

Friday, 26 April 2024

Mr Mark Fitt  
Committee Secretary  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Delivered via online Australian Parliament House website portal

Dear Mr Fitt

**Re: Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures)  
Bill 2024 [Provisions] (“DBFO Bill”)**

Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia welcome the opportunity to provide comments in relation to the DBFO Bill.

CPA Australia and CA ANZ represent over 300,000 professional accountants globally. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

Our comments are limited to Schedule 1 of the Bill.

CA ANZ and CPA Australia are actively engaged with the Quality of Advice Review conducted by Ms Michelle Levy. We agree that the current regulatory settings are making the provision of personal financial advice too expensive, and we have supported the recommendations made by Ms Levy to make advice affordable and available to all Australians. Wholesale regulatory reform, while maintaining important consumer protections, is essential and we welcome the government’s commitment to achieve this objective.

CPA Australia and CA ANZ also plan to respond to this inquiry as part of a submission to be lodged by the Joint Advice Working Group (JAWG) and have participated in the recent media release<sup>1</sup> on this Bill made by the JAWG.

We encourage the Parliament to progress these urgent reforms as a priority.

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<sup>1</sup> <https://www.charteredaccountantsanz.com/news-and-analysis/media-centre/press-releases/media-statement-from-the-joint-associations-working-group>

### Many clients rely on their accountant who can't help them with basic financial advice needs:

- Accountants play an essential role in helping individuals and businesses manage their financial affairs: around 95% of small businesses use a tax practitioner to manage some or all their tax affairs.
- Accountants walk a legislative tightrope: Given the ambiguity around the current legislation, one slightly wrong step, they could fall into providing unlicensed financial advice and thus be subject to substantial penalties. The regulatory environment should not create such uncertainty and unnecessary risk to accountants.

### The current environment – clients and accountants are frustrated:

- As noted, many people, especially those operating small businesses, rely on their accountant for tax advice each year. Accountants are expected to discuss the advantages and disadvantages of making superannuation contributions yet are unable to discuss the quantum of such contributions, except in very general terms, nor the type of fund that should be used.
- Chapter 7 of the *Corporations Act 2001* defines “financial product advice” and “personal advice” in such a way that it is very difficult to provide information about the above matters without accidentally providing such advice. Accountants therefore potentially face significant penalties for providing unlicensed advice, especially as this area of the law reverses the onus of proof in respect of breaches.
- Correspondingly, our members continually remind us that they find themselves in a conflicting and difficult situation with their clients: our members are seeking to provide simple superannuation advice relating to their tax affairs, but the ‘line in the sand’ between tax advice and licensed financial product advice in relation to superannuation is blurred.
- It is well known that there is a large unmet financial advice need in the community. The research house Investment Trends estimated that in 2023, there were approximately 270,000 Self Managed Superannuation Funds (SMSFs) that do not use a financial adviser and have unmet advice needs
- There are no present government reform projects aimed at solving these problems.

Reform of this area is essential.

## Specific Comments About the DBFO Bill

Our major concern about the DBFO Bill concerns Schedule 1.

### Part 1 – Financial advice fees paid in superannuation

Our concern is that the proposed Section 99FA of the *Superannuation Industry (Supervision) Act 1994* is an inappropriate solution to the payment of personal advice fees from superannuation funds because, in our view, it creates too many risks for the trustees of APRA regulated superannuation funds. We are aware that some superannuation fund trustees will want to actively review every advice document issued by a financial adviser which would be excessive and costly. In addition to this, such work would duplicate work already undertaken by financial advisers.

Some superannuation fund trustees will want to complete these tasks in order to substantiate their fund's tax position under the proposed item 5 in Sec 295-490 contained in the Bill.

The proposed wording of Sec 99FA is complex and will be interpreted in different ways by all stakeholders including trustees, advisers, regulators and others. This will lead to inefficiencies and a lack of certainty.

We believe there are a range of potential solutions that could deliver the following benefits:

- Ensuring consumers are protected
- Super fund trustees are also protected and can claim Reduced Input Tax Credits for GST purposes in full
- Does not lead to any detriment to other fund members
- Takes account the different circumstances of members and their benefits – for example still working and yet to retire, partially retired, fully retired etc
- Is simple and cost effective to administer

As such, we have been working with our colleagues as part of the Joint Associations Working Group (JAWG) to investigate solutions to deliver these benefits.

### Part 2 - Ongoing Fee Arrangements

We are pleased that the Minister will be able to approve an ongoing advice fee form. However, we are concerned that product providers will continue to have the ability to require additional information in relation to the ongoing fee request, which is explicitly specified in the note at the end of subsection 962Y(1). We believe product providers should be allowed to have their own ongoing advice fee form but should also be required to accept the form that the Minister approves.

### Part 3 – Financial Services Guide

We are concerned about the large criminal penalties for breaching these administrative matters. For example, two years jail is proposed for a failure to record changes to website information. We suggest a civil penalty would be more appropriate here.

Sincerely,



**Tony Negline**  
Superannuation  
& Financial Services  
Leader  
Chartered  
Accountants ANZ



**Ram Subramanian**  
Interim Head of  
Policy & Advocacy  
CPA Australia

