





# **Treasury Laws Amendment (Putting Members' Interests First) Act 2019**

**No. 79, 2019**

**An Act to amend the law relating to superannuation, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (Putting Members' Interests First) Act 2019

No. 79, 2019

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## An Act to amend the law relating to superannuation, and for related purposes

[Assented to 2 October 2019]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (Putting Members' Interests First) Act 2019*.

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## 2 Commencement

- (1) Each provision of this Act 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	3 October 2019

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Low-balance accounts and members under 25**

### **Part 1—Amendments**

#### ***Superannuation Industry (Supervision) Act 1993***

##### **1 After section 68AAA**

Insert:

##### **68AAB Benefits provided by taking out insurance—low-balance accounts**

- (1) Each trustee of a regulated superannuation fund must ensure that a benefit is not provided by the fund to, or in respect of, a member of the fund under a choice product or MySuper product held by the member by taking out or maintaining insurance if:
  - (a) the member has an account balance with the fund that relates to the product that is less than \$6,000; and
  - (b) on or after 1 November 2019, the member has not had an account balance with the fund that relates to the product that was equal to or greater than \$6,000; and
  - (c) the member has not elected under subsection (2) 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 has an account balance with the fund that relates to the product that is less than \$6,000.

Note: This section does not apply in relation to regulated superannuation funds with fewer than 5 members (see section 68AAD).

- (2) Each trustee of the regulated superannuation fund must ensure that each member of the fund who holds a choice product or MySuper product offered by the fund may elect, in writing, that a benefit specified in the election is to be provided to, or in respect of, the member under the product by taking out or maintaining insurance, even if the member has an account balance with the fund that relates to the product that is less than \$6,000.

- (3) The member is taken to have made an election under subsection (2) if the member makes an election under subsection 68AAC(2).
- (4) This section does not apply 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 (see section 68AAE); or
  - (e) a member to whom the dangerous occupation exception applies (see section 68AAF).
- (5) Nothing in this section affects a right of a member of a regulated superannuation fund if:
- (a) the right relates to insurance cover; and
  - (b) in compliance with this section, an insurance premium in relation to the member for that insurance cover ceases to be paid; and
  - (c) the right exists because of insurance premiums paid in relation to the member before insurance premiums cease to be paid as mentioned in paragraph (b).
- (6) Nothing in this section affects a right of a member of a regulated superannuation fund if:
- (a) the right is a right to insurance cover for a fixed term, subject only to the payment of insurance premiums; and
  - (b) that fixed term begins before the time at which a trustee of the fund is required under subsection (1) to ensure that a benefit is not provided to, or in respect of, the member under a choice product or MySuper product held by the member by taking out or maintaining insurance.

**68AAC Benefits provided by taking out insurance—members under 25 years old**

- (1) Each trustee of a regulated superannuation fund must ensure that a benefit is not provided by the fund to, or in respect of, a member of the fund under a choice product or MySuper product held by the member by taking out or maintaining insurance if:
- (a) the member is under the age of 25 years; and
  - (b) the member has not elected under subsection (2) 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 is under the age of 25 years.

Note: This section does not apply in relation to regulated superannuation funds with fewer than 5 members (see section 68AAD).

- (2) Each trustee of the regulated superannuation fund must ensure that each member of the fund who holds a choice product or MySuper product offered by the fund and who is under the age of 25 years may elect, in writing, that a benefit specified in the election is to be provided to, or in respect of, the member under the product by taking out or maintaining insurance, even if the member is under the age of 25 years.
- (3) The member is taken to have made an election under subsection (2) if the member makes an election under subsection 68AAB(2).
- (4) This section does not apply 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 (see section 68AAE); or
  - (e) a member to whom the dangerous occupation exception applies (see section 68AAF).

## 2 Section 68AAD (heading)

Omit “Section 68AAA does not apply”, substitute “Sections 68AAA, 68AAB and 68AAC do not apply”.

## 3 Section 68AAD

Omit “Section 68AAA does not apply”, substitute “Sections 68AAA, 68AAB and 68AAC do not apply”.

## 3A After section 68AAE

Insert:

### 68AAF Dangerous occupation exception

- (1) The *dangerous occupation exception* applies to a member of a regulated superannuation fund to, or in respect of, whom a benefit is provided by the fund under a choice product or MySuper product held by the member by taking out or maintaining insurance if:
  - (a) the trustee or trustees of the fund make an election under this section that members holding that product will be covered by a dangerous occupation exception if they are employed in an occupation specified in the election; and
  - (b) the election is in force; and
  - (c) the member is employed in an occupation specified in the election; and
  - (d) it is reasonable to expect that some or all of the contributions paid into the product will be paid in respect of that employment.
- (2) The trustee, or trustees, of a regulated superannuation fund may elect that members holding a choice product or MySuper product specified in the election are covered by a dangerous occupation exception if they are employed in an occupation specified in the election and either:
  - (a) a Fellow of the Institute of Actuaries of Australia has certified that:
    - (i) based on rates of death, or death and total and permanent disability; and
    - (ii) using information from the most recent 5 years in relation to Australian occupations;

- the occupation is in the riskiest quintile of Australian occupations; or
- (b) the occupation is as an emergency services worker (as defined for the purposes of the *Work Health and Safety Act 2011*).
- (3) The election must be made in writing.
- (4) The election is *in force* during the period:
- (a) beginning on the day on which a copy of the election is given to APRA; and
- (b) ending on the day on which the trustee, or the trustees, of the fund give APRA notice in writing that the election is withdrawn.
- (5) As soon as practicable after the election is made, a copy of the election must be:
- (a) published on the trustee's, or each trustee's, website; and
- (b) given to APRA.
- (6) Within 28 days of the dangerous occupation exception applying to a member of the fund, the trustee or trustees must give the member:
- (a) a notice in writing stating that the trustee or trustees have elected to treat the member's occupation as a dangerous occupation, and are providing the benefit under the choice product or MySuper product by taking out or maintaining insurance; and
- (b) details of the annual cost to the member of providing the benefit under the choice product or MySuper product by taking out or maintaining insurance; and
- (c) details of how the member may elect to have the benefit cease.
- (7) To avoid doubt, nothing in this section affects the obligations of a trustee under the covenants referred to in section 52, or of a director of a corporate trustee under the covenants referred to in section 52A.

Note: For example, under paragraph 52(7)(c) each trustee is subject to a covenant to only offer or acquire insurance of a particular kind, or at a

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**Schedule 1** Low-balance accounts and members under 25  
**Part 1** Amendments

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particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries.

**4 Subsection 68AA(8A) (heading)**

Repeal the heading, substitute:

*Inactive accounts, low-balance accounts and members under the age of 25 years*

**5 Subsections 68AA(8A) and (8B)**

After “section 68AAA”, insert “, 68AAB or 68AAC”.

***Superannuation (Unclaimed Money and Lost Members) Act 1999***

**6 At the end of paragraph 20QA(1)(a)**

Add:

- (ix) no benefit that despite section 68AAB of the SIS Act could, because of the application of subsection 68AAB(5) or (6) of that Act, be provided to, or in respect of, the member under the product by taking out or maintaining insurance is provided in that way; and

**7 Subsection 20QA(3)**

Omit “subparagraphs (1)(a)(iv), (v) and (viii)”, substitute “subparagraphs (1)(a)(iv), (v), (viii) and (ix)”.

## **Part 2—Application**

### **8 Application of section 68AAB**

#### *Application*

- (1) Section 68AAB of the *Superannuation Industry (Supervision) Act 1993*, as inserted by item 1 of this Schedule, applies on and after 1 April 2020 (the *commencement day*).

#### *Notice to members who have a low balance on 1 November 2019*

- (2) Each trustee of a regulated superannuation fund that offers a choice product or MySuper product under which a benefit may be provided by taking out or maintaining insurance must ensure that:
- (a) on 1 November 2019, each member of the fund who has an account in relation to one or more of those products with a balance that is less than \$6,000 is identified; and
  - (b) on or before 1 December 2019, each of the members of the fund identified under paragraph (a) is given notice in writing in accordance with subitem (3).
- (3) The notice must:
- (a) state that, on and after 1 April 2020, a benefit will not be provided to the member under the product by taking out or maintaining insurance if:
    - (i) the member has an account balance with the fund that relates to the product that is less than \$6,000; and
    - (ii) on or after 1 November 2019, the member has not had an account balance with the fund that relates to the product that was equal to or greater than \$6,000; and
    - (iii) the member has not elected 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 account balance with the fund that relates to the product is less than \$6,000; and
  - (b) set out the method by which the member can make such an election in writing.

- (4) An election under paragraph (3)(b) has effect on and after the commencement day as if it were an election made under subsection 68AAB(2) of the *Superannuation Industry (Supervision) Act 1993*.
- (5) Despite subitem (2), a trustee of a regulated superannuation fund that offers a choice product or MySuper product does not have to ensure that a notice is given to a member of the fund to whom it would otherwise be required to be given under that subitem if:
- (a) before 1 November 2019, the member has given the fund notice that the member elects to have one or more benefits provided under the product or the products held by the member by taking out or maintaining insurance; and
  - (b) the only benefits provided to the member under the product or products held by the member by taking out or maintaining insurance are covered by the election.

The notice mentioned in paragraph (a) has effect on and after the commencement day as if it were an election made under subsection 68AAB(2) of the *Superannuation Industry (Supervision) Act 1993*.

***Notice to members who begin to hold product after 1 November 2019***

- (6) Each trustee of a regulated superannuation fund that offers a choice product or MySuper product under which a benefit may be provided by taking out or maintaining insurance must ensure that each person who acquires an interest in the product after 1 November 2019 and before the commencement day is given notice in writing:
- (a) stating that the benefit will not be provided on and after 1 April 2020 if:
    - (i) the member has an account balance with the fund that relates to the product that is less than \$6,000; and
    - (ii) on or after 1 November 2019, the member has not had an account balance with the fund that relates to the product that was equal to or greater than \$6,000; and
    - (iii) the member has not elected 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 account balance with the fund that relates to the product is less than \$6,000; and

- (b) setting out the method by which the member can make such an election in writing.
- (7) An election under paragraph (6)(b) has effect on and after the commencement day as if it were an election made under subsection 68AAB(2) of the *Superannuation Industry (Supervision) Act 1993*.

## **9 Application of section 68AAC**

Section 68AAC of the *Superannuation Industry (Supervision) Act 1993*, as inserted by item 1 of this Schedule, applies in relation to a benefit provided by a regulated superannuation fund to, or in respect of, a member of the fund under a choice product or MySuper product held by the member, if the member begins to hold the product on or after 1 April 2020.

## **10 Administration of the application and transitional provisions**

Despite subparagraph 6(1)(a)(iv) of the *Superannuation Industry (Supervision) Act 1993*, ASIC not APRA has the general administration of items 8 and 9 of this Schedule.

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[Minister's second reading speech made in—  
House of Representatives on 4 July 2019  
Senate on 16 September 2019]

(92/19)

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