

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Mercer (Australia) Pty Ltd
ABN 32 005 315 917
Collins Square
727 Collins Street
Melbourne, VIC Australia 3008
GPO Box 9946 Melbourne VIC 3001
T +61 3 9623 5464
www.mercer.com.au

financialadvice@treasury.gov.au

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Subject: **Delivering Better Financial Outcomes - reducing red tape and other measures**

Dear Sir/Madam

Mercer welcomes the opportunity to respond to the draft legislation and exposure draft explanatory materials relating to the Treasury Laws Amendment (2024 Measures No. 1) Bill 2024 released by the Assistant Treasurer and Minister for Financial Services on 14 November 2023.

The structure of this submission is as follows:

- Who is Mercer?
- Our overall support for this legislation
- A recommendation to provide greater certainty for trustees
- Some other related matters

Who is Mercer?

Mercer believes in building brighter futures by redefining the world of work, reshaping retirement and investment outcomes, and unlocking real health and well-being. Mercer's approximately 25,000 employees are based in 43 countries and the firm operates in 130 countries. Mercer is a business of Marsh McLennan (NYSE: MMC), the world's leading professional services firm in the areas of risk, strategy and people, with 85,000 colleagues and annual revenue of over \$20 billion. Through its market-leading businesses including Marsh, Guy Carpenter, Mercer and Oliver Wyman, Marsh McLennan helps clients navigate an increasingly dynamic and complex environment.

Mercer Super operates one of the leading superannuation funds in the market, with around 35 years of history serving our members in Australia. The fund has approximately 750,000 members and \$64 billion in assets under management. Mercer Super's value proposition for members is supported by the global expertise of 1,300 investment professionals around the world and 75 years of experience in wealth management.

Our overall support for this legislation

Mercer supports the overall direction of this legislation. That is, Mercer supports:

- The need to clarify the legal basis in the SIS Act for superannuation trustees to be able to charge individual members for financial advice from their superannuation account. However, we recommend that this clarification be extended as discussed below.
- The streamlining and simplification of ongoing fee renewal and consent requirements into a single document.
- The need to provide greater flexibility on how Financial Services Guides can be provided to customers and clients.
- The need for simplification and clarification in respect of conflicted remuneration.

While supporting the streamlining of the fee consent arrangements, we note that such consents do not continue following a successor fund transfer. With the ongoing consolidation of the superannuation industry, this represents an unfortunate barrier to members receiving ongoing financial advice.

Mercer therefore recommends that the simplified ongoing fee documents continue to operate following a successor fund transfer.

The need for greater certainty for trustees

Section 99FA of the SIS Act currently sets out the conditions that must be met for trustees of regulated superannuation funds to be able to pass on the cost of financial product advice received by a member onto that member. The draft legislation clarifies that superannuation funds are permitted to pay these fees when requested by the member. This provides greater clarity for both trustees and the provider of the financial advice.

However, the trustees have additional responsibilities set out in legislation; including to act in the best financial interests of the member and to act in accordance with the sole purpose test. These obligations suggest that the trustee should make some assessment of the purpose and quality of the financial advice to ensure that the trustees are not breaching these legal obligations.

Such assessment is time consuming and costly, and may also lead to privacy breaches. We are also aware that some superannuation funds are declining all such requests as they feel unable to ensure sole purpose test compliance. The draft legislation does not address this issue. Hence this impediment to the provision of financial advice to superannuation fund members will remain.

Given the legal obligations that now apply to financial advisers, we consider that trustees should be able to assume the advice is in the member's best financial interests and to rely on a statement from a registered financial adviser as to the cost of the advice to a member which relates to the member's interest in the fund (being all or a portion of the total cost of the advice, as applicable in the circumstances), without undertaking any assessment of the advice, as doing so would add undue cost. It would also be open to trustees to apply an upper limit to the amount of the fee that they would agree to meet.

Mercer therefore recommends that the legislation be extended to clarify that the payment by a regulated superannuation fund of the cost of financial product advice to a member will not breach the sole purpose test nor the requirement for trustees to act in the member's best financial interest.

Some other related matters

GST treatment of financial advice

Further clarity should also be provided in respect of the GST treatment (particularly the availability of input tax credits or reduced input tax credits) to be applied for financial advice fees paid by the superannuation fund. An amendment to the GST provisions to clarify that the superannuation fund is the acquirer of the supply of the financial advice services and is entitled to an appropriate input tax credit/reduced input tax credit would provide the required clarity.

This additional clarity is needed is to ensure the same GST treatment is received by the superannuation fund whether the cost of the financial advice is incurred by the fund directly or is incurred by the member and subsequently paid by the fund.

Definition of financial advice

The proposed amendment of Section 99FA applies to an amount that is for a cost incurred via the provision of "personal advice" and the amount is paid at the request, or with the consent, of the member from their interest in the superannuation fund. However, paragraph 1.59 of the Draft EM says that a deduction under this new section could be for amounts charged against other members' interest ("intra-fund" advice). The introduction of the term "intra-fund" advice in this context is confusing as the term "intra-fund advice" is not defined by law and is used inconsistently to refer to various types of advice. It can cover both "general advice" and limited or scaled "personal advice".

Our understanding is that where the relevant amount paid by the superannuation fund is in respect of intra-fund advice which is "general advice" such amounts would not be deductible under the proposed provision. Hence it would be more helpful to confirm in the EM that the section applies to the cost of providing relevant forms of personal advice but does not apply to the cost of general advice, which should normally be deductible under section 8-1 of the ITAA 1997.

Naturally, we would be very happy to discuss any of these comments with you and your team as you carefully consider these matters.

Yours sincerely,



Dr David Knox AM
Senior Partner