov.au

Dear Sir/ Madam

Advice fees in superannuation

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

This consultation proposes that fees (which are not intra-fund advice fees) would be prohibited from being charged to superannuation interests, unless the interest is a choice interest and not MySuper, subject to an arrangement which the member has consented to, and where the trustee has been provided with the consent or a copy of it.

CPA Australia believes that this proposed measure will create a question of equity in relation to members of superannuation funds who would be unable to consent to a fee arrangement simply because they have elected to be in a MySuper option. This measure is likely to result in complicated workarounds which we do not believe would be in the best interests of fund members.

We recommend that where advice has been sought by a member in a MySuper option, and where the member ultimately elected to be invested in the MySuper option, that the advice fees should be allowed to be charged to the MySuper option, subject to an arrangement (as outlined in this consultation). We also recommend that ASIC and APRA be required to provide guidance to licensees and trustees to ensure that expectations in relation to this measure are met. Our submission forms an attachment to this letter.

If you have any queries do not hesitate to contact Richard Webb, Policy Advisor Financial Planning & Superannuation at CPA Australia on richard.webb@cpaaustralia.com.au or 03 9606 9607.

Yours sincerely



Dr Gary Pflugrath CPA

Executive General Manager, Policy and Advocacy
CPA Australia

Response to exposure draft

In this submission, CPA Australia agrees that the key intention of the exposure draft is to ensure that advice sought on non-superannuation matters are not charged to a member's fund, whether this be choice or MySuper. We also agree with the parts of the exposure draft which relate to the objective of ensuring that superannuation trustees are properly aware of the arrangement under which the advice fees are being charged. We are satisfied that these objectives have been achieved in the draft legislation. However, we are not satisfied that the recommendation in relation to MySuper members is premised upon a complete understanding of the circumstances of MySuper members.

Advice fees charged to MySuper products

Recommendations 3.2 and 3.3 from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Royal Commission (the 'Royal Commission', Hayne 2019) were aimed at preventing the situation where one's nest egg was debited for advice fees which did not necessarily relate to the superannuation arrangements of the member. Hayne (2019:240) writes that:

More often than not, trustees of RSEs have permitted payment out of a member's account of fees certified by either the advice licensee or the authorised representative to be fees for advice about the member's superannuation arrangements. But in many cases, the services to be provided by the adviser have been so loosely defined that the advice provided may, but need not, include advice about whether to alter the client's financial plans or arrangements about post-retirement income.

Hayne notes that arrangements where the advice relates to non-superannuation advice is inconsistent with the sole purpose test prescribed by section 62 of the *Superannuation Industry (Supervision) Act 1993* (SISA), and should not continue:

It follows that the nature of the advice that may properly be paid for from a superannuation account is limited to advice about particular actual or intended superannuation investments. This may include such matters as consolidation of superannuation accounts, selection of superannuation funds or products, or asset allocations within a fund. It would not include broad advice on how the member might best provide for their retirement or maximise their wealth generally. Any practice by trustees of allowing fees for these latter kinds of financial advice to be deducted from superannuation accounts must end.

(emphasis removed for clarity)

In his report, Hayne notes that this is what the law intends, however determines that MySuper arrangements should be kept simple. In Recommendation 3.2, Hayne proposes to prohibit the deduction of advice fees other than intra-fund advice fees from MySuper accounts. Hayne writes (2019:240):

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.

Hayne (2019:239) understands MySuper members as having not chosen any of their circumstances, yet this is only a subset of MySuper members. We consider that there are several extremely common scenarios where a MySuper member has elected to be invested in that option because of advice. These include:

- Investment option advice to a MySuper member where the MySuper option is considered the most appropriate option
- Investment option advice to a choice member where the MySuper option is considered the most appropriate option
- Advice given to a person without any superannuation arrangements to open an account with a fund and use the MySuper option at that fund
- Advice given to a member of another fund to join a different fund and use the MySuper option at that fund, and
- Advice given to a MySuper member which does not relate to choice of investment option, such as insurance arrangements, death nominations etc.

MySuper was created in response ('Stronger Super', Australian Government 2010) to a recommendation from the Super System Review (the 'Cooper Review', Cooper et al 2010). A good explanation may be found in the Cooper Review Final Report (Cooper et al 2010:1):

*MySuper is a simple, well-designed product **suitable for the majority of members**. The MySuper concept is aimed at lowering overall costs while maintaining a competitive market-based, private sector infrastructure for super. The concept draws on and enhances an existing and well-known product (the default investment option). MySuper takes this product, simplifies it, adds scale, transparency and comparability, all aimed at achieving better member outcomes.*

(our emphasis)

We emphasised the description of "suitable for the majority of members" in our quote from Cooper et al (2010) for one reason: An appropriately designed MySuper product should, at least in theory, cater to members who have not and may never make a decision regarding the investment option appropriate to them. The MySuper option should therefore be developed in the interests of a fund's members and be suitable to, if not a majority of them, then a significant cohort.

An inference to be drawn from this is that one would expect that if members of a superannuation fund are being advised about the superannuation fund option which is most appropriate to them, the MySuper option should, statistically, be recommended most frequently, either alone, or in conjunction with other investment options. It could additionally be contemplated that a member who has previously chosen a different investment option could potentially receive advice regarding their investment option which suggests that their fund's MySuper option might be more appropriate to them.

It is also relevant to mention that it may be in the best interests of a member of one fund to be recommended the MySuper option in a different superannuation fund.

This choice of investment option is but one topic available to members of a superannuation fund seeking advice. Advice may also be sought in relation to other features of a superannuation fund available to MySuper members, such as insurance, contributions, rollovers, death benefit nominations or any other feature for which a member in a MySuper option is eligible. The scope where such advice may be sought may not even include the selection of the investment option.

Relevant to this point is that personal advice matters available via intra-fund advice are extremely limited. Where advice is sought which is not compliant with the intra-fund advice charging rules (available through section 99F of SISA), such advice could only be available to members for a fee. Advice to a person without any superannuation arrangements to invest in a fund's MySuper option is such an example, as is advice to a member of another fund to do the same. As we saw above, Hayne was not opposed to advice being charged to a superannuation account where that advice relates to one's own superannuation.

Also relevant is the present situation where not all trustees who offer a MySuper product provide an intra-fund advice service, meaning that there may be no way for advice fees to be recouped from a member.

The exposure draft makes it impossible for existing members of a MySuper option, to have an adviser's fees debited to that option, unless the service is provided by the trustee as allowable intra-fund advice. This could create a number of potentially convoluted workarounds, such as:

1. Creation by trustees of an equivalent choice investment option which resembles the MySuper option
2. Advice to create a synthesised equivalent to the MySuper option from other choice options
3. Advice to create a temporary interest in a choice option (such as the fund's cash option) for the purpose of being immediately extinguished by advice fees
4. Dual-tier fee structures where the option of charging advice to one's superannuation is entirely contingent upon whether a choice investment option is recommended, or
5. Financial advisers referring or declining a client who is likely to be recommended a MySuper option unless that client is able to pay from elsewhere.

We note that in the first three cases above, a member may be unnecessarily subjected to transaction fees such as buy-sell spreads and activity fees, as well as adding to administration costs incurred by funds.

Furthermore, the Cooper Review agreed that the MySuper option for a fund would ideally be developed from existing default investment options (Cooper et al 2010:11). This raises a question of competitive neutrality in relation to superannuation funds which do not offer a MySuper product. In the majority of cases, these funds also offer a specific investment option as a default option, where a member has not yet provided investment instructions to the trustee. In such a case, why would a member of the default option at a non-MySuper fund be able to have advice fees deducted whereas members of funds in default options at MySuper-authorized funds would not?

CPA Australia recommends that, where advice has been sought by a member in a MySuper option, and where the member ultimately remains invested in the MySuper option, that the advice fees should be allowed to be charged to the MySuper option, subject to an arrangement (as outlined in this consultation at paragraph 1.27 of the draft Explanatory Memorandum).

Advice fees charged to choice products

This exposure draft also proposes to prohibit trustees charging members fees for advice (other than collectively charged intra-fund advice fees) unless the fee is charged in accordance with an arrangement that the member has entered into. The measure also requires that the member has consented to the arrangement and that the trustee has the consent or a copy of the consent.

CPA Australia generally supports this measure, however has some concerns about the implementation of this measure. As we noted above, Hayne's comments in relation to the debiting of advice fees which are not consistent with the sole purpose test. Whilst Hayne (2019:240) believes that this is already the law, and no further modification is necessary, we note that the exposure draft and the explanatory memorandum refer to "financial products" rather than superannuation specifically. We believe that this may be subject to some degree of confusion as a result.

We recommend that ASIC and APRA be required to provide guidance associated with this measure to ensure that trustees and financial advisers are fully aware of their expectations in relation to this matter.

References

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Hayne, K. (2019). *Final Report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*. Volume 1. [online] Canberra: Commonwealth of Australia. Available at: <https://tinyurl.com/y93raay5> [Accessed 10 Feb. 2020].