

EXPLANATORY MATERIALS

Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019

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

The Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 passed Parliament on 18 February 2019.

The purpose of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2018* (the Regulations) is to supplement and support the *Protecting Your Super* reforms.

The *Protecting Your Super* reforms look 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. As part of the *Protecting Your Super* reforms, trustees will be unable to provide insurance by default when an account has been inactive for more than 16 months.

Insurance

The Regulations will amend the *Corporations Regulations 2001* (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.

As a result of the changes to insurance, amendments are also required to the *Superannuation Guarantee (Administration) Regulations 1993* (SG Regulations). The Regulations will 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* reforms.

Fees

The *Protecting Your Super* reforms also look to protect low balance superannuation by capping the fees that can be deducted during a year. The Regulations will 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 will amend the Corporations Regulations to place an obligation on trustees to disclose the fee cap to members in product disclosure statements and periodic statements.

Consolidation of inactive low balance accounts

The *Protecting Your Super* reforms also ban exit fees to remove a possible barrier to account consolidation. The Regulations will amend the Corporations Regulations to remove references to ‘exit fees’ as a consequence of the exit fee ban.

The *Protecting Your Super* reforms also give the Commissioner of Taxation additional powers to consolidate low balance superannuation accounts without being directed by the member. The Regulations will 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.

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

The Regulations commence the day after being registered and apply from 1 July 2019.

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 will set out the commencement dates for the various parts of the Regulations.

The Regulations will commence on the later of the day after this instrument is registered.

Section 3—Authority

This section will provide that the Regulations are made under the Corporations Act, the SGA 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 and one of those matters is a superannuation product holder's benefit entitlements. Those benefit entitlements include the provision of insurance cover for the member through superannuation products.

The Regulations will insert new regulations into the Corporations Regulations to require a trustee to notify a member once their account has been inactive for nine, 12 and 15 months, giving the member an opportunity to take steps to maintain their insurance cover if they wish.

The Regulations will also 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 will 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 will also provide that notices are needed for a member whose employer makes contributions on their behalf, which 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 will be triggered after a period of inactivity. The Regulations will insert a definition of *inactive* into the Corporations Regulations.

Item 1 will insert 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 will insert 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.

What should be included in the inactivity notices?

Item 1 will insert a new regulation, Regulation 7.9.44B to require a trustee of a superannuation fund to provide an *insurance inactivity notice* to a MySuper or choice member whose account has been inactive for nine and 12 months if the member has not elected to take out or maintain insurance.

The insurance inactivity notice will:

- state the length of time that the member's account has been inactive in relation to the MySuper or choice product and the date on which the account will be inactive for 16 months;
- 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;
- explain that the trustee will only be able to offer or maintain insurance for its MySuper or choice members from 1 July 2019 on an opt in basis where the account is inactive for 16 months or more;
- set out the methods by which the member can opt in; and
- explain that the member's right to be covered by insurance is unaffected until the end of the period for which premiums have been charged or the expiry date of the term of the member's existing insurance contract.

The notices need to be provided to the member within two weeks of the end of the nine and 12 month periods of inactivity.

Regulation 7.9.44B will require a trustee to provide a *final inactivity notice* to a MySuper or choice member whose account has been inactive for 15 months and the member has not elected to take out or maintain insurance.

The final insurance inactivity notice will be required to cover the same matters as the insurance inactivity notice and state the date on which the insurance cover will cease if the account continued to have no activity. The notice will need to be provided to the member within two weeks of the end of the 15 month period 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 will insert 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 to acknowledge 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 will be able to decide the date that the annual 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 account may not have received contributions or rollovers in the previous 16 months;
- 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 SGA Regulations.

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

Items 29 and 33 will amend the SGA 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 will amend the SIS Regulations to provide:

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

Item 31 will amend 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.

Item 31 will also amend the SIS Regulations to insert Regulation 9.50 to provide how to determine the amount that is subject to the cap, but which is not charged to the member as a fee, but 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 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.

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.

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 will amend 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 will provide that the revised threshold applies to requests made on or after the commencement of the Regulations.

Disclosure of fees and costs

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, 22, 24 and, 25 to 27 will 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 will amend 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, if it has not been covered elsewhere in the periodic statement.

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 will amend the Corporations Regulations to provide that product disclosure statements or periodic statements given on or after 1 July 2019 must contain the updated information.

Prohibition of exit fees

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 will amend the Corporations Regulations to update or remove references to exit fees for superannuation products, to reflect that these fees can no longer be charged for superannuation products. These amendments apply to periodic 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 will insert 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 will 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 will consider 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 will have 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 section 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.