



2 March 2020

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

By email: [FSRCconsultations@treasury.gov.au](mailto:FSRCconsultations@treasury.gov.au)

Dear Sir/Madam

### ADVICE FEES IN SUPERANNUATION

1. The Superannuation Committee (**the Committee**)<sup>1</sup> of the Law Council of Australia's Legal Practice Section welcomes the opportunity to make a submission to the Treasury in relation to the Exposure draft Bill *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020: fees (FSRC Rec 3.2 and 3.3)*.
2. The amendments are intended to extend restrictions on advice fees paid from member superannuation accounts so that:
  - they cannot be charged against a member's MySuper account;
  - otherwise can only be charged against a member account subject to a new set of conditions, including:
    - express written consent by the member to the fee recipient;
    - the trustee holding that consent or a copy; and
    - in accordance with a permitted arrangement.
3. However, it is noted in the Explanatory Memorandum (**EM**) that "intra fund advice" (currently undefined in the Corporations Law) which is charged to and recovered from members collectively is "still" to be permitted. A draft "carve out" provision is inserted (subsection 99FA(3)) for that purpose.
4. For the avoidance of doubt, the Committee suggests the express exception to cover off on "intra fund advice" that otherwise satisfies section 99F of *Superannuation Industry (Supervision) Act 1993 (Cth)* (**SIS**) be included as an express exemption in subsection 99FA(3) along the lines of "including in respect of any advice provided on

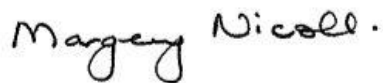
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<sup>1</sup> The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

or on behalf of a fund's trustee concerning members' existing interest or variation to their interests in a fund".

5. In order not to detract from the trustee's exercise of its statutory covenants (including best interests consideration) and compliance with the sole purpose test, the subsection 99FA(3) permitted advice arrangement conditions should also include reference to exercise of the trustee's duties under SIS.
6. The Law Council would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact Superannuation Committee Chair, Dr Lisa Butler Beatty on BeattyLi@cba.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Margery Nicoll." The signature is written in a cursive, slightly slanted style.

**Margery Nicoll**  
**Acting Chief Executive Officer**