



Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
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20 January 2012

Dear Sir/Madam

PJC Submission on Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011

The Financial Planning Association of Australia (FPA)¹ welcomes the opportunity to provide comments and feedback on the MySuper Legislation.

In general, the FPA is pleased with the legislation and the purpose of our submission is to highlight areas of clarification and potential unintended consequences.

Of particular are the fee rules for MySuper products. While the FPA does not intend to debate policy in this submission, we are concerned that parts of this measure will create confusion for both consumers and financial planners, when it comes to comparing the cost of different superannuation funds.

Hence, the FPA has recommended in this submission that the legislation be simplified by requiring that intra-fund advice fee be a transparent fee and not be hidden from members by being bundled in the 'administration fee' category.

The option of allowing Intra-Fund (personal) advice to be charged, essentially as a form of secret commission, not only undermines the reform agenda that FOFA is trying to achieve but also undermines the policy objective of Stronger Super and MySuper in particular.

If you have any questions regarding the FPA's submission, please contact me directly

Yours sincerely

Dante De Gori
General Manager Policy and Government Relations

¹ The FPA is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at \$630 billion.



MySuper Legislation

FPA SUBMISSION ON PARLIAMENTARY JOINT COMMITTEE (PJC) | DATE: 20.1.2012

Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011

A Bill for an Act to amend the law relating to superannuation, and for related purposes

FPA submission to:
The Secretary
Parliamentary Joint Committee (PJC) on
Corporations and Financial Services

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FPA SUBMISSION ON PARLIAMENTARY JOINT COMMITTEE (PJC) | DATE: 20.1.2012

INTRODUCTION

The FPA supports the intention of the MySuper objectives, which is to provide a simple and cost-effective superannuation product including a simple set of product features, irrespective of who provides them. The purpose is to enable super fund members (and potential members), employers and market analysts to compare funds more easily based on a few key differences.

The FPA also understands that MySuper is intended to ensure super fund members do not pay for any unnecessary 'bells and whistles' they do not need or use, especially where they do not require or generally do not request these additional services.

Further the FPA supports the intention to have 'comparable' characteristics based on cost, investment performance and the level of insurance coverage. A key requirement is that MySuper products will be restricted to charging fees that are described in the same way so that they can be directly compared. Members will also generally be charged the same fees, enabling members (and potential members), employers and market analysts to make comparisons based on the actual fees paid and investment returns received by members in each MySuper product.

However, the FPA in consideration of these key objectives and intentions has concerns as to whether these can be achieved. The key areas of concern to arise from this legislation surround the type of fees that may be charged and the form in which they may be charged.

In particular we have a real concern with intra-fund advice fees. It is our interpretation and understanding that an intra-fund advice fee should not and is not an 'administration fee' as suggested in the explanatory memorandum.

The FPA believes that this fee needs to be identified as a separate fee with the cost being borne by the member for which the advice is being provided and not by the member pool or collective membership to ensure consistency with Government policy.

Further it is imperative that there is only one method of charging fees to ensure the MySuper model remains simple and transparent for the consumer. The percentage-based model is the only proposal, which is truly a user, pays system that ensures that all members are treated on a fair and equitable basis.



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INTRA – FUND ADVICE

The FPA acknowledges that paragraph 5.9 of the Explanatory Memorandum (the EM) states that intra-fund advice is: 'to be defined in more detail in a later tranche of legislation'. However, it would be reasonable to assume that it will meet a form of 'personal advice' as defined by subsection 766B(3) of the Corporations Act and in accordance to ASIC current position Intra-fund superannuation advice² is defined as:

Superannuation fund trustees (and their authorised representatives) who provide personal advice to fund members about their existing super fund.

The FPA further acknowledges that the Minister for Superannuation and Financial Services, the Hon Bill Shorten MP announced new rules that superannuation trustees have to comply with to ensure intra-fund advice is provided in member's best interest and at a reasonable cost³. The announcement stated that Intra-fund advice will cover any advice provided within the sole-purpose test. However, there will be new restrictions on the types of advice that can be provided under intra-fund advice rules.

Though the FPA welcomes the clarity that has now been provided of what is intra-fund advice, we are still concerned that the cost of intra-fund advice is allowed to be hidden and bundled in as an administration fee, effectively removing protections for clients that transparency, disclosure and choice provides when dealing with a financial planner.

In addition, paragraph 1.16 of the EM states measures to be contained in subsequent tranches of legislation including: 'rules for the charging of financial advice, including intra-fund advice'.

Whilst the Bill does not deal with specific fee definitions, the Explanatory Memorandum clearly states, under paragraph 5.9, that intra-fund advice can be cross-subsidised via a MySuper provider's administration fee.

This means that neither disclosure obligations nor Future of Financial Advice requirements are likely to apply. As a consequence, there will be members paying for personal financial advice they are not receiving without the ability to opt-out, other than to leave the MySuper product altogether.

This will create a significant distortion in the advice market and is contrary to the reform principles the Government has espoused in unbundling product and advice fees and in addressing conflicts of interest.

The FPA submits that all forms of personal financial advice should be subject to the same set of rules, irrespective of the provider or subject matter. A workable scalable advice framework is critical to enable greater access to affordable financial advice for more Australians. Intra-fund advice is a subset of scalable advice. However, it is critical that the FOFA reforms such as the best interest duty and specific related remuneration

² ASIC Class Order [CO 09/210]

³ Minister Bill Shorten Press release 08/12/2011:

<http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/164.htm&pageID=003&min=brs&Year=&DocType>



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provisions allow for scalable advice and are not undermined by the stronger superannuation reforms.

MySuper members should be permitted to access information (including general advice) about their superannuation interest as part of the administration fee but not access personal financial advice which is paid for by all members. The FPA completely supports the facilitation of factual information and general advice services to super fund members. Indeed many FPA members, such as corporate superannuation advisers specialise in providing general advice services to employer groups and other default group schemes.

However, the FPA does not agree with the provision and payment of 'personal' intra-fund advice services, which the legislation and in particular the explanatory memorandum has made it very clear that these fees will be able to be bundled within the 'administration fee' category.

The FPA has a number of concerns with this, not least the hypocrisy that underlines this position, especially in the context of the catalyst for the reform agenda underway as part the future of financial advice (FOFA) reforms. Hidden fees, commission, lack of transparency and paying for services not received are all problems FOFA is trying to rectify in respect to the provision of financial advice. To paraphrase Government's justification for FOFA, it is designed to protect disengaged clients from paying financial advice fees where they are receiving little or no service. For those that are not disengaged, the transparency will allow those clients with an opportunity to consider whether the service they are receiving equates to value for money.

Therefore based on these objectives how does hiding the fees associated with the provision of personal advice services such as intra-fund advice within the 'administration fee' serve to be in the interests of the super fund members.

The FPA recommends that intra-fund advice fees should be a choice option as well as being separately disclosed and fully transparent to all members of the super fund.

MYSUPER FEES

The legislation provides for three different ways in which MySuper fund providers are permitted to charge their fees, which will ultimately make it very difficult for both financial planners and consumers to compare between MySuper funds, as is the stated objective of these reforms.

The FPA believes the legislation contradicts this very objective. For example the fees for a \$60,000 superannuation balance could be represented to the consumer as:

1. Flat fee of \$1,000
2. Fixed percentage of 1%
3. Flat fee of \$500 + 0.25%



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The proposed 'flat fee' option and combined 'flat fee and percentage based' option do not accurately reflect the true cost of investing within the MySuper fund and as a result could mean that those with lower balances could inadvertently be subsidising those with higher balances where they are both paying the same flat fee. It is the FPA's opinion that these options have been included as a result of some heavy lobbying by certain representatives of the superannuation industry, which are in their best interest rather than in the best interest of their members.

The FPA does not believe that this proposal will support the Government's intention to 'enable members, employers and market analysts to compare funds more easily based on a few key differences'. Further it is not consistent with the recent FOFA reforms, which are focused on improving transparency and fairness for consumers.

To illustrate your position, outlined below is a standard table that could be used to show the fees on superannuation balances (Note: this is for illustration purposes only, increments could be per \$1,000 to provide greater comparability of fee costs to members).

Superannuation Balance	Dollar value of fees (based on 0.6% pa)
\$10,000	\$60
\$20,000	\$120
\$30,000	\$180
\$40,000	\$240
\$50,000	\$300
\$60,000	\$360
\$70,000	\$420
\$80,000	\$480
\$90,000	\$540
\$100,000	\$600

Should all MySuper funds comply with this requirement, then this will significantly simplify the ability for super fund members and non-members to compare the fees they are paying across a number of MySuper options. Allowing MySuper funds with three separate methods of charging fees does not support the Government's intention and for Australian's to easily compare.

The FPA recommends that for comparability purposes, MySuper funds should only be permitted to charge fees as a fixed percentage and that it is mandatory that examples be provided by MySuper funds to illustrate to members (and prospective members) what fees they will pay in dollar terms for their superannuation balance.



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CONCLUSION

The FPA wholly supports the principle objectives underlying MySuper to provide simple superannuation products that are easy to compare so that consumers are better able to make informed decisions about where their superannuation is invested and the costs involved.

The FPA are however of the opinion that there are three key shortcomings in relation to the charging of fees which if left in their current form would mean that the Government MySuper policy objectives would not be achieved. These shortcomings surround the areas of transparency, fairness for all members and comparability of fees.

It is the FPA's view that transparency can only be achieved where all fees, including 'intra-fund advice' fees are clearly defined as part of the legislation. It is for this reason the FPA have recommended that the 'intra-fund' advice fee is clearly identified as a separate fee.

The FPA believes that a fair and equitable playing field will only exist where additional services, such as 'intra-fund advice' are charged on a 'user-pays' system and not as part of a collective membership fee. It is for this reason the FPA have recommended that the 'intra-fund' advice fee is separately identified as a cost to members.

Finally and perhaps most importantly it is the FPA's view that a true comparison of fees can only be made on a 'like' basis. The FPA does not believe that this can be done where fees are being charged using different fee methodology. Further the FPA does not believe charging fees on a 'flat dollar basis' provides equitable treatment to all members. It is for both these reasons that the FPA recommends that the fees charged by all MySuper funds be a percentage of the member's account balance with examples provided in dollar terms.