**11 December 2023**

Mr Andre Moore
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Treasury
Langton Crescent
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By email: financialadvice@treasury.gov.au

Dear Mr Moore

**DELIVERING BETTER FINANCIAL OUTCOMES—REDUCING RED TAPE AND OTHER MEASURES**

1. This submission has been prepared by members of two Committees of the Law Council of Australia:

   (a) the Superannuation Committee within the Legal Practice Section; and

   (b) the Financial Services Committee (**FSC**) within the Business Law Section

   (together, the **Committees**).

2. The Committees thank Treasury for the opportunity to provide feedback in response to the exposure draft bill titled *Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1* (the **Bill**) and the accompanying draft explanatory memorandum (the **EM**), which were released by Treasury for consultation on 14 November 2023.

3. The Bill sets out proposed amendments to the *Corporations Act 2001* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) (the **SIS Act**) and the *Income Tax Assessment Act 1997* (Cth) (the **ITAA**) for the purpose of implementing certain recommendations of the Quality of Advice Review.

4. The Committees' comments on each Part of Schedule 1 to the Bill are provided below. The Superannuation Committee has responded to Part 1 of Schedule 1 and the FSC has responded to Parts 2 and 3. In relation to Part 4, the Committees bring differing perspectives, which are reflected in the responses to this Part.

## Part 1—Superannuation

*Proposed replacement section 99FA of the SIS Act*

*Primary prohibition*

5. Under proposed replacement section 99FA of the SIS Act, a superannuation fund's trustee would be prohibited from charging the cost of providing financial product advice against a member's interest in the fund unless various conditions are satisfied.

6. The Superannuation Committee considers that, for some of those conditions, it will be straightforward for a trustee to know whether the condition is satisfied. For example, it will be straightforward for a trustee to know, where the fee is not an ongoing fee, whether the written request or written consent of the member satisfies the applicable requirements (paragraph 99FA(1)(e)). This is because the trustee will be able to review the request or consent it receives and assess whether it satisfies the specific requirements listed in subsection 99FA(2). Similarly, the trustee will know whether it 'has the request or consent, or a copy of it' (paragraph 99FA(1)(f)).

7. For other conditions, the Superannuation Committee notes that the trustee will need to do more in order to know whether—or be reasonably confident that—the condition is satisfied. For example, the trustee will need to have processes and procedures in place directed at identifying whether:

   (a) the financial product advice that the member is receiving is personal advice;

   (b) the advice is wholly or partly about the member's interest in the fund; and

   (c) the amount charged could exceed the cost of providing the advice (paragraphs 99FA(1)(a) and (b)).

8. When compared with the two categories of conditions referred to above, the condition in paragraph 99FA(1)(d) of the SIS Act is of a qualitatively different kind. Under that condition, if the arrangement under which the advice is provided is an ongoing fee arrangement, then 'any applicable requirements of Division 3 of Part 7.7A' of the Corporations Act must be met. It should be noted that Part 2 (Ongoing fee arrangements) of Schedule 1 to the Bill sets out extensive amendments to the requirements for ongoing fee arrangements in Division 3 of Part 7.7A of the Corporations Act.

9. In the context of section 99FA of the SIS Act, the Superannuation Committee notes that an ongoing fee arrangement will very often be between a fund member, on the one hand, and a financial adviser who is not associated with the superannuation fund trustee, on the other hand. The Superannuation Committee considers that, consequently, it is very difficult for a superannuation fund trustee to be in a position to know whether (or be reasonably confident that) an ongoing fee arrangement between a fund member and a third-party financial adviser complies with the requirements governing ongoing fee arrangements under Division 3 of Part 7.7A the Corporations Act. It is very unlikely that a superannuation fund trustee could ever be completely satisfied as to whether a particular arrangement complies at all relevant times. Paragraph 99FA(1)(d) implies a level and cost of due diligence and governance on the part of the trustee that is potentially unreasonable (and an unfair burden to be shared across the fund in terms of cost) and, indeed, a standard of perfection which a trustee, not being the fee recipient, is not in a position to achieve.

10. Members of the Superannuation Committee have observed that the existing Corporations Act requirements for ongoing fee arrangements are notoriously difficult to comply with. Notwithstanding amendments that were made to the requirements in 2021 and notwithstanding the proposed amendments in Part 2 of Schedule 1 to the Bill, the risk of inadvertent non-compliance with the requirements remains.

11. The Superannuation Committee accepts that an ongoing fee arrangement's non-compliance, whether innocent or otherwise, is a serious matter. However, where the fee recipient is a third party, the Committee submits that it would be anomalous for the superannuation fund trustee's conduct, in charging the fee against the member's interest, to be rendered unlawful as an automatic consequence of some shortcoming, however minor, on the part of the fee recipient and/or the ongoing fee arrangement.

12. The Superannuation Committee recommends that the Bill include a provision to the effect that paragraph 99FA(1)(d) of the SIS Act is deemed to be satisfied if:

    (a) the fee recipient is neither the superannuation fund trustee nor a representative of the trustee; and

    (b) the trustee has taken reasonable steps to ensure that 'any applicable requirements of Division 3 of Part 7.7A' of the Corporations Act are met.

13. A provision to this effect would mean a superannuation fund trustee would not be treated as having engaged in unlawful conduct (by charging a fee against the member's interest in the fund) merely because a third party (and/or an arrangement between that third party and the fund member) was, in some respect (no matter how minor) non-compliant. On the other hand, it would require the trustee to take reasonable steps. Absent the taking of reasonable steps, the trustee would not comply with paragraph 99FA(1)(d) of the SIS Act and, would be in breach if it had done nothing, or very little, to satisfy itself about the third party's arrangements for ensuring compliance with the applicable requirements. The Superannuation Committee considers that this would strike a more appropriate balance.

14. Proposed replacement paragraph 99FA(1)(d) of the SIS Act is—absent the modification the Superannuation Committee is suggesting—considerably more onerous for a superannuation fund trustee than its current 'equivalent' in existing paragraph 99FA(1)(c). The condition in existing paragraph 99FA(1)(c) is limited to there being a consent of a particular kind where the consent complies with requirements made under section 962T of the Corporations Act. That limited condition has a direct counterpart, in the case of a fee that is not an ongoing fee, in existing paragraph 99FA(1)(d), and also in proposed replacement paragraph 99FA(1)(e). Proposed replacement paragraph 99FA(1)(d) is the sole outlier. The Superannuation Committee considers that the modification to proposed replacement paragraph 99FA(1)(d) which it has recommended is warranted because that paragraph goes so much further than existing paragraph 99FA(1)(c).

*Cost treated as direct cost of operating superannuation fund*

15. The Superannuation Committee respectfully queries the need for, or appropriateness of, the words 'For the purposes of this Act and the regulations,' which preface subsection 99FA(5) of the SIS Act. The Superannuation Committee submits that the deeming effected by subsection 99FA(5) should apply generally. For example, it should apply for the purposes of the trustee legislation (of the states and territories),

the general law and the trust deeds governing superannuation funds. Therefore, it is submitted that the words 'For the purposes of this Act and the regulations,' should be removed.

16. To the extent that there might otherwise be a concern that doing so could have consequences under the ITAA, that concern is answered by the specificity of the proposed amendments to the ITAA, which are discussed below.

*Operation of consent on a successor fund transfer*

17. Proposed replacement section 99FA of the SIS Act will require the superannuation fund trustee to hold a written request or consent from a member before charging the cost of providing financial product advice against the member's interest in the superannuation fund.

18. If the arrangement under which the advice is provided is an ongoing fee arrangement, paragraph 99FA(1)(d) will require the consent to meet the requirements of Division 3 of Part 7.7A of the Corporations Act, which includes section 962T. That section sets out the content requirements for the account holder's consent, which includes, among other things, specifying 'the name of the account holder and the other details of the account' (paragraph 962T(c)).

19. If the arrangement under which the advice is provided is not an ongoing fee arrangement, paragraph 99FA(1)(e) will require the request or consent to satisfy the content requirements in subsection 99FA(2) which will, in turn, require the consent to include 'the name of the fund from which the cost of the advice is requested to be paid'.

20. Proposed replacement sections 962T of the Corporations Act and 99FA of the SIS Act do not contemplate the details of a member's superannuation account and the name of the member's fund changing if their interest is subsequently transferred to another superannuation fund pursuant to a successor fund transfer.

21. In these circumstances, the trustee of the successor fund would not be able to rely on consent or requests given by the member to the trustee of the transferor fund for the purposes of proposed replacement sections 962T of the Corporations Act and 99FA of the SIS Act, because those consents and requests will not identify the details of the member's account or the name of the new successor fund.

22. This would require the successor trustee to cease paying advice fees until all transferring members provide updated consents. This is not only impractical but also has the potential for member detriment, as members may lose access to advice until their consent is renewed.

23. As a matter of practice, an incoming trustee of a superannuation fund does not generally undertake an exercise of re-obtaining other consents, nominations, directions and elections made by members of the fund.

24. The Superannuation Committee submits that proposed replacement sections 962T of the Corporations Act and 99FA of the SIS Act should include an additional provision to clarify that a new written consent or request will not be required in these circumstances.

25. This would align with the approach taken in new subsection 963BB(3) of the Corporations Act, which allows a client's consent for the charging of certain insurance commissions to be transferred to a new licensee or representative in the context of the sale or transfer of the relevant financial product advice business to the new licensee or representative.

26. It is also similar to the approach taken in *ASIC Corporations and Superannuation (Amendment) Instrument 2023/512* which modified previous instruments[1] to allow consents to continue to operate if, after the consent was signed, there is a change in the account holder's name or contact details (for example, as a result of marriage) or a change in the fee recipients name or contact details (for example, as a result of a sale or transfer of the adviser's business).

27. Finally on this topic, proposed replacement paragraphs 99FA(1)(a) and (b) and (2)(e) contemplate that the advice will be about the member's interest in the fund from which the advice fee is to be paid, which may not be the case following a successor fund transfer. Following a successor fund transfer, the advice fee could only be paid from the successor fund and yet the advice may be about the member's interest in the transferor fund before the transfer. The Superannuation Committee submits that the proposed additional provision concerning successor fund transfers should specify that the advice may be about the member's interest in the transferor fund.

*Other—typographical error*

28. In item 2(2), 'regardless whether' should be 'regardless of whether'.

*Proposed new item 5 of subsection 295-490(1) of the ITAA*

*Deductibility of fees*

29. Under proposed new item 5 of subsection 295-490(1) of the ITAA, an amount will only be deductible to the extent that it is not incurred in relation to gaining or producing the superannuation fund's exempt income or non-assessable non-exempt income (paragraph (d)).

30. The EM says (at paragraph 1.63):

> *The most important type of income of superannuation funds that is exempt income is income from segregated current pension assets or income from other assets used to meet current pension liabilities (in brief, this is income in respect of retirement phase superannuation income stream benefits).*

31. This appears to suggest that, if the fee is for personal advice comprising a recommendation to commence a pension, it will not be deductible. If that is the intention, then the Superannuation Committee respectfully submits that it would be helpful to say so, plainly, in the EM.

*Other—typographical error*

32. In proposed new paragraph 307-10(e) of the ITAA, the word 'and' should be removed.

[1] *ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124* and *ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2021/126*

**Part 2—ongoing fee arrangements**

*Proposed civil penalty provision*

33. The FSC does not support the proposal for the obligation imposed on a fee recipient to notify the client of termination of the ongoing fee arrangement within 10 business days to be a civil penalty provision (proposed subsection 962F(4) of the Corporations Act).

34. The FSC notes that, where the failure to provide the requisite notification within the required timeframe is attributable to deficiencies in the licensee's established processes or controls, this can be a matter for assessment against the general obligations of a financial services licensee under section 912A of the Corporations Act. Those obligations include, for example, the requirements for the licensee to:

    (a) provide financial services efficiently, honestly and fairly (paragraph 912A(1)(a);

    (b) take reasonable steps to ensure its representatives comply with financial services laws (paragraph 912A(1)(ca); and

    (c) ensure the representatives are adequately trained (paragraph 912A(1)(f)).

    Each of the above obligations is a civil penalty provision.

35. The FSC therefore considers that it is not fair or reasonable for a fee recipient who misses the 10 business day notification requirement for termination of the ongoing fee arrangement (irrespective of the cause of such failure) to face a potential civil penalty. Further details are provided below.

*Notification of termination of ongoing fee arrangements*

*Ongoing fee arrangement terminates without consent*

36. Under proposed subsection 962F(4) of the Corporations Act, if an ongoing fee arrangement terminates because it is no longer covered by a written consent of the client, the fee recipient must give written notice to the client that the arrangement has terminated, within 10 business days of the termination. Item 18 in Schedule 1 of the Bill inserts subsection 962F(4) as a civil penalty provision under subsection 1317E(3) of the Corporations Act.

37. The FSC acknowledges that it is important that clients are informed about termination of the ongoing fee arrangement. However, there could be circumstances beyond the control of the fee recipient which prevent the notice being given within the required timeframe, such as:

    (a) unforeseen delays in the administration or processing of the notice by or on behalf of the advice practice;

    (b) external factors beyond the advice licensee's control; and

    (c) where the adviser is absent from his or her office due to illness or other unforeseen circumstances.

38. Further, proposed section 962E contains statutory prerequisites for the ongoing fee arrangement to be treated as being 'covered by a written consent of the client', and the FSC notes that minor issues or errors, for example in relation to the consent (such as consent is not dated), could subsequently be found to have resulted in termination pursuant to 962F(1). This example further demonstrates that the imposition of a civil penalty for failure to notify the client within 10 business days of the termination being effective is potentially unjust.

*Client may terminate ongoing fee arrangement at any time*

39. Where a client exercises their right to terminate an ongoing fee arrangement by providing notice to the fee recipient, proposed subsection 962G(5) of the Corporations Act would require the fee recipient to give written notice of the termination to the client within 10 business days of the termination. Termination is deemed by proposed subsection 962G(3) to have taken effect on the day the client gave the notice. Item 18 of the Bill denotes the adviser's 10 business day notification requirement as a civil penalty provision.

40. The FSC refers as above to the possibility of ad-hoc administration or processing delays occurring in relation to the advice practice's provision of the notification within 10 business days. The mere failure of the adviser's confirmation of the client's termination of the arrangement to be issued within 10 business days therefore does not appear to justify the imposition of a civil penalty.

*Other—typographical error*

41. The FSC also queries whether the proposed amendment to section 1317GA of the Corporations Act in item 22 ought to refer to subsection 962G(6) rather than subsection 962G(5). Section 1317GA concerns the Court's ability to make refund orders in the event a fee recipient knowingly or recklessly continues to charge ongoing fees after the arrangement has terminated.

*Notification of cessation of consent for deduction of advice fees*

42. Currently, subsection 962V(2) of the Corporations Act requires the fee recipient to notify the account provider of the cessation of the client's consent to the deduction of advice fees from the relevant account within 10 business days of the cessation. (The notification requirement applies in the circumstance where the fee recipient had provided a copy of the client's consent to the account provider under paragraph 962S(3)(c)). This existing obligation is a civil penalty provision.

43. The Bill proposes that written notice of the cessation of the consent must also be provided to the client (or to all account holders where the relevant account is held jointly) within 10 business days of cessation (item 13, proposed subsection 962V(1A). Failure to provide the notification would be the subject of a civil penalty provision (item 19).

44. The FSC considers that the proposal to make subsection 962V(1A) a civil penalty provision, in addition to the pre-existing obligation for the adviser to notify the account provider where required, appears excessive. As discussed above, various factors could cause the notification to be made outside of the 10 business day timeframe for reasons beyond the fee recipient's control, notwithstanding appropriate processes having been in place.

45. Furthermore, as shown above, an ongoing fee arrangement may terminate automatically because it is not covered by a written consent substantively in the form prescribed by section 963E of the Corporations Act. In accordance with existing paragraph 962V(1)(b), a client's consent for the deduction of ongoing fees from an account pursuant to section 962R or section 962S ceases to have effect if the ongoing fee arrangement is terminated. Again, this could mean the designation of the 10 business day notification requirement as a civil penalty provision is potentially onerous.

*Termination of ongoing fee arrangement if fee deducted without consent*

46. Proposed section 962WA prescribes, as a condition of the ongoing fee arrangement, that the arrangement terminates if the requirements of section 962R or section 962S for consent and arranging for the deduction of ongoing fees have not been complied with. The FSC notes that this would mean termination of the ongoing fee arrangement even if the failure to comply relates to the deduction of ongoing fees from an account with one particular financial product provider, where the ongoing fees are also deducted pursuant to a consent and arrangement for deduction with another account provider.

47. Proposed subsection 962WA(6) would clarify that the adviser's obligation to continue to provide services dependent on the continued payment of ongoing fees also terminates.

48. The FSC queries whether there should be an exception to proposed section 962WA to allow for the situation where the adviser and the client make alternative arrangements for payment of the ongoing advice fees. The FSC notes in this regard that sections 962R and 962S do not apply where the relevant account for payment of ongoing fees is an account linked to a credit card or a basic deposit product.

**Part 3—Financial Services Guide**

49. The FSC supports the introduction of an exemption from the obligation to provide a Financial Services Guide (**FSG**) in proposed subsection 941C(5A) of the Corporations Act, for the purpose of implementing Recommendation 10 of the Quality of Advice Review. This proposed new exemption would allow a financial adviser to make the relevant information that would otherwise be included in an FSG available on its website in prescribed circumstances.

50. However, to ensure the proposed changes can facilitate flexibility and efficiency for financial advisers in practice, the FSC submits that the proposed exemption should also cover the provision of general advice which is typically provided by an adviser early in the client relationship, before the adviser has had the opportunity to ascertain the client's personal circumstances and prepare personal advice.

51. Under section 941D of the Corporations Act, except in time critical cases, the FSG must be given to the client as soon as practicable after it becomes apparent to the providing entity that the financial service will be, or is likely to be, provided to the client and must in any event be given before the financial service is provided. Given the possibility of general advice being provided to the client prior to any personal advice, the adviser needs to provide an up-to-date FSG at or before the point in time when such general advice is given.

52. Additionally, even where an adviser may anticipate that the client is a wholesale client (in which case there is no obligation for the adviser to provide an FSG to the client), their status as a wholesale client can only be confirmed in due course in accordance with section 761G of the Corporations Act by making the relevant inquiries. In the interim, with the possibility of general advice being provided and without being certain whether or not the recipient of the advice is a retail client, to avoid contravening section 941D, the adviser will ordinarily give the client an FSG.

53. The FSC therefore submits that the proposed new exemption in subsection 941C(5A) of the Corporations Act ought to be broadened to cover the provision of preliminary general advice, as opposed to being strictly confined to the provision of personal advice. This could be achieved by, for example, extending paragraph (a) in subsection 941C(5A) to a financial service that is provided, or is likely to be provided, in circumstances where the providing entity reasonably expects that personal advice may subsequently be provided.

54. The FSC also submits that the wording of paragraphs 1.143 to 1.153 of the EM should be revisited to ensure that there is no confusion between:

    (a) preparing an FSG, which is made available on a website; and

    (b) providing relevant information on a website *instead of* preparing an FSG (which is what the proposed new exemption would allow).

**Part 4—Conflicted Remuneration**

*Proposed new subsection 963A(2) and paragraph 963B(1)(bb) of the Corporations Act*

*General definition of 'conflicted remuneration'*

55. Under proposed replacement section 963A of the Corporations Act, a benefit will not be conflicted remuneration if it is given to the licensee or representative by a retail client in relation to financial product advice given by the licensee or representative to the client (paragraph 963A(1)(b)). There is then:

    (a) a note that says: 'A reference in this Subdivision (including sections 963A, 963AA, 963B and 963C) to giving a benefit includes a reference to causing or authorising it to be given (see section 52)'; and

    (b) a provision that says, for the purposes of paragraph 963A(1)(b), 'a benefit is given by a retail client only if the benefit is paid by the retail client, or on behalf of the client (including from one or more financial products in which the client has a beneficial interest)' (subsection 963A(2)).

56. The Superannuation Committee submits that the overall effect of the above provisions is, with respect, unclear, for the following reasons.

57. Firstly, the relationship between the note and section 52, on the one hand, and subsection 963A(2), on the other hand, is unclear. One might have thought subsection 963A(2) was intended to codify the ways in which a benefit may be given by a retail client, at least in the context of paragraph 963A(1)(b). However, the note suggests otherwise, indeed it suggests that section 52 is intended to provide a separate and distinct basis on which a benefit may be said to be given by a retail client, even if the conditions in subsection 963A(2) are not satisfied.

58. One way of addressing the lack of clarity (stemming from the relationship between the note and subsection 963A(2)) would be:

    (a) to dispense with the note;

    (b) to 'turn off' section 52 in relation to Subdivision B of Division 4 of Part 7.7A;

    (c) to state that subsection 963A(2) is for the purposes of Subdivision B of Division 4 of Part 7.7A (i.e., not just for the purposes of paragraph 963A(1)(b)); and

    (d) if any aspect of section 52 is to be continued, to incorporate that aspect into subsection 963A(2) itself.

    There may be other ways to address the current lack of clarity. Whatever the method, the Superannuation Committee submits that the issue should be dealt with.

59. Secondly, subsection 963A(2), viewed on a standalone basis, is unclear. This is primarily because it uses the expression 'on behalf of'. While that expression is used extensively in legislation, it can be notoriously difficult to determine its precise meaning in any particular legislative and factual context.

60. For example, the responsible entity of a registered managed investment scheme structured as a unit trust would not ordinarily be regarded as doing anything 'on behalf of' a particular scheme member. Therefore, it is not clear whether, under the current formulation of subsection 963A(2), the responsible entity would be able to pay a fee for advice given to a scheme member (whether such advice is about the member's interest in the scheme or otherwise).

61. The FSC further notes that, depending on the nature of the relevant financial product and the terms on which it is issued, the deduction of advice fees for payment to the client's adviser may involve the exercise of discretion by the product issuer subject to its duties and obligations. The product issuer (for example, the responsible entity of a registered managed investment scheme) may apply its own guidelines or limits concerning the reasonableness of the advice fees in connection with the client's account balance in the relevant financial product. These observations serve to illustrate the point made in the previous paragraph, namely, that the deduction of advice fees from one or more financial products in which the client has a beneficial interest may not necessarily occur by or on behalf of the client.

62. Thirdly, the uncertainty attending subsection 963A(2) is compounded by its immediate context, specifically, paragraph 963B(1)(bb), which provides a specific exception for a personal advice fee paid from a superannuation fund. The existence of paragraph 963B(1)(bb) has, of itself, the potential to suggest a narrow reading of 'on behalf of' in subsection 963A(2), although the Superannuation Committee concedes that, set against that potential suggestion is the absence of any specific exception for, say, an advice fee (whether for personal advice or general advice) paid by a responsible entity.

63. Fourthly, the EM further compounds the uncertainty. Among other things, the example (or examples) at paragraph 1.168 is (or are) unclear. For one thing, it is not clear whether the three bullet points are meant to be cumulative, embracing a single example, or else set out three separate examples. The first two bullet points overlap to a considerable extent and the third bullet point (if it is intended to be a separate

example) is, in the Superannuation Committee's view, far too broad. Further, paragraph 1.169 of the EM says that the purpose of paragraph 963A(1)(b) and subsection 963A(2) is 'to ban benefits given by a product issuer'. For this and other reasons, the uncertainty associated with subsection 963A(2) is not reduced or removed by the words '(including from one or more financial products in which the client has a beneficial interest)'. Indeed, those words seem to invite more questions, rather than resolving any uncertainty.

64. The Superannuation Committee therefore respectfully submits that 'on behalf of' should be dispensed with and replaced with 'at the written direction or written request of, or with the written consent of,'. This alternative form of wording would seem to cover most—and probably all—of the potentially relevant circumstances, while also using terminology that is reasonably certain—and considerably less uncertain than 'on behalf of'. This alternative form of wording would also be largely consistent with the way in which the Australian Securities and Investments Commission (**ASIC**) says it administers the law today.[2] If these alternative words were used, there would seem to be no need to continue any aspect of section 52 in subsection 963A(2) (and so section 52 could simply be 'turned off'). The FSC agrees with the Superannuation Committee on this point, and considers that such an amendment would preserve the scope for product issuers to act in accordance with their powers and duties in response to the client's request, and not merely on behalf of the client.

65. The Superannuation Committee considers that the exception for benefits given by a retail client has been unsatisfactory since inception, notwithstanding subsequent attempts to 'clarify' it (see the various amendments since 2012 to section 963A and subsection 963B(1) and particularly the notes at the end of each of those provisions). The Superannuation Committee respectfully submits that it is important to seize the present opportunity to rectify the issue.

*Specific exception for personal advice fees paid from superannuation*

66. Although it is a reasonably minor point, the Superannuation Committee submits that subparagraph 963B(1)(bb)(iii) of the Corporations Act should be amended to read:

    *(iii) the benefit is charged against one or more of the client's interests in the fund and the interests of other members of the fund;*

67. This is because a fee for 'intra-fund' advice will, in many cases, be charged to some extent (even if only to a very small extent) against the interest of the member who receives the advice (and not solely against the interests of other members of the fund).

*Removal of section 963D of the Corporations Act*

68. The FSC is concerned that the proposed removal of section 963D of the Corporations Act will have the consequence that payments made to call centre operators and/or personnel will constitute conflicted remuneration in circumstances where the call centre personnel are reading a standardised script to customers which includes general advice. Given that the script (which includes the general advice) is being read

[2] At paragraph RG 246.57 of Regulatory Guide 246 *Conflicted and other banned remuneration*, ASIC says it will treat a benefit as having been given by a client 'if the benefit is given at the client's direction or with their clear consent'. As Treasury will appreciate from the Superannuation Committee's proposed alternative form of wording, the Committee considers: a direction should have to be written; the concept of a written request should be added; and, while a consent should also have to be written, the adjective 'clear' is unhelpful (as it is, itself, unclear in terms of what it requires).

to customers in consideration for payment for that service, it would appear that the payment made by the ADI necessarily influences the general advice that call centre personnel are providing to the customer.

69. The FSC is uncertain whether this was the intended outcome, would appreciate greater clarity, and submits that (if the above outcome is not the intention) the proposed repeal of the entirety of section 963D ought to be reconsidered.

**Part 5—Insurance commissions**

70. The subject matter of Part 5 of Schedule 1 to the Bill is outside the expertise of the Committees and therefore the Committees do not seek to comment on this Part.

**Contact**

71. If Treasury has any questions or would like to further discuss with any matters raised in this submission with the Committees, please do not hesitate to contact Pip Bell, Chair of the FSC (committeechairfsc@gmail.com) or Natalie Cambrell, Chair of the Superannuation Committee (ncambrell@khq.com.au), as appropriate.

Yours faithfully

**James Popple**
**Chief Executive Officer**