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| **EXPOSURE DRAFT** |

Inserts for

Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: fees (FSRC Rec 3.2 and 3.3)

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule [3.2, 3.3] | 1 July 2020. |  |

Schedule [3.2, 3.3]—Fees

Part 1—General fees rules

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1)

Insert:

***ongoing fee arrangement*** has the same meaning as in Part 7.7A of the *Corporations Act 2001*.

2 Section 99F (heading)

Repeal the heading, substitute:

99F Cost of financial product advice—collectively charged fees

3 After section 99F

Insert:

99FA Cost of financial product advice—fees charged to member concerned

 (1) The trustee or the trustees of a regulated superannuation fund must not directly or indirectly pass the cost of providing financial product advice in relation to a member of the fund on to the member, unless:

 (a) the cost is to be paid in accordance with the terms of an arrangement entered into by the member; and

 (b) the trustee passes the cost on, or the trustees pass the cost on, in accordance with the terms of a written consent of the member; and

 (c) if the arrangement is an ongoing fee arrangement:

 (i) the consent is of a kind described in paragraph 962R(2)(a) or 962S(2)(a) of the *Corporations Act 2001*; and

 (ii) if requirements that apply in relation to the consent are determined under section 962T of that Act—the consent complies with those requirements; and

 (d) if the arrangement is not an ongoing fee arrangement:

 (i) the consent is for the trustee or the trustees to directly or indirectly pass the cost of providing financial product advice in relation to the member on to the member; and

 (ii) if requirements that apply in relation to the consent are determined under subsection (2)—the consent complies with those requirements; and

 (e) the trustee has, or the trustees have, the consent or a copy of the consent.

Note: If the arrangement is an ongoing fee arrangement, it may be terminated as a result of section 962F or 962FA of the *Corporations Act 2001*.

 (2) ASIC may, by legislative instrument, make a determination specifying requirements for the purposes of subparagraph (1)(d)(ii).

 (3) Subsection (1) does not apply if the cost is shared by passing it on to the member mentioned in subsection (1) and to other members of the fund.

Part 2—Fees for MySuper products

Superannuation Industry (Supervision) Act 1993

4 Subsection 10(1) (definition of *advice fee*)

Omit “subsection 29V(8)”, substitute “section 29VAA”.

5 Paragraph 29V(1)(g)

Repeal the paragraph.

6 Paragraph 29V(2)(b)

Omit “, an advice fee”.

7 Subparagraph 29V(3)(b)(ii)

Omit “, an advice fee”.

8 Paragraph 29V(7)(b)

Omit “, an advice fee”.

9 Subsection 29V(8)

Repeal the subsection.

10 Paragraph 29V(9)(c)

Omit “, an activity fee or an advice fee”, substitute “or an activity fee”.

11 Paragraph 29VA(5)(a)

After “an activity fee”, insert “(other than an activity fee that is also an advice fee)”.

12 Paragraph 29VA(6)(a)

After “an activity fee”, insert “(other than an activity fee that is also an advice fee)”.

13 Paragraph 29VA(7)(a)

After “an activity fee”, insert “(other than an activity fee that is also an advice fee)”.

14 Subsection 29VA(9A)

Repeal the subsection (including the heading).

15 After section 29V

Insert:

29VAA Meaning of *advice fee*

 A fee is an ***advice fee*** if the fee relates directly to costs incurred by the trustee, or the trustees, of a superannuation entity because of the provision of financial product advice to a member by:

 (a) a trustee of the entity; or

 (b) another person acting as an employee of, or under an arrangement with, a trustee or trustees of the entity.

16 Paragraph 29VB(5)(b)

Omit “, an advice fee”.

Part 3—Application

17 Application

The amendments made by this Schedule apply:

 (a) in relation to a fee payable under an arrangement entered into on or after 1 July 2020—on and after 1 July 2020;

 (b) in relation to a fee payable under an ongoing fee arrangement to which Subdivision C of Division 3 of Part 7.7A of the *Corporations Act 2001*, as in force before 1 July 2020, applied before the repeal of that Subdivision by item [19 of Schedule 2.1] to this Act—on and after 1 January 2021;

 (c) in relation to a fee payable in any other case—on and after 1 July 2021.