

EXPOSURE DRAFT



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Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Stuart Robert
Assistant Treasurer

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1 Name

This instrument is the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Corporations Act 2001*;
- (b) the *Superannuation Guarantee (Administration) Act 1992*;
- (c) the *Superannuation Industry (Supervision) Act 1993*;
- (d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

Part 1 Amendments

Schedule 1—Amendments

Part 1—Amendments

Corporations Regulations 2001

1 After Subdivision 5.8 of Division 5 of Part 7.9

Insert:

Subdivision 5.8A—Information in relation to inactive superannuation accounts

7.9.44A Meaning of *inactive*

In this Subdivision, a member of a regulated superannuation fund has an account that is *inactive* in relation to a choice product or a MySuper product for a period if the member has an account that is inactive in relation to the product for the period within the meaning of subsection 68AAA(3) of the SIS Act.

7.9.44B Notices about insurance—inactivity

- (1) This regulation is made for the purposes of paragraph 1017DA(1)(a) of the Act.

Application

- (2) This regulation applies if:
- (a) a member of a regulated superannuation fund holds a choice product or a MySuper product offered by the fund; and
 - (b) the fund provides a benefit to, or in respect of, the member under the product by taking out or maintaining insurance; and
 - (c) the member has not made an election, under subsection 68AAA(2) of the SIS Act, that the benefit will be provided to, or in respect of, the member under the product by taking out or maintaining insurance even if the member's account is inactive in relation to the product for a continuous period of 16 months.
- (3) However, this regulation does not apply in relation to:
- (a) a defined benefit member; or
 - (b) an ADF Super member (within the meaning of the *Australian Defence Force Superannuation Act 2015*); or
 - (c) a person who would be an ADF Super member apart from the fact that the regulated superannuation fund is or was, for the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, a chosen fund for contributions for the person's superannuation by the Commonwealth; or
 - (d) a member to whom the employer-sponsor contribution exception applies under section 68AAE of the SIS Act.

Notices about insurance

- (4) Each trustee of the regulated superannuation fund must ensure that:
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- (a) if the member's account has been inactive in relation to the product for a continuous period of 9 months—the member is given an insurance inactivity notice in relation to the benefit; and
 - (b) if the member's account has been inactive in relation to the product for a continuous period of 12 months—the member is given an insurance inactivity notice in relation to the benefit; and
 - (c) if the member's account has been inactive in relation to the product for a continuous period of 15 months—the member is given a final insurance inactivity notice in relation to the benefit.
- (5) For the purposes of subregulation (4), an *insurance inactivity notice* in relation to the benefit is a notice in writing given to the member:
- (a) stating the length of the continuous period for which the member's account has been inactive in relation to the product under which the benefit is provided; and
 - (b) explaining that the member's account will be active in relation to the product if an amount, such as a contribution, is paid into the account; and
 - (c) stating the date on which, if there is no activity, the member's account becomes inactive in relation to the product for a continuous period of 16 months; and
 - (d) stating the amount of insurance fee charged in relation to the product for the fund's most recent completed year of income; and
 - (e) explaining that, under section 68AAA of the SIS Act, on and after 1 July 2019 the fund cannot provide the benefit to, or in respect of, the member under the product by taking out or maintaining insurance if:
 - (i) the member's account is inactive in relation to the product for a continuous period of 16 months; and
 - (ii) the member has not made an election, under subsection 68AAA(2) of the SIS Act, that the benefit will be provided to, or in respect of, the member under the product by taking out or maintaining insurance even if the member's account is inactive in relation to the product for a continuous period of 16 months; and
 - (f) setting out the method by which the member can make an election of the kind mentioned in subparagraph (e)(ii); and
 - (g) explaining that section 68AAA of the SIS Act does not affect a right of the member in relation to insurance that is covered by subsection 68AAA(7) or (8) of that Act.

Note: Subsections 68AAA(7) and (8) of the SIS Act cover certain rights of a member of a regulated superannuation fund that exist before the occurrence of conduct required by section 68AAA of that Act.

- (6) For the purposes of subregulation (4), a *final insurance inactivity notice* in relation to the benefit is a notice in writing given to the member:
- (a) stating that the member's account has been inactive in relation to the product under which the benefit is provided for a continuous period of 15 months; and
 - (b) explaining that the member's account will be active in relation to the product if an amount, such as a contribution, is paid into the account; and
 - (c) stating:

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Schedule 1 Amendments

Part 1 Amendments

- (i) the date on which, if there is no activity, the member's account becomes inactive in relation to the product for a continuous period of 16 months; and
- (ii) the date on which, if there is no activity, insurance cover for the member will cease; and
- (d) stating the amount of insurance fee charged in relation to the product for the fund's most recent completed year of income; and
- (e) explaining that, under section 68AAA of the SIS Act, on and after 1 July 2019 the fund cannot provide the benefit to, or in respect of, the member under the product by taking out or maintaining insurance unless:
 - (i) the member's account ceases to be inactive in relation to the product; or
 - (ii) the member makes an election, under subsection 68AAA(2) of the SIS Act, that the benefit will be provided to, or in respect of, the member under the product by taking out or maintaining insurance even if the member's account is inactive in relation to the product for a continuous period of 16 months; and
- (f) setting out the method by which the member can make an election of the kind mentioned in subparagraph (e)(ii); and
- (g) explaining that section 68AAA of the SIS Act does not affect a right of the member in relation to insurance that is covered by subsection 68AAA(7) or (8) of that Act.

Note: Subsections 68AAA(7) and (8) of the SIS Act cover certain rights of a member of a regulated superannuation fund that exist before the occurrence of conduct required by section 68AAA of that Act.

Time for giving notice

- (7) If a trustee of a regulated superannuation fund is required under subregulation (4) to ensure that a member of the fund is given a notice in relation to a benefit provided to the member under a product offered by the fund, the notice must be given:
 - (a) if paragraph (4)(a) applies—within the period of 2 weeks after the day on which the member's account becomes inactive in relation to the product for a continuous period of 9 months; and
 - (b) if paragraph (4)(b) applies—within the period of 2 weeks after the day on which the member's account becomes inactive in relation to the product for a continuous period of 12 months; and
 - (c) if paragraph (4)(c) applies—within the period of 2 weeks after the day on which the member's account becomes inactive in relation to the product for a continuous period of 15 months.

7.9.44C Notices about insurance—right to cease insurance cover

- (1) This regulation is made for the purposes of paragraph 1017DA(1)(a) of the Act.

Application

- (2) This regulation applies if:
 - (a) a member of a regulated superannuation fund holds a choice product or a MySuper product offered by the fund; and

- (b) the fund provides a benefit to, or in respect of, the member under the product by taking out or maintaining insurance; and
 - (c) the member has made an election, under subsection 68AAA(2) of the SIS Act, that the benefit will be provided to, or in respect of, the member under the product by taking out or maintaining insurance even if the member's account is inactive in relation to the product for a continuous period of 16 months.
- (3) However, this regulation does not apply in relation to:
- (a) a defined benefit member; or
 - (b) an ADF Super member (within the meaning of the *Australian Defence Force Superannuation Act 2015*); or
 - (c) a person who would be an ADF Super member apart from the fact that the regulated superannuation fund is or was, for the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, a chosen fund for contributions for the person's superannuation by the Commonwealth; or
 - (d) a member to whom the employer-sponsor contribution exception applies under section 68AAE of the SIS Act.
- (4) Each trustee of the regulated superannuation fund must ensure that the member is given a notice about rights to cease insurance in relation to the benefit:
- (a) within 2 weeks after the day on which the member makes the election mentioned in paragraph (2)(c) in relation to the benefit; and
 - (b) after the first notice about rights to cease insurance in relation to the benefit is given, at regular intervals of no more than 15 months.
- (5) For the purposes of subregulation (4), a ***notice about rights to cease insurance*** in relation to a benefit is a notice in writing given to the member:
- (a) explaining that the member has elected, under subsection 68AAA(2) of the SIS Act, that the benefit will be provided to, or in respect of, the member under the product by taking out or maintaining insurance even if the member's account is inactive in relation to the product for a continuous period of 16 months; and
 - (b) stating the date on which, and the manner in which, the member made that election; and
 - (c) explaining what the member needs to do if the member wishes to cease to obtain the benefit.

2 In the appropriate position in Chapter 10

Insert:

Part 10.29—Application and transitional provisions relating to the Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019

10.29.01 Definitions

In this Part:

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Schedule 1 Amendments

Part 1 Amendments

amending regulations means the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019*.

10.29.02 Transitional provisions relating to regulation 7.9.44B

For the purposes of regulation 7.9.44B, as inserted by item 1 of Schedule 1 to the amending regulations, a period during which a member's account is inactive in relation to a choice product or a MySuper product offered by a regulated superannuation fund is to be taken into account even if the period begins before the commencement of that Schedule.

10.29.03 Application of amendments relating to product disclosure statements

The amendments made by items 3 to 28 of Schedule 1 to the amending regulations apply in relation to product disclosure statements given on and after 1 July 2019.

10.29.04 Application of amendments relating to periodic statements

The amendments made by items 3 to 28 of Schedule 1 to the amending regulations apply in relation to periodic statements given on and after 1 July 2019.

3 Clause 101 of Schedule 10 (paragraph (a) of the definition of *exit fee*)

Omit "subsection 29V(6)", substitute "subsection 99BA(2)".

4 Clause 101 of Schedule 10 (definition of *withdrawal fee*)

After "*withdrawal fee*", insert ", for a collective investment product,".

5 Clause 201 of Schedule 10

After "Other fees, such as activity fees, advice fees for personal advice and insurance fees, may also be charged, but these will depend on the nature of the activity, advice or insurance chosen by you.", insert "Entry fees and exit fees cannot be charged.".

6 Clause 201 of Schedule 10 (table item dealing with *Investment fee*)

Omit "*Investment fee*", substitute "*Investment fee*".

7 Clause 201 of Schedule 10 (table item dealing with *Administration fee*)

Omit "*Administration fee*", substitute "*Administration fee*".

8 Clause 201 of Schedule 10 (table item dealing with *Exit fee*)

Repeal the item.

9 Clause 201 of Schedule 10 (table item dealing with *Other fees and costs*)

Omit "*Other fees and costs*", substitute "*Other fees and costs*".

10 Clause 201 of Schedule 10 (table item dealing with *Indirect cost ratio*)

Omit "*Indirect cost ratio*", substitute "*Indirect cost ratio*".

11 Clause 201 of Schedule 10 (before the note)

Insert:

1. If your account balance for a product offered by the superannuation entity is less than \$6,000 at the end of the entity's income year, the total combined amount of administration fees, investment fees and indirect costs charged to you is capped at 3% of the account balance. Any amount charged in excess of that cap must be refunded.

12 Clause 201 of Schedule 10 (note)

Omit "1.", substitute "2."

13 Paragraph 209(a) of Schedule 10

Omit "footnote 1 for superannuation products", substitute "footnote 2 for superannuation products".

14 Clause 209A of Schedule 10 (paragraph (b) of the definitions of *activity fee*, *administration fee* and *advice fee*)

Omit "an exit fee,".

15 Clause 209A of Schedule 10

Omit:

Exit fees

An *exit fee* is a fee to recover the costs of disposing of all or part of the members' interests in the superannuation entity.

substitute:

Exit fees

An *exit fee* is a fee, other than a buy-sell spread, that relates to the disposal of all or part of a member's interests in a superannuation entity.

16 Clause 209A of Schedule 10 (subparagraph (b)(ii) of the definition of *investment fee*)

Omit "an exit fee,".

17 Clause 211 of Schedule 10 (note)

Omit "And, if you leave the superannuation entity early, you may also be charged **exit fees** of between 0% and 5% of your total account balance (between \$0 and \$2 500 for every \$50 000 you withdraw).".

18 Clause 216 of Schedule 10

Omit "If an exit fee may be charged, it", substitute "If an exit fee may be charged in relation to a collective investment product, the fee".

19 Subclause 219(1) of Schedule 10

Omit "a superannuation product or".

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Schedule 1 Amendments

Part 1 Amendments

20 At the end of subclause 303(1) of Schedule 10

Add:

- ; (c) a statement that if the account balance for a MySuper product or a choice product offered by the superannuation entity is less than \$6,000 at the end of the entity's income year:
 - (i) the total combined amount of administration fees, investment fees and indirect costs charged in relation to the MySuper product or a choice product is capped at 3% of the account balance; and
 - (ii) any amount charged in excess of that cap must be refunded.

21 Subclause 8(3) of Schedule 10D (table item dealing with Investment fee)

Omit "*Investment fee*", substitute "*Investment fee*".

22 Subclause 8(3) of Schedule 10D (table item dealing with Administration fee)

Omit "*Administration fee*", substitute "*Administration fee*".

23 Subclause 8(3) of Schedule 10D (table item dealing with Exit fee)

Repeal the item.

24 Subclause 8(3) of Schedule 10D (table item dealing with Other fees and costs)

Omit "*Other fees and costs*", substitute "*Other fees and costs*".

25 Subclause 8(3) of Schedule 10D (table item dealing with Indirect cost ratio)

Omit "*Indirect cost ratio*", substitute "*Indirect cost ratio*".

26 Subclause 8(3) of Schedule 10D (before the note)

Insert:

1. If your account balance for a product offered by the superannuation entity is less than \$6,000 at the end of the entity's income year, the total combined amount of administration fees, investment fees and indirect costs charged to you is capped at 3% of the account balance. Any amount charged in excess of that cap must be refunded.

27 Subclause 8(3) of Schedule 10D (note)

Omit "1.", substitute "2."

28 Paragraph 8(6A)(a) of Schedule 10D

After "section 29V", insert "or subsection 99BA(2)".

Superannuation Guarantee (Administration) Regulations 2018

29 At the end of section 14

Add:

- (7) The requirement in subsection (1) does not apply to an employer if, under section 68AAA of the *Superannuation Industry (Supervision) Act 1993*, insurance in the event of the death of the employee is not to be provided.

Superannuation Industry (Supervision) Regulations 1994

30 Paragraph 6.35(1)(b)

Omit “\$5 000”, substitute “\$6,000”.

31 At the end of Part 9AA

Add:

9.50 Capped fees and costs

- (1) This regulation is made for the purposes of paragraph 99G(3)(c) of the Act.
- (2) The amount prescribed as part of the capped fees and costs charged to a member of a regulated superannuation fund in relation to a MySuper product or choice product for a year of income of the fund is so much of the indirect cost of the MySuper product or the choice product for the year that is required to be reported to the member under section 1017D of the *Corporations Act 2001* as:
 - (a) is not charged to the member as a fee; and
 - (b) is incurred by the trustee or the trustees of the fund in relation to the year; and
 - (c) relates to the administration of the fund or investment of the assets of the fund.

9.51 Fee cap percentage

For the purposes of subsection 99G(4) of the Act, the fee cap percentage is 3%.

Note: The fee cap percentage prescribed in this regulation would also apply in relation to subsections 99G(2) and (5) of the Act as those subsections are affected by item 20 of Schedule 1 to the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019*.

Superannuation (Unclaimed Money and Lost Members) Regulations 1999

32 After Part 4

Insert:

Part 5—Reunification of superannuation balances

10 Transferring balances to an active account—eligible fund

For the purposes of paragraph 24NA(2)(c) of the Act, the period prescribed is the period:

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Schedule 1 Amendments

Part 1 Amendments

- (a) beginning on the first day of the financial year immediately preceding the financial year in which the payment by the Commissioner under subsection 24NA(2) of the Act is made; and
- (b) ending on the day immediately preceding the day on which the payment by the Commissioner under subsection 24NA(2) of the Act is made.

10A Transferring balances to an active account—more than one eligible fund

- (1) This regulation is made for the purposes of subsection 24NA(3) of the Act.
- (2) This regulation applies if:
 - (a) under subsection 24NA(1) of the Act, the Commissioner holds a superannuation amount (within the meaning of that subsection) in respect of a person; and
 - (b) there is more than one fund in relation to which paragraphs 24NA(2)(b), (c), (d) and (e) of the Act are satisfied in respect of the person (there is more than one *eligible fund*).
- (3) The Commissioner must pay the superannuation amount in respect of the person in accordance with this regulation.
- (4) The Commissioner must pay the superannuation amount in respect of the person to the following eligible fund for crediting to the person:
 - (a) if the Commissioner has made a payment under subsection 17(2) or section 20H, 20QF, 24G or 24NA of the Act to an eligible fund for crediting to the person during the financial year in which the payment day for the superannuation amount occurs—that eligible fund;
 - (b) if paragraph (a) does not apply—the eligible fund that most recently received an amount in respect of the person during the financial year in which the payment day for the superannuation amount occurs or the immediately preceding financial year;
 - (c) if paragraphs (a) and (b) do not apply—the eligible fund that holds the largest account balance for the person at the end of the last completed financial year preceding the payment day for the superannuation amount;
 - (d) if paragraphs (a), (b) and (c) do not apply—the eligible fund determined by the Commissioner.
- (5) In this regulation:

payment day, for a superannuation amount in respect of a person, is the day on which the Commissioner pays the superannuation amount to a fund in accordance with this regulation.

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Amendments **Schedule 1**
Application of amendments **Part 2**

Part 2—Application of amendments

Superannuation Guarantee (Administration) Regulations 2018

33 In the appropriate position in Part 8

Insert:

27 Application—insurance requirements after amendment made by the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019*

The amendment made by item 29 of Schedule 1 to the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* applies in relation to contributions made on or after 1 July 2019.

Superannuation Industry (Supervision) Regulations 1994

34 In the appropriate position in Part 14

Insert:

Division 14.19—Transitional arrangements arising out of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019*

14.19 Arrangements relating to when a trustee may refuse to roll over or transfer an amount

The amendment made by item 30 of Schedule 1 to the *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* applies in relation to requests to roll over or transfer an amount under regulation 6.34 of these Regulations made on or after the commencement of this item.