Stockbrokers and Investment Advisers Association
Serving the interests of investors

26 April 2024

Via upload

Committee Members
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senators

INQUIRY INTO THE TREASURY LAWS AMENDMENT (DELIVERING BETTER FINANCIAL OUTCOMES AND OTHER MEASURES) BILL 2024

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and they provide wealth advice and portfolio management services.

The history of the stockbroking profession in Australia can be found here.

Thank you for the opportunity to provide feedback on the inquiry into the *Treasury Laws Amendment (Delivering Better Financial Outcomes and other measures) Bill 2024* (the Bill).

Executive summary

SIAA recommends that the following changes be made to the Bill:

- The provisions concerning the deduction of adviser fees from superannuation be amended to ensure that consumers can have advice fees deducted from their superannuation accounts without the red tape that is currently provided for in the Bill.
- The ongoing fee arrangements provisions be amended to remove the requirement for fee recipients to send the fee consent to the account provider/product issuer. If the government does not agree with this recommendation, it is made explicit in the Explanatory Memorandum that the Minister will approve a standard consent form that has been

developed as a result of industry consultation that involves all participants in the financial advice ecosystem, including advisers, licensees and product issuers.

- That additional examples of how the ongoing fee arrangement application and transition provisions operate are included in the Explanatory Memorandum to assist licensees implement them in a compliant and efficient manner.
- That breach of section 943M attract a civil not criminal penalty.

Deduction of adviser fees from superannuation

SIAA is a member of the Joint Association Working Group (JAWG) that has publicly raised concerns that the proposed changes to section 99FA of the SIS Act will establish a particularly excessive obligation on trustees to closely review advice and fee arrangements to confirm compliance with the sole purpose test. Under the proposed legislation, superannuation trustees that allow fee deductions will need to check every piece of advice individually and duplicate valid checks already undertaken by financial advisers and their licensees. The proposal is unworkable and worse for all than the current situation. It will also significantly increase the costs of operating a superannuation fund.

What is of the most concern is that the Bill provides that a superannuation trustee is not required to agree to the member's request to charge the relevant costs even when the requirements are satisfied. Superannuation is the member's money and no trustee should have the right to override a member's decision in the context of all legal requirements having been met.

Consumers will face more red tape when it comes to setting up an ongoing adviser arrangement with superannuation trustees to pay for advice, yet this brings no additional consumer protections or benefits. This will add to the cost of advice and result in a poor consumer experience.

Financial Advisers already have a best interests duty and they must ensure their fees are reasonable and apportion the fees appropriately to meet the SIS Act requirements. The government has on multiple occasions been on the public record as noting that Delivering Better Financial Outcomes is intended to reduce red tape. This provision increases it exponentially.

We recommend that the Government amends the legislation to ensure that consumers can have advice fees deducted from their superannuation without the red tape that is currently provided for in the Bill.

We note that a roundtable with the Minister, Treasury and representatives of JAWG is being held on 30 April 2024 to discuss the legislative changes needed to address these issues.

Ongoing fee arrangements

The Quality of Advice Review Report found that the ongoing fee arrangement regime was unnecessarily complicated with too many forms and too much duplication that was of limited value for clients. In fact, clients were puzzled and sometimes annoyed by the number of forms and did not in fact understand what fees they are paying.

It is important therefore that the bill effectively implements the recommendations aimed at cutting red tape while maintaining appropriate levels of consumer protection.

Repeal of existing requirement to provide a fee disclosure statement

We welcome the removal of the existing requirement to provide a fee disclosure statement to clients. The recommendation from the Quality of Advice Review Report to remove the obligation for advisers to provide a fee disclosure statement to their clients is a sensible and uncontroversial reform that is urgently needed. Providing clients with backward-facing and forward-facing fees is confusing for clients, extremely time-consuming and costly for licensees and administratively duplicative. This reform will reduce red tape and administrative costs for advice providers and reduce the cost of advice for clients and improve the client experience.

New requirements for consent

Legislation that requires for ongoing fee arrangements to be renewed annually by the client and for the client to consent to services to be provided and the fees that are to be charged should be straightforward and uncontroversial. We support the principle that underpins the requirements – that clients are aware of and consent to the fees that are charged for the services they receive.

However, the current regulatory framework has introduced additional cost and complexity for clients: it facilitates anti-competitive outcomes and thus the principal has become obscured.

The problem with the current provisions

One of the ongoing fee arrangement provisions that has caused the most problems for advisers, licensees and clients is the requirement for renewal and consent forms to be sent to the entity that conducts the account from which the fee is to be deducted (the account provider/product issuer).

Product issuers have introduced their own forms that they require clients to sign to evidence their express written authority to pay the advice fee rather than accepting the authority included in the ongoing fee arrangement renewal and consent form created by the advice provider. In doing so, product issuers have imposed their own requirements on the design and content of the form they will accept.

The industry raised concerns in early 2021 that if product issuers created their own forms, advisers and licensees would be forced to locate and complete a host of forms in different formats for each client, increasing dramatically the administrative burden and adding significantly to client confusion. Despite advice associations calling for product issuers to work with industry to come up with one form that all sides could use, this did not occur, and advisers and licensees have been forced to work with multiple forms from multiple product issuers.

This issue is a particular challenge facing for our members who have clients holding their investments on platforms. Platform providers require clients to execute/consent using their bespoke consent forms and there is no consistency between platform providers in the format or content of the form. This creates duplication and confusion for clients who are receiving multiple forms; one from their stockbroker or investment adviser and one or more from their platform provider(s). Clients are finding a product issuer interposing between them and the advice provider to be confusing and confronting. From the client's perspective, their relationship is with their adviser, not the product issuer. And of course, this complex and over-engineered process is very time consuming for clients.

The non-standardised forms offered by different product issuers capture the back-office processes of licensees. There is a significant cost involved in changing back-office processes to meet the

requirements of differing forms to move from one product issuer to another. Advisers need to act in the best interests of their clients and should be able to recommend that clients move from one product issuer to another without having to incur and pass on to clients the costs attached to meeting the back-office changes necessary to meet the requirements of a non-standardised form. Some of our members have told us that they are reducing their platform offering to clients to reduce the red tape imposed by different consent requirements of platform providers. This lessens product choice for clients and reduces competition.

The obligation to give the account provider/product issuer a copy of the client consent and renewal does not apply in other commercial settings.

This is why, during Treasury consultations on the exposure draft of the bill, SIAA and other advice associations strongly recommended that while advisers should still be required to have clients sign a standard fee consent form, they should not be required to provide the fee consent form to product issuers at all. Rather, product issuers should be permitted to rely on advisers and licensees meeting their fee consent obligations under the Code of Ethics and Corporations Act. Product issuers could be granted the right to operate a sample-based audit regime to confirm adviser compliance with the client consent requirements.

In the alternative, we argued that if the government wanted to retain the existing regulatory framework that includes product issuers then it needed to ensure that the Bill cuts the red tape that surrounds the consent process by introducing an industry agreed standardised fee consent form that product issuers would be required to accept.

While we understand that product issuers would incur costs to implement a standardised form, the outcome would be efficiencies across the sector, which in turn would reduce costs for clients. Indeed, advice licensees would also incur costs to implement a standardised form, but they are of the view that the short-term pain of the cost is far outweighed by being able to achieve a much more efficient ecosystem, which reduces costs and complexity for the consumer. And of course, as product providers have already developed their individual systems and processes to meet the fee consent requirement, it is extremely unlikely they would choose to make further expensive changes to support standardisation unless those changes were required by law.

The Bill

It is clear from the Bill that the government has decided not to adopt the option preferred by SIAA and other advice associations to remove the requirement for advice providers to provide the fee consent to the product issuer.

We are pleased however that the government has amended the Bill to provide for the Minister to approve one or more forms for giving consent to enter into or renew an ongoing fee arrangement or authorise the deduction of ongoing fees and that the approved forms can be relied on by advisers and product issuers as evidence of a client's consent. We are also pleased that the Bill provides that if the Minister has approved a consent form, a consent must be in the approved form. In other words, once a form is approved, its use is mandatory.

We agree with the Explanatory Memorandum that a mandatory form will help to standardised information collection requirements and reduce administrative burdens on industry and provide certainty that a consent satisfies regulatory requirements.

We remain concerned about the following note to section 962Y of the Bill:

> *Despite consent being given in an approved form, an account provider…may request additional information from the fee recipient before deducting ongoing fees from an account.*

This is exactly the issue at hand. A requirement that a client provide authorisation for the deduction of ongoing fees is essentially another term for a direction to pay – a form used in many commercial transactions. It must not be used to create a situation where the product issuer effectively becomes the auditor of the fee arrangement between advisers and their client. Our discussions with platform operators confirm that they do not want this role either.

It is vitally important that, in order to achieve the intended outcome of the legislation, the Minister approves a consent form that can be relied on by advisers and product issuers. We strongly recommend that the Minister convene a roundtable of associations representing all participants in the financial advice ecosystem, including advisers, licensees and product issuers so that the content of the standardised form can be finalised. Without such facilitation the Minister will be unaware of what is considered important by the relevant parties and risks mandating a form that satisfies only one party or none. There needs to be transparency as to how the content of the form is reached. It is important that the content and design of a standardised form must be the result of industry consultation and we recommend that this be explicitly referred to in the Explanatory Memorandum.

Anniversary date

Another important issue raised by our members regarding the exposure draft was the overly prescriptive requirements regarding the 'anniversary date' of the ongoing fee arrangement renewal and the Bill providing for more flexibility on renewals to enable advice providers to better align and reset anniversary dates.

We support the changes to the Bill that provide for additional flexibility in the timing of renewals of consent fee arrangements and deduction arrangements.

Repeal of civil penalties for failure to notify

We support the repeal of a civil penalty in the event a fee recipient fails to provide written confirmation to the account holder or third-party account holder that it has received a notice from an account holder varying or withdrawing their consent to deductions being made from an account. We agree with the Explanatory Memorandum that making this a civil penalty provision is disproportionate to consumer harm. Charging a fee after an ongoing fee arrangement has been terminated is a civil penalty provision – that is the critical protection for the client.

Technology neutral sending and signing of documents

We welcome the provisions in the Bill that provide certainty to licensees and advice providers that documents permitted or required to be sent in relation to ongoing fee arrangements can be sent and signed in a technologically neutral way.

Transitional provisions

The application and transitional provisions are complex. We welcome the examples provided in the Explanatory Memorandum and recommend that additional examples be added that can assist licensees implement the new provisions in a compliant and efficient manner.

Flexibility for FSG requirements

We have previously raised the issue that the FSG flexibility provisions only apply in the case of personal advice, while our members provide their clients with a combination of personal advice, general advice and dealing services. We have previously recommended that for the provision to be adopted more broadly and achieve its intended benefit of reducing red tape it should allow providers to rely on it when providing any financial service to retail clients regardless of the type of financial service being provided.

It is clear from the Bill that the government has decided not to adopt this change. We continue to recommend this change be made to the Bill in order to reduce red tape. For licensees providing both personal and general advice and dealing services, it introduces complexity to try to set up two different systems for the provision of a FSG, particularly when the same client can on one occasion be receiving personal advice while on another occasion receiving general advice.

Another issue with the exposure draft was that to rely on the FSG flexibility provision, the client must not have requested a copy of the FSG. This obligation had the practical effect of requiring the advice provider to prove that the client did not request a copy of the FSG to rely on the provision. From a compliance perspective it required an advice provider to make a record that the client did not ask for a copy of the FSG, thus adding an extra step to the client onboarding process. This would have run counter to the intention of the bill to deliver better financial outcomes by reducing red tape.

We are pleased that the government noted our argument and removed this requirement from the Bill.

We would also like to point out the excessive and punitive criminal penalties in the Bill for breach of essentially administrative matters. For example, failing to record the date of a material alteration to website disclosure information is a criminal offence subject to two years imprisonment (section 943M). This is clearly disproportionate to consumer harm. We recommend that breach of this provision attract a civil not a criminal penalty.

Conflicted remuneration

We have no comments on this part of the Bill.

Standard consent requirements for certain insurance commissions

We note that the government will be making changes to provisions concerning the payment of insurance commissions to providers of general advice to address a drafting error.

Otherwise, we have no comments on this part of the Bill.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Yours faithfully

Judith Fox
Chief Executive Officer