

## **EXPLANATORY STATEMENT**

### **Issued by the authority of the Assistant Treasurer**

*Corporations Act 2001*  
*Superannuation Guarantee (Administration) Act 1992*  
*Superannuation Industry (Supervision) Act 1993*  
*Superannuation (Unclaimed Money and Lost Members) Act 1999*

*Treasury Laws Amendment (Protecting Your Superannuation Package)*  
*Regulations 2019*

The *Corporations Act 2001* (the Corporations Act), the *Superannuation Guarantee (Administration) Act 1992* (the SG Act), the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (the SUMLM Act) amongst other things establish Australia's compulsory superannuation system and regulate superannuation savings.

Subsection 1364(1) of the Corporations Act, section 80 of the SG Act, subsection 353(1) of the SIS Act and subsection 50(1) of the SUMLM Act provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The Government announced the *Protecting Your Super Package* in the 2018-19 Budget. The *Protecting Your Super Package* seeks to protect individuals' retirement savings from erosion, ultimately increasing superannuation balances.

The purpose of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* (the Regulations) is to supplement and support the *Protecting Your Super Package*.

The Regulations apply from 1 July 2019.

### **Insurance**

The *Protecting Your Super Package* looks to ensure that arrangements for insurance in superannuation are appropriate and that members are not paying for insurance cover that they do not know about or premiums that inappropriately erode their retirement savings. From 1 July 2019, amendments to the SIS Act mean trustees will be unable to provide insurance by default when an account has been inactive for more than 16 months. A member will have to ask for the insurance to be provided.

The *Corporation Regulations 2001* (the Corporations Regulations) set out the disclosure and notification obligations for a trustee. The Regulations amend the Corporations Regulations to support the insurance changes by setting out:

- when a trustee must notify a member that a member's account has been inactive and that insurance may no longer be offered or maintained without a direction from the member; and

- how a trustee must inform a member that the member can cancel their insurance where the member has previously directed the trustee to take out or maintain insurance coverage.

Amendments are also required to the *Superannuation Guarantee (Administration) Regulations 2018* (SG Regulations) as a result of the changes to the SIS Act which stop insurance on inactive accounts. The Regulations amend the SG Regulations to remove the requirement that an employer make contributions to a fund that offers a certain level of insurance when the trustee cannot offer insurance as a result of the *Protecting Your Super Package*.

### **Fees**

The *Protecting Your Super Package* also protects low superannuation balances by capping the fees that can be deducted during a year. The Regulations amend the *Superannuation (Industry) Supervision Regulations 1994* (SIS Regulations) to set out further detail needed to administer the fee cap including the percentage of the cap and how to determine which fees are capped.

As a result of the fee cap, the Regulations amend the Corporations Regulations to place an obligation on trustees to disclose the fee cap to members in product disclosure statements and periodic statements.

From 1 July 2019, amendments to the SIS Act will also prevent a trustee from charging exit fees. This will remove a possible barrier to account consolidation. The Regulations amend the Corporations Regulations to remove references to ‘exit fees’ in product disclosure statements and other statements as a consequence of the exit fee ban.

### **Consolidation of inactive low balance accounts**

The *Protecting Your Super Package* also gives the Commissioner of Taxation (the Commissioner) additional powers to consolidate certain low balance superannuation accounts without being directed by the member. The Regulations amend the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* (SUMLM Regulations) to support account consolidation by setting out rules to direct the Commissioner to the fund into which amounts should be paid.

The authorising Acts specify no conditions that need to be met before the power to make the Regulations may be exercised.

Public consultation was held on the Regulations for one week. Nine submissions were received predominately from industry members with one submission from a consumer advocate. Treasury also facilitated two discussions with key industry stakeholders.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the day after the regulations were registered.

A Statement of Compatibility with Human Rights is at [Attachment A](#).

Details of the Regulations are set out in [Attachment B](#).

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* (the Regulations) is to supplement and support the *Protecting Your Super Package*.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Details of the Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019**

**Section 1—Name of the Regulations**

This section provides that the title of the Regulations is the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* (the Regulations).

**Section 2—Commencement**

This section sets out the commencement date for the Regulations.

The Regulations commence the day after this instrument is registered.

**Section 3—Authority**

This section provides that the Regulations are made under the Corporations Act, the SG Act, the SIS Act and the SUMLM Act.

**Section 4—Schedules**

This section provides that each instrument specified in a Schedule to the Regulations be amended or repealed as set out in the applicable items in the Schedule concerned and any other item in a Schedule to this instrument have effect according to its terms.

**Insurance information in relation to inactive superannuation accounts**

From 1 July 2019, section 68AAA of the SIS Act will prevent a trustee of a superannuation fund from offering or maintaining insurance for its members holding a MySuper or choice product if the account has been inactive for 16 months or more, unless the member has directed the trustee to maintain the insurance.

Paragraph 1017DA(1)(a) of the Corporations Act allows regulations to prescribe additional obligations on trustees of superannuation funds to provide information on certain matters, including a superannuation product holder's benefit entitlements. Those benefit entitlements include the provision of insurance cover for the member through superannuation products.

The Regulations insert new Regulation 7.9.44B into the Corporations Regulations to require a trustee to notify a member once their account has been inactive, when after a further prescribed period of continued inactivity, insurance will cease to be provided either because of the amendments to the SIS Act or the fund's governing rules. This is intended to give a member an opportunity to take steps to maintain their insurance cover if they wish.

The Regulations also insert new Regulation 7.9.44C to place obligations on the trustee to acknowledge a member's direction to maintain insurance cover even though the member's account may be considered inactive and provide annual reminders to the member.

The Regulations provide that the notices do not need to be given to defined benefit members and Australian Defence Force Super members as the changes in the SIS Act do not apply to those members.

The Regulations also provide that notices are not needed for a member whose employer makes contributions on their behalf, where the contributions cover the full cost of the members' insurance premiums in addition to the employer's superannuation guarantee obligations.

The obligations apply from 1 July 2019.

#### *Notice about inactivity*

The notification obligations are triggered after a period of inactivity. The Regulations insert a definition of *inactive* into the Corporations Regulations.

Item 1 inserts a new regulation, Regulation 7.9.44A into the Corporations Regulations to provide that the definition of *inactive* is the same definition as in the SIS Act. An inactive account will be an account that has not received an amount such as a contribution or a rollover in the previous 16 months.

Item 2 inserts a transitional provision into Chapter 10 of the Corporation Regulations to provide that when considering a period of inactivity, the trustee must include the period before the Regulations commenced.

Item 1 also sets out the periods of inactivity which trigger the requirement to issue an inactivity notice.

These periods are:

- when a member's account has been inactive for a continuous period of time and insurance would cease to be provided if the account continued to be inactive for another seven months;
- when a member's account has been inactive for a continuous period of time and insurance would cease to be provided if the account continued to be inactive for another four months; and
- when a member's account has been inactive for a continuous period of time and insurance would cease to be provided if the account continued to be inactive for another month.

For example, when insurance cover will cease after 16 months of inactivity consistent with the SIS Act, a notice will be required to be sent after 9 months of inactivity, then after 12 months of inactivity and then after 15 months of inactivity.

An inactivity notice is not required if the person has elected to maintain insurance or insurance has already ceased to be provided.

#### *Content of the insurance inactivity notices*

Item 1 inserts a new regulation, Regulation 7.9.44B, which requires a trustee of a superannuation fund to provide an *insurance inactivity notice* to a MySuper or choice member whose account has been inactive for the prescribed period.

The insurance inactivity notice will:

- state the length of time that the member's account has been inactive for the MySuper or choice product and the date on which insurance cover will cease;

- explain that the account will become active if it receives an amount, such as a contribution or rollover;
- state the insurance fee charged for the product in the previous income year and what the insurance fee is likely to be in the current income year;
- explain that the trustee will only be able to offer or maintain insurance on an opt in basis where the account is inactive for 16 months or more, or where insurance will cease after a lesser time of inactivity as a result of the fund's governing rules – explain these rules; and
- set out the methods by which the member can elect to retain insurance if this is possible.

The notices need to be provided to the member within two weeks of the end of the prescribed periods of inactivity.

#### *Notice about the right to cease insurance cover*

Where a member's account is considered inactive and the member has elected to take out or maintain insurance, the member must be made aware of how to cancel the insurance cover in the future.

Item 1 also inserts Regulation 7.9.44C to require a trustee of the fund to provide a notice about rights to cease insurance within two weeks of the member making the election and at certain intervals after that to remind the member that insurance premiums are still being charged to the member's account.

The trustee is able to decide the date the reminder is sent to the member, as long as it is within 15 months of the last notice sent to the member. This will give trustees the flexibility to align the distribution of reminder notices with their ordinary distribution schedule.

The notice about rights to cease insurance cover will:

- explain that the member has elected to take out or maintain insurance cover even though their product has been inactive;
- state the date the election was made; and
- explain how the member can cancel their insurance cover.

#### *Impact on employer's superannuation guarantee obligations*

The insurance requirements set out in the SIS Act have implications for the obligations on an employer under the SG Regulations.

Where the member has not chosen a fund, an employer meets their superannuation guarantee obligations under the SG Act by making contributions for a member to a MySuper product that provides a certain level of death cover.

Items 29 and 33 amend the SG Regulations so that employers will continue to meet their superannuation guarantee obligations when a contribution is made to a fund, on or after 1 July 2019, but insurance is not provided because the trustee is prevented from providing that member with insurance as a result of the changes to the SIS Act.

## **Fee protection**

### *Cap on certain fees and costs*

From 1 July 2019, the SIS Act will apply a cap on the amount of administration fees, investment fees and certain costs that a member can be charged where the balance of the account on the last day of the income year, or the day that the member ceases to hold the account, for a MySuper or choice product is less than \$6,000.

The cap will apply as a percentage of that balance. If the total amount of the administration fees, investment fees and certain costs for the income year charged to a member for a MySuper or choice product is more than the maximum permitted amount calculated using the percentage, the difference must be refunded to the member's account within three months of the end of the fund's income year.

The Regulations amend the SIS Regulations to provide:

- the percentage of the fee cap; and
- how to work out the amount that is subject to the fee cap where the amount is not charged to the member as a fee, is incurred by the trustee and relates to the administration of the fund or the investment of the assets of the fund.

Item 31 amends the SIS Regulations to insert Regulation 9.51 which sets out the percentage of the cap as three per cent of the member's account balance for a product.

Where a member holds a superannuation product with multiple underlying investment options, the total administration and investment fees and certain costs that could be charged for the product (including platform fees, and fees and costs associated with the investment options) will be capped with reference to the sum of the interests held in that product.

Where a member holds interests in respect of MySuper and choice products in a superannuation fund, only the account balance relating to the MySuper product will be assessed separately.

### **Example – Investment platforms**

Sebastian uses a platform to invest his superannuation savings into three investment options: cash, Australian shares and property. On the last day of the income year, each investment option has a balance of \$1,000.

The total administration and investment fees and certain costs that could be charged across the platform will be capped and calculated against the \$3,000 balance of his aggregated interests.

Item 31 also amends the SIS Regulations to insert Regulation 9.50 to provide how to determine the amount that is subject to the fee cap, where the amount is not charged to the member as a fee, is incurred by the trustee and relates to the administration of the fund or the investment of the assets of the fund.

The total amount subject to the cap will include any indirect costs reported, if any, to a member in their periodic statement that are not already included as administration fees or investment fees for the product for the income year. Such indirect costs must

not have been charged to the member as a fee, and must be incurred by the trustee and be related to the administration of the fund or the investment of the fund's assets.

Trustees currently have discretion as to whether costs that are paid out of the superannuation entity are treated as investment fees or indirect costs. In calculating the capped amount, it should not matter whether an amount has been disclosed as an investment fee or indirect cost. Similarly, it should not matter whether an amount has been disclosed as an administration fee or indirect cost.

#### *Trustee ability to refuse to roll over or transfer an amount*

Currently under the SIS Regulations, a trustee of a fund is allowed to refuse to roll over or transfer part of the member's account balance to another fund if the residual balance will be less than \$5,000.

Item 30 amends the SIS Regulations to update that threshold to \$6,000 to align with the balance threshold for the fee cap. The change will mean that the trustee can refuse to roll over or transfer an amount to another fund if the residual balance in the fund will be less than \$6,000.

Item 34 provides that the revised threshold applies to requests made on or after the commencement of the Regulations.

#### *Disclosure of fees and costs – Cap on fees and the exit fee ban*

The SIS Act and the SIS Regulations set out the obligations on a superannuation trustee about the fees and costs charged to the member. However, fees and costs for a product are disclosed to members through product disclosure statements and periodic statements. The Corporations Regulations provide the content and presentation of those documents, including template texts and tables.

Items 6, 7, 9 to 13, 21 to 22, and 24 to 27 amend the Corporations Regulations to update the template texts in product disclosure statements and shorter form product disclosure statements. The updated template texts will explain that certain fees and costs are subject to the cap and any amount charged in excess of the cap must be refunded to the member's account.

Item 20 amends the Corporations Regulation to provide that a periodic statement for a MySuper or choice product must include a statement about the fees and costs being capped and the refund of any excess amounts.

The amendments ensure that members with account balances of less than \$6,000 are aware that certain fees and costs of products are capped. The changes also ensure members are aware of the impact of the cap on their account balances in respect of those products.

Item 2 amends the Corporations Regulations to provide that product disclosure statements given on or after 1 July 2019 must contain the updated information.

Item 2 also amends the Corporations Regulations to provide that periodic statements for reporting periods beginning on or after 1 July 2019 must include the information on the fee caps.



From 1 July 2019, the SIS Act will prohibit exit fees on all superannuation accounts, regardless of a member's account balance.

Similar to the capped fees and costs, exit fees are disclosed to members in product disclosure statements.

Items 3 to 5, 8, 14 to 19, 23 and 28 amend the Corporations Regulations to update or remove references to exit fees in product disclosure statements for superannuation products to reflect that these fees can no longer be charged. These amendments apply to product disclosure statements given on or after 1 July 2019.

### **Reunification of superannuation balances**

From 1 July 2019, the SUMLM Act will allow the Commissioner to pay amounts held in respect of a person to an active account of the person, where the reunited account balance will be \$6,000 or more.

Those amounts are made up of amounts paid to the Commissioner as unclaimed money, inactive low-balance accounts and lost member accounts. However, they exclude any amounts that have already been paid out under Part 3 of the SUMLM Act (unclaimed money), Part 3B (inactive low-balance accounts) or section 24E (lost members).

In addition to the requirement that the reunited account balance will be \$6,000 or more, the fund receiving the reunited amount must have received a contribution or rollover for the person within a certain period prescribed in the regulations. This is to ensure that the account for the person is considered active.

Item 32 inserts Regulation 10 into the SUMLM Regulations to set the period of time in which an amount must have been received by a fund in order to be considered 'active'. This period is the previous financial year and the days in the current financial year before the Commissioner makes the payment to the fund. For example, if the payment day is 1 November 2019, the fund will have needed to receive a contribution or rollover for the person on or after 1 July 2018 and before 1 November 2019 in order to receive the amount.

### *Hierarchy of factors*

Where more than one account across multiple funds meets the requirements, the Regulations amend the SUMLM Regulations to set out the factors the Commissioner must consider in determining into which account to pay the amounts held.

Item 32 will also insert Regulation 10A which sets out the hierarchy of those factors and tiebreaker rules where a specific factor does not determine a single fund to receive the payment. This could happen if the specific factor is met by multiple funds or by none of the funds. The Commissioner considers the factors in light of the information that is reported to the Commissioner or otherwise available at the time.

First, the Commissioner pays the amount to a fund that the Commissioner has made a payment to during the current financial year for the person. This will occur where the Commissioner has already paid amounts for the person under subsection 17(2) and section 20H of the SUMLM Act (unclaimed money), section 20QF (inactive

low-balance accounts), section 24G (lost members) or section 24NA (superannuation balance reunification).

Second, the Commissioner pays the amount to the fund that received the most recent contribution during the previous or current financial year, based on the contribution information reported by funds to the Commissioner.

Third, the amount is paid to the fund that had the largest account balance for the member at the end of the previous financial year.

Finally, the Commissioner has the discretion to determine the fund that the amount is to be paid to.

### **Example – payment order**

The Commissioner holds a consolidated amount of \$3,500 for the person under the SUMLM Act.

The Commissioner intends to pay the consolidated amount to the person's active account on 1 November 2019 and has the following available information for the person at that time.

<i>Fund name</i>	<i>Date of last contribution</i>	<i>Account balance on 30 June 2019</i>
Fund A	20 April 2018	\$12,500
Fund B	31 October 2018	\$3,100
Fund C	23 February 2019	\$3,500
Fund D	23 February 2019	\$4,000
Fund E	31 May 2019	\$2,000

As the payment day is 1 November 2019, the fund must have received a contribution or rollover on or after 1 July 2018 and before 1 November 2019 (the prescribed period) in order to receive the consolidated amount.

The last amount received by Fund A is before the prescribed period, so the consolidated amount cannot be paid to Fund A under subsection 24NA(2).

The requirement for the reunited account balance to be \$6,000 or more means that Fund E also cannot receive the consolidated amount under subsection 24NA(2) as the reunited balance for the person's account in Fund E would be \$5,500.

As Funds B, C and D received contributions within the prescribed period and the reunited amounts would be more than \$6,000, they are all eligible funds under subsection 24NA(2). The Commissioner will pay the amount to one of those funds in accordance with the hierarchy of factors.

1. The Commissioner has not made a payment for the person under Part 3 of the SUMLM Act (unclaimed money), Part 3B (inactive low-balance accounts) or section 24E (lost members) to Fund B, C or D on or after 1 July 2019.
2. The most recent contribution for the person was received on 23 February 2019 by both Funds C and D.
3. Out of Funds C and D, the largest account balance for the member at the end of the previous financial year, 30 June 2019, was held by Fund D.

Therefore, the Commissioner would pay \$3,500 to Fund D on 1 November 2019.