

# EXPOSURE DRAFT

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

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**Commencement information**

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

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## 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:

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- 1 (i) the consent is for the trustee or the trustees to directly or  
2 indirectly pass the cost of providing financial product  
3 advice in relation to the member on to the member; and  
4 (ii) if requirements that apply in relation to the consent are  
5 determined under subsection (2)—the consent complies  
6 with those requirements; and  
7 (e) the trustee has, or the trustees have, the consent or a copy of  
8 the consent.

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

- 12 (2) ASIC may, by legislative instrument, make a determination  
13 specifying requirements for the purposes of subparagraph  
14 (1)(d)(ii).
- 15 (3) Subsection (1) does not apply if the cost is shared by passing it on  
16 to the member mentioned in subsection (1) and to other members  
17 of the fund.

## 18 **Part 2—Fees for MySuper products**

### 19 ***Superannuation Industry (Supervision) Act 1993***

#### 20 **4 Subsection 10(1) (definition of *advice fee*)**

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

#### 22 **5 Paragraph 29V(1)(g)**

23 Repeal the paragraph.

#### 24 **6 Paragraph 29V(2)(b)**

25 Omit “, an advice fee”.

#### 26 **7 Subparagraph 29V(3)(b)(ii)**

27 Omit “, an advice fee”.

#### 28 **8 Paragraph 29V(7)(b)**

29 Omit “, an advice fee”.

#### 30 **9 Subsection 29V(8)**

31 Repeal the subsection.

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## 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;

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- (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.