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# PROTECTING YOUR SUPERANNUATION PACKAGE

## What Superannuation Trustees Need to Do and When

Geoff Sanders and Zoe Chapman

**R**ecently passed legislation, part of a package of reforms designed to 'protect Australians' superannuation savings from undue erosion by fees and insurance premiums', introduces a series of important changes that will create challenging implementation timeframes for funds and administrators in the coming months. This paper reports on the effects of the amendments, and what they mean for trustees of superannuation funds.

### Background

The Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 (the **Bill**) passed both Houses of Parliament on 18 February 2019, and is awaiting Royal Assent. The Bill formed part of the Federal Government's package of reforms of the same name, announced in the 2018-19 Budget.

While last-minute Senate amendments to the Bill did narrow its scope somewhat (including that the requirement to opt-into insurance will no longer automatically apply to under-25-year-old members and to accounts with balances below \$6,000), the Bill nonetheless introduces a series of significant reforms.

### Insurance for 'inactive' accounts to be provided on an opt-in basis only

#### What is it?

The Bill will amend the *Superannuation Industry (Supervision) Act 1993* (Cth) (the **SIS Act**) to insert a new section 68AAA, which prohibits trustees from providing automatic insurance coverage to members holding 'inactive' accounts (whether in a MySuper or choice account setting), unless the member positively elects to maintain the cover.

An 'inactive' account is defined for the purposes of the insurance opt-in rules as one in respect of which no contribution has been received (from any source) for a continuous period of 16 months (extended from 13 months under the original proposals, to accommodate longer planned absences from the workforce).

The Bill contains exemptions from the new prohibition for various groups of members, including defined benefit members, and for members whose employer-sponsor pays for their insurance. Rules also apply to ensure that insurance that has, in effect, been pre-paid continues in effect even where a member subsequently becomes 'inactive'.

#### Implications for superannuation trustees

The prohibition in s68AAA of the SIS Act commences on 1 July 2019. However, superannuation trustees have significant work to do before then.



### The quote

*The ban on exit fees will commence on 1 July 2019. Any trustee that currently charges an exit fee will need to review its current fee structure immediately.*

### Steps required in lead-up to 1 July 2019

- The first deadline for trustees is 1 April 2019, being the date by which trustees must have identified members that have been inactive for a continuous period of six months (or more) before that date – in effect, a first test run of the systems that will need to be put in place to monitor 'inactive' members.
- Following that, on or before 1 May 2019, trustees must provide a notice in writing to each of those members, stating that (from 1 July) insurance will not be provided if the member's account is inactive for a continuous period of 16 months and the member does not opt-in to insurance.
- It is important to note that a member's period of 'inactivity' can commence before 1 July 2019 – i.e. it will be necessary for trustees to be in a position to be able to 'turn-off' insurance immediately come 1 July 2019 for any member who has been inactive for 16 months before that date.
- Trustees will also need to work through the (less than straightforward, given the somewhat unfortunate use of 'product' and 'account' references in the legislation) question of which 'accounts' of a member might be captured as 'inactive' by the new rules as a result of a period of inactivity, particularly in fund structures where (as is commonly the case) there is no clear distinction between the MySuper account and the choice account of the same member, and/or where members have multiple accounts or even merely investments in multiple investment options in the same fund.

### Ongoing trustee obligations

- Once the regime is in full swing, trustees will need to ensure that they have ongoing arrangements in place to be able to identify members at risk of becoming 'inactive'.
- In particular, trustees are required to warn members on three separate occasions before ceasing their insurance benefits under s68AAA – these warnings (which must contain certain prescribed information) will be contained in 'insurance inactivity notices', required to be issued within two weeks after a member's account has been inactive for a period of nine, 12 and 15 months.

### Ban on exit fees

#### What is it?

A new s99BA of the SIS Act will prohibit the payment of all exit fees from superannuation (excluding buy-sell spreads).

Various consequential amendments to the MySuper fee rules and *Corporations Act 2001* (Cth) disclosure requirements are contained in the Bill, to flow the new exit fee ban through the regulatory framework.

#### Implications for superannuation trustees

As for the insurance changes, the ban on exit fees will commence on 1 July 2019. Any trustee that currently charges an exit fee will need to review its current fee

structure immediately, and implement the necessary product and disclosure changes to ensure exit fees are not charged on or after that date.

### Capped fees for low balance accounts

#### What is it?

A new rule in s99G of the SIS Act will operate to limit the aggregate amount of administration fees, investment fees and indirect costs able to be charged for each fund financial year to no more than 3% pa of a member's account balance.

The cap applies to any account (again, whether a choice or MySuper account) where the member's account balance is less than \$6,000 on the last day of a financial year (noting that testing is only done at that single point in time).

#### Implications for superannuation trustees

The fee cap on low balance accounts commences on 1 July 2019 (i.e. such that the cap applies to fees charged for the period on and from 1 July 2019), so trustees will need to start work now to ensure that they can identify affected accounts, and to put in place the arrangements to ensure the fee cap rules are met for affected accounts by the end of the next financial year for their fund (i.e. ending any time on and from 1 July 2019).

A few practical points to note on the operation of the fee cap:

- While trustees are permitted to put in place arrangements to ensure fees are capped in advance for affected accounts, in practical terms we expect most trustees to take advantage of the rules permitting them to charge uncapped fees during the year, and to refund fees in excess of the cap for affected accounts to the member within three months after the end of the relevant financial year.
- The Bill includes transitional arrangements if the financial year of a fund ends on a day other than 30 June – in those circumstances, a transitional arrangement will apply that seeks to pro rate the fee cap for the first financial year of operation of the rule (i.e. such that the cap still applies to fees relating to the period after 1 July 2019).
- Similar to the issue described above in relation to the insurance changes, trustees will need to closely examine their fund and account structure, to determine what an 'account' means in the context of their fund (noting the legislation is clear that where there are separate 'accounts', the fee cap is to apply on a per account basis, even if the total amount the member has invested in the fund exceeds \$6,000).

### Requirement to transfer low balance accounts to the ATO

#### What is it?

The Bill will amend the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth) to introduce a new requirement for trustees to identify, and ultimately

transfer to the ATO, the account balances of 'inactive low-balance account' members.

An account (which again includes MySuper and choice accounts but not defined benefit accounts) in a fund is an 'inactive low-balance account' if:

- it is an account in respect of which no contribution has been received for 16 months;
- the balance of the account is less than \$6,000; and
- the member has not taken certain other actions within that 16-month period that demonstrate some engagement with the fund, such as changing their insurance or investment arrangements, or making a death benefit nomination.

The Bill also contains arrangements to ensure that, where possible, amounts transferred by funds to the ATO are ultimately reunited with the member by the ATO.

#### **Implications for superannuation trustees**

As with the other reforms, work will be required in the coming months to put in place the necessary administrative arrangements to ensure the ATO transfer requirements can be met.

Relevantly, trustees will need processes in place to:

- Identify each 'inactive low-balance account' as at 31 December and 30 June each year (with the first testing date being 30 June 2019); and
- Report the details of those inactive accounts to the ATO on the following 30 April (for the 31 December testing date) and 31 October (for the 30 June testing date) and, provided the accounts remain inactive at that time, transfer the balance of those accounts to the ATO.

Accordingly, trustees should be in a position to lodge statements of affected members with (and transfer their associated account balances to) the ATO on 31 October 2019. **FS**