Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019

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Law and Bills Digest Section

This Digest replaces an earlier version dated 17 September 2019.

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Date introduced: 4 July 2019
House: House of Representatives
Portfolio: Treasury
Commencement: The day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

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History of the Bill

The Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019 (the first Bill) was introduced into the House of Representatives on 20 February 2019. However, the first Bill lapsed when the Parliament was dissolved on 11 April 2019.¹

The Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019 (the Bill) which was introduced into the House of Representatives on 4 July 2019 is in equivalent terms to the first Bill—although the originally proposed contingent amendments are no longer included as they are unnecessary.

Purpose of the Bill

The purpose of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019 is to amend the Superannuation Industry (Supervision) Act 1993 (SIS Act) to prevent superannuation funds from automatically providing insurance to members where:

• the member has an account balance below $6,000 or
• the member is a new member who is under the age of 25.

The Bill also makes consequential amendments to the Superannuation (Unclaimed Money and Lost Members) Act 1999 (SUMLM Act).

Background

Insurance in superannuation: legislative requirements

Development of the law

While insurance in superannuation has been provided to varying degrees since the 1950s, it was not until the 2005 Choice of Fund reforms that default funds were required to ‘provide a minimal level of life insurance cover (but not total and permanent disability or income protection insurance)’.

Subsequently, and consistent with the 2010 findings of the Super System Review (the Cooper Review), the Australian Government made it mandatory in 2012 for funds to provide life and total and permanent disability insurance, on an opt-out basis, in all MySuper products.³

Current law

Existing Part 6 of the SIS Act contains provisions relating to the governing rules of superannuation entities. In particular, section 52 of SIS Act includes a range of covenants that must be included in, or are otherwise taken to be included in the governing rules of a registrable superannuation entity including:

• to formulate, review regularly and give effect to an insurance strategy for the benefit of beneficiaries of the entity that addresses the type and level of insurance offered having regard to the demographic composition of the beneficiaries

¹ A FlagPost was prepared in respect of the first Bill.
• to consider the cost to all beneficiaries of offering or acquiring insurance
• to only offer or acquire insurance if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries and
• to pursue insurance claims with reasonable prospects of success.  
As a result of the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (FSRC) implemented in the 45th Parliament, breach of the covenants may now result in criminal and civil penalties for contravening, or being involved in a contravention of the covenants.  
In relation to MySuper products, a regulated superannuation fund must ensure that the fund provides a permanent incapacity benefit and a death benefit in the form of insurance to each MySuper member of the fund—that is, TPD and life insurance.  
Whilst most members can opt-out of either TPD or life insurance, the fund may require that the member opt-out of both if they elect to opt-out of either. However, funds are not required to allow MySuper product members to opt-out of TPD or life insurance if the trustee is satisfied that the risk to be insured cannot be insured at a reasonable cost, or be provided on an opt-out basis. In addition, superannuation funds are no longer bound by the requirement to provide default death and TPD insurance in relation to an account that is inactive.  
There are certain minimum legislative requirements that apply to insurance provided through a MySuper product, which include for example the types of benefits that may be provided and the minimum level of cover that must be provided in the event of the death of a member. The Insurance Operating Standards contained in the SIS Regulations provide that a fund must not provide an insured benefit to a member other than for death, terminal medical condition, permanent incapacity and temporary incapacity for new members from 1 July 2014. However, as noted in the final report of the FSRC, ‘Aside from conditions of release, there are no mandatory or proscribed terms for default group life policies’—the insurance coverage is otherwise largely determined by the terms and conditions of the insurance contract.  

**Protecting Your Superannuation Package reforms**

As part of its 2018–19 Budget the Government announced it would introduce new measures to protect superannuation balances. Accordingly, the Treasury Laws Amendment (Protecting Your
Superannuation Package Act 2019 (the PYSP Act)\textsuperscript{13} made significant changes to MySuper and choice products including:

- in Schedule 1: banning exit fees on withdrawals and limiting the amount of fees that can be charged for MySuper and choice super products where the balance of the member’s account is less than $6,000\textsuperscript{14}
- in Schedule 2: preventing insurance in superannuation being provided on an opt-out basis where the member’s account is inactive\textsuperscript{15} and
- in Schedule 3: requiring inactive low-balance accounts to be paid to the Australian Taxation Office (ATO) and subsequently consolidated by the ATO into another of the member’s active superannuation accounts, so long as the consolidated balance is at least $6,000—otherwise the balance is held by the ATO on behalf of the member.\textsuperscript{16}

Removing opt-out insurance on inactive accounts

The provisions in Schedule 2 of the PYSP Act prevent superannuation funds from providing insurance such as death, total and permanent disability (TPD) or income protection insurance on an opt-out basis where the member’s account has not received a contribution for 16 months.\textsuperscript{17} This means that from 1 July 2019 onwards, insurance for such accounts will be cancelled unless the member \textit{opts-in} and elects to maintain their insurance coverage.\textsuperscript{18} This effectively reverses the default position—that insurance is provided unless a member elects to \textit{opt-out}—for this class of MySuper and choice members.

Schedule 3 of the PYSP Act also makes changes to the SUMLM Act that require superannuation trustees to transfer accounts with balances below $6,000 to the Australian Taxation Office so that they can be consolidated into a single account for the member.

Under the application provisions of the PYSP Act trustees were obliged to provide members who would likely be affected by the measures with the opportunity to maintain insurance by identifying inactive accounts and notifying members.\textsuperscript{19} This requirement is discussed further under the heading ‘Key issue—no carve out of members affected by the PYSP Act’ below.

Amendments to the original PYSP Bill

The Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 (the PYSP Bill) as originally introduced contained additional measures which would have also prevented superannuation funds from providing insurance on an opt-out basis to:

- new members under the age of 25 years and
- members with an account balance below $6,000.

\textsuperscript{14} \textit{Superannuation Industry (Supervision) Act 1993} (SIS Act), sections 99BA and 99G; section 9.51 of the \textit{Superannuation Industry (Supervision) Regulations 1994} sets the fee cap percentage for MySuper and Choice products low-balance accounts at 3%.
\textsuperscript{15} SIS Act, section 68AAA.
\textsuperscript{16} \textit{Superannuation (Unclaimed Money and Lost Members) Act 1999} (SUMLM Act), sections 20QD and 24NA.
\textsuperscript{17} SIS Act, section 68AAA.
\textsuperscript{18} Note that superannuation funds were required to notify their members who would be affected by the changes by May 2019 (subclause 3(3) in Part 2 of Schedule 2 to the Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019).
\textsuperscript{19} PYSP Act, item 3 in Part 2 of Schedule 2.
However in the Senate, the Australian Greens (the Greens) successfully moved amendments to the PYSP Bill to, among other things, remove those proposed limitations.  

Following the passage of the PYSP Bill by both Houses of the Parliament on 18 February 2019, the Government moved swiftly to introduce the first Bill with the intention of enacting those measures which were removed from the original PYSP Bill in the Senate. The measures were also contained in *Budget measures: budget paper No. 2 2019-20* released on 2 April 2019.

**Insurance in Superannuation Voluntary Code of Practice**

**Creating the Code**

In November 2016, the Insurance in Superannuation Industry Working Group (ISWG) was established to develop a code for the provision of insurance in superannuation. The *Insurance in Superannuation Voluntary Code of Practice* (the Code) which is owned by the Association of Superannuation Funds of Australia (ASFA), the Australian Institute of Superannuation Trustees (AIST) and the Financial Services Council (FSC) was finalised in December 2017 and came into effect on 1 July 2018. The Code partly addresses some of the issues that the Bill seeks to remedy.

The announcement of the ‘Protecting Your Super Package’ in the 2018–19 Budget followed the development of the Code. In March 2018, prior to the commencement of the Code, the Minister for Revenue and Financial Services, Kelly O’Dwyer expressed concern that superannuation trustees’ statutory obligations were not ‘being taken as seriously as they should be’. Ms O’Dwyer was particularly concerned that this was the case with respect to the provision of duplicate income protection insurance as well as insurance which was eroding low-balance and inactive accounts. While Ms O’Dwyer acknowledged that the work of the Code went some way to dealing with the issue, she considered that industry could do more.

The Government ultimately decided that regulatory intervention was necessary. Ms O’Dwyer was reported as stating:

I am not going to wait for the industry to do this. I gave them a chance to fix it and they didn’t. I wasn’t going to hang around and wait for five years while they talked among themselves.

**Moves to enforce the Code**

The Productivity Commission’s Final Report *Superannuation: Assessing Efficiency and Competitiveness* (PC Final Report) recommended that the Government establish a taskforce led by the Australian Securities and Investments Commission (ASIC) and including the Australian Prudential Regulation Authority (APRA) to advance the Code and ensure that it is both enforceable and a condition of holding a RSE licence.

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23. ASFA, *‘Insurance in Superannuation Voluntary Code of Practice’*, ASFA website.
25. Ibid., p. 3.
The final report of the FSRC also recommended that the Financial Services Council, the Insurance Council of Australia and ASIC take all necessary steps, by 30 June 2021, to have the provisions of the Code that govern the terms of the contract made or to be made between the insurer and the policyholder designated as ‘enforceable code provisions’ (recommendation 4.9). This directly relates to the FSRC’s recommendation 1.15 that certain financial sector codes include ‘enforceable code provisions’, contravention of which will constitute a breach of the law.

The Government has agreed to implement recommendation 1.15 by providing ASIC with ‘additional powers to approve and enforce industry code provisions’ and ‘establish an approved codes regime that includes ‘enforceable code provisions’. Accordingly, Treasury released a consultation paper in March 2019 addressing this recommendation. That consultation has concluded and the Government’s FSRC Implementation Roadmap indicates that relevant legislation will be introduced by 30 June 2020. The Government also supports the relevant bodies including ASIC implementing recommendation 4.9 once the Government has implemented its response to recommendation 1.15.

**Inquiries dealing with insurance in superannuation**

There have been a number of inquiries which have included consideration of insurance in superannuation, the most recent and notable being the FSRC and the PC’s inquiry into the efficiency and competitiveness of the superannuation system.

The Parliamentary Joint Committee on Corporations and Financial Services also considered the issue in its *Inquiry into the life insurance industry*, and the provisions of the PYSP Bill were considered by the Senate Standing Committee on Economics in the 45th Parliament. In addition to these inquiries, private analysis of the provisions of Schedule 2 of the PYSP Bill was undertaken by Rice Warner and KPMG. Further information on the findings of these inquiries, including the PC’s draft recommendations in its draft report *Superannuation: Assessing Efficiency and Competitiveness*, can be found in the Bills Digest to the PYSP Bill.

**Productivity Commission and FSRC Final Reports**

The issues which are relevant to this Bills Digest that were canvassed by the FSRC and the Productivity Commission are discussed below.

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29. Ibid., pp. 108-12, (recommendation 1.15).
Members under 25

The PC’s Final Report recommended that insurance should be made opt-in for under 25 year olds. The recommendation is based on its finding that default cover can be poor value for young members because, for example, ‘[m]any young members work in casual or part-time jobs, and have relatively low financial commitments or no dependants to support, meaning life insurance is simply not of value to them’. However, the PC did note that default insurance can be of value for some members under 25 and recommended that APRA be able to allow funds to provide default insurance to a specific cohort of under 25 year olds if the fund can demonstrate that insurance would be in their best interests.

Low-balance accounts

The PC did not make a recommendation that low-balance accounts (below $6,000) be excluded from default insurance arrangements. However, it did comment that the original PYSP Bill, which included removing default insurance for low-balance accounts, ‘should be passed without delay’. The PC considered that ‘there is a case for low balance accounts to be captured under an opt-in system, particularly in the absence of broader measures to ensure that people’ are only ever defaulted into one superannuation account so that they do not have multiple accounts. One of the primary recommendations of the PC’s Final Report is that in order to avoid the proliferation of multiple accounts and the associated default insurance policies, default accounts should only ever be created for workers who do not have a superannuation account; the FSRC also recommended that this should be the case.

The PC considered that low balance accounts ‘are also likely to account for a disproportionately large share of inactive accounts’—inactive accounts are already provided for under section 68AAA of the SIS Act. In addition to the category of inactive accounts, the PC notes:

... there are two broad remaining groups of members captured by the Government’s proposal.

- New workforce entrants (or those opening a new account who do not have an existing account with insurance) over 25 years of age who may experience a relatively short period without insurance before they reach the $6000 threshold where insurance is automatically instated.

- Members over 25 years of age with very low superannuation balances due to low, but persistent, levels of workforce attachment. This could include those who have multiple active accounts as a result of working in multiple part-time jobs.

For the former group, there may be unintended and possibly perverse effects for some members, although these are likely to be small given the transitory nature of the opt-in arrangement. In the case of the latter group, their low workforce attachment and incomes suggest that even low levels of default cover may represent overinsurance and inappropriate balance erosion for many of these members. [citations omitted and emphasis added]

37. Ibid., p. 71.
38. Ibid., p. 41.
39. Ibid., p. 401.
40. Ibid., p. 65; FSRC, Final report, op. cit., p. 253 (recommendation 3.5).
It should be noted that some stakeholders, such as Women in Super and the Australian Council of Trade Unions (ACTU), consider that it is some of those members in the latter group who are in most need of default cover.42

Inquiry into insurance in superannuation
Consistent with stakeholder concerns discussed below, the PC recommended that within four years of its Final Report the Government establish an independent inquiry into insurance in superannuation which, among other things, ‘examines the costs and benefits of retaining current [default] insurance arrangements’.43

Review of universal definitions
The FSRC Final Report stopped short of recommending a full inquiry into the provision of default insurance in superannuation. Instead, it considered that there was merit in Treasury and industry determining the practicability and likely pricing effects of legislating key universal definitions, terms and exclusions for default MySuper group life policies.44 This recommendation flows from the fact that there are minimal legislative requirements that apply to the provision of life insurance through a MySuper product (see discussion under the heading ‘Current law’). The FSRC Final Report also considered that the review should consider the merits of prescribing:

• higher minimum coverage for life insurance as well as prescribing a maximum limit
• minimum coverage for TPD insurance and
• a fixed level of coverage for life/and or TPD insurance so as to set a standard amount of default insurance across all MySuper products.45

Committee consideration

Senate Economics Legislation Committee
The provisions of the Bill were referred to the Senate Economics Legislation Committee (the Committee) for inquiry and report by 18 October 2019, however the reporting date was subsequently changed to 23 July 2019.46 Details of the inquiry are at the inquiry homepage. Submissions closed on 15 July 2019. The Committee received 46 submissions; Australian Labor Party (Labor) members of the Committee called for hearings to be scheduled but this did not occur.47 The Committee delivered its report into the inquiry to the Senate on 23 July 2019.48

The Committee recommended that the Government change the commencement date to 1 December 2019 and, subject to consideration of this recommendation, the Committee recommended the Bill be passed.49 While the Committee acknowledged a range of stakeholder

42. Women in Super (WIS), Submission to Senate Standing Committee on Economics, Inquiry into the Provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 11], 15 July 2019, p. 2; Australian Council of Trade Unions (ACTU), Submission to Senate Standing Committee on Economics, Inquiry into the Provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 23], 15 July 2019, p. 5.
44. FSRC, Final report, op. cit., p. 324.
45. Ibid.
47. S Jones, Labor calls on Government to reconsider decision to refuse senate hearing, media release, 22 July 2019, p. 1; S Jones, Letter to the Assistant Minister for Superannuation, Financial Services and Financial Technology, 19 July 2019.
49. Ibid., p. 18.
concerns, majority members of the Committee were ultimately of the view that ‘the Bill strikes the right balance for all concerned’.  

Labor Senators provided additional comments to the Committee’s report, in which they echoed stakeholder concerns on a number of issues. Labor Senators considered that the Bill should be passed if the following recommendations are supported:

- commencement should be deferred until 1 July 2020
- high-risk occupations that would benefit from default insurance should be excluded and
- a review of the measures should take place one year after implementation to investigate whether insurance premiums rise both generally and for those who decide to opt-in.

**Previous committee consideration**

The provisions of the PYSP Bill were also considered by the Senate Standing Committee on Economics in the 45th Parliament. Details of the inquiry are at the inquiry homepage. As a result of this inquiry, the Committee recommended that the Bill be passed by the Senate. Labor Senators provided additional comments and noted stakeholder concerns regarding Schedule 2 of the PYSP Bill. As discussed above, the provisions of the current Bill reflect provisions that were removed from Schedule 2 of the PYSP Bill by Senate amendments.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible as it does not raise any human rights issues.

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.
Policy position of non-government parties/independents

Labor

The position of Labor members of the Parliament is reflected in their additional comments to the Senate Committee inquiry as outlined above.\(^59\)

The comments reiterate the concerns that Labor Senators expressed about Schedule 2 of the PYSP Bill and, in particular, that members in high-risk occupations may find it difficult to opt into insurance at a reasonable price or at all.\(^60\) Labor’s position reflects concerns stakeholders raised in their submissions to the Committee inquiry discussed below.

Labor’s proposed amendments

Labor moved amendments to the Bill in the House of Representatives to:

- defer the application of the proposed changes to 1 July 2020\(^61\) and
- provide superannuation funds with the ability to ‘elect’ to exempt certain occupations or industries from the proposed changes if a fund is satisfied that it is appropriate to do so based on:
  - evidence of risk and insurance claims in the industry or occupation and/or
  - the availability of insurance for people working in that industry or occupation that would represent exceptionally good value for those members.\(^62\)

Superannuation funds would be unable to utilise the proposed occupation or industry exemption unless satisfied that it would not inappropriately erode members’ superannuation.\(^63\) The proposed amendment would also require the written election to be provided to APRA in the approved form signed by each trustee of the fund and:

- includes the outcomes of an actuarial investigation about:
  - the evidence of risk and insurance claims in the industry or occupation and/or whether insurance would represent exceptionally good value for the members and
  - whether it would inappropriately erode members’ superannuation
- include data about risks in that occupation or industry and past insurance claims for that occupation or industry.\(^64\)

Both of Labor’s proposed amendments were negatived in the House.\(^65\)

The objective of Labor’s proposed amendment mirrors their proposed amendment to Schedule 2 of the PYSP Bill. However, unlike Labor’s proposed amendment to Schedule 2 of the PYSP Bill which would have required a superannuation fund to seek an exemption from APRA, the proposed


\(^{61}\) Opposition, ‘*Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019*’, House of Representatives, Amendment Sheet 1, 16 September 2019.

\(^{62}\) Opposition, ‘*Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019*’, House of Representatives, Amendment Sheet 2, 16 September 2019.

\(^{63}\) Ibid., proposed subsection 68AAF(3).

\(^{64}\) Ibid., proposed subsection 68AAF(4).

amendment would enable a fund to ‘elect’ to treat an industry or occupation as exempt from the changes where the above criteria are met.66

**The Greens**

The Greens successfully moved amendments to Schedule 2 of the PYSP Bill to remove proposed sections 68AAB and 68AAC of the SIS Act—the result being that opt-out insurance arrangements continue to apply to members under the age of 25 years and members with an account balance below $6,000.67

Greens Treasury spokesperson Senator Peter Whish-Wilson explained in relation to the PYSP Bill that the Greens were primarily concerned with the adverse impact that proposed sections 68AAB and 68AAC would have on young members, those members in blue collar industries as well as people who are new to the workforce.68 Following the passage of the PYSP Bill through the Senate, Senator Whish-Wilson reiterated the Greens position:

The original Bill [the PYSP Bill] sought to pick apart the provision of life insurance through superannuation without considering how it would impact upon vulnerable people. It is true that most young people don’t need life insurance, but no one needs insurance until they need it. And it’s those who are most vulnerable who most depend on life insurance should something unfortunate occur.69

The Greens commissioned the Parliamentary Budget Office to cost a proposal in which the Government would be the default provider of insurance for workers under 25 and for those with account balances below $6,000.70 It is estimated that the Government would pay out $5.8 billion worth of claims over the period to 2029-30 under this proposal.71

**Pauline Hanson’s One Nation**

Senator Pauline Hanson has tabled amendments which seek to exclude members in certain industries from the application of the Bill, including those in the following industries:

- emergency services, including police officers, firefighters, ambulance officers and paramedics
- healthcare, including nurses, home care, disability and aged care workers and allied health professionals or
- agriculture, forestry and fisheries.72

**Centre Alliance**

Centre Alliance Senators Rex Patrick and Stirling Griff, along with Senator Cory Bernardi, opposed the Senate’s amendments to remove proposed sections 68AAB and 68AAC from the PYSP Bill.73

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69. P Whish-Wilson, Senate supports Greens amendment on default superannuation, media release, 14 February 2019.
70. Parliamentary Budget Office, Common group insurance, Advice provided to Senator Richard Di Natale, PBO, Canberra, 5 July 2019.
71. Ibid., p. 5.
73. Australia, Senate, Journals, 140, 14 February 2019, pp. 4697–8.
Senator Patrick ‘recognise[d] the benefit of having insurance inside of superannuation, including on a default opt-out basis’, but he ultimately considered that insurance cross-subsidisation and funds failing to tailor their insurance means that workers are not getting ‘value for money from their insurance’. Senator Griff considered that ‘workers should be empowered to make their own financial decisions, and their employer or super provider should provide them with relevant information’.  

**Position of major interest groups**

**Stakeholders in favour of the measures**

While many of the submissions to the Committee Inquiry broadly support the objectives of the Bill, only ClearView and Super Consumer Australia at CHOICE (SCA at CHOICE) have provided their full support for the Bill in its current form. ClearView has further suggested that all existing members under 25 should be required to opt-in and the Bill should be considered ‘a first and important step towards a scenario in which life insurance in super becomes optional on an opt-in basis for all workers’. The Grattan Institute is also in favour of the measures contained in the Bill and considers that it ‘should be passed at the earliest opportunity’ but also note that the implementation ‘timeline appears overly optimistic’.

**Stakeholders not in favour of the measures**

Other stakeholders such as Women in Super, the Shop, Distributive and Allied Employees’ Association (SDA) and the Australian Council of Trade Unions (ACTU) oppose the Bill or will not support it unless major amendments are made. Some stakeholders also consider that the removal of default insurance on low-balance accounts will disadvantage women and their dependants, particularly those re-entering the workforce. The ACTU and Women in Super further argue that the Australian Prudential Regulation Authority (APRA) already has the necessary regulatory powers to ensure default insurance is appropriately targeted and in the members’ best interests.

**Mixed responses to the Bill**

There is otherwise considerable variation between stakeholders regarding suggested amendments; Maurice Blackburn considers that there is a justification for defaulting under 25’s

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76. ClearView, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 1], 10 July 2019, p. 1; Superannuation Consumers Australia at CHOICE (SCA at CHOICE), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 2], 10 July 2019, p. 3.
78. Grattan Institute, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 38], July 2019, pp. 2 and 7.
79. WIS, Submission, op. cit., pp. 1 and 4; ACTU, Submission, op. cit., p. 1; Shop, Distributive and Allied Employees’ Association (SDA), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 30], 15 July 2019, p. 1; HESTA, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 22], July 2019, p. 4.
80. WIS, Submission, op. cit., p. 2; ACTU, Submission, op. cit., p. 5; AIST, Submission, op. cit., pp. 5–6; ISA, Submission, op. cit., pp. 7–8.
into **TPD** insurance to compensate them for potential future lost earning capacity, but suggests that there is limited justification for maintaining default **life** insurance for them.\(^{82}\) TAL considers that members in high risk occupations should be provided an exemption while also leaving it to the discretion of the trustees to determine whether TPD insurance is in their members best interests.\(^{83}\) In this regard, ISA argues that ‘industry super funds tailor their insurance design arrangements to meet the needs of their membership’.\(^{84}\) Other stakeholders such as CBUS argue that members in high-risk occupations should be carved out from the Bill.\(^{85}\)

Conversely, AustralianSuper supports the removal of default insurance for those under 25, but together with other stakeholders such as Rice Warner and the Australian Institute of Superannuation Trustees (AIST), submits default insurance should continue to apply to active accounts below $6,000.\(^{86}\)

### Summary of stakeholder concerns

While there is significant variation between concerns and recommendations among stakeholders, the following issues are relatively consistent:

- there is considerable concern that the implementation timeframe is too short and commencement date of 1 October 2019 is too soon because:
  - the relevant notification dates have already passed and
  - given the recent implementation of the **PYSP Act**, the changes may result in members becoming confused about their funds’ insurance arrangements
- it is not clear whether members will necessarily be able to opt-in at a reasonable price if at all, particularly those in high-risk occupations
- stakeholders query the policy rationale for excluding members with low balance accounts who are actively contributing from the provision of default insurance and
- premiums are likely to rise both for those who are defaulted into insurance as well as those who elect to opt-in.

### Implementation timeframe

Many stakeholders consider that the implementation date of 1 October 2019 is too soon; this is partly because the proposed notification dates have already passed—that is, funds are required to

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82. Maurice Blackburn Lawyers, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 6], 15 July 2019, p. 2.
83. TAL, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 39], 15 July 2019, p. 5–6.
84. ISA, Submission, op. cit., p. 7; QSuper, Submission, op. cit., p. 4.
85. CBUS, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 21], 15 July 2019, p. 2; First State Super (FSS), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 17], 15 July 2019, p. 3.
86. AustralianSuper, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 5], 15 July 2019, pp. 1–2; Rice Warner, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 3], 12 July 2019, p. 2; Australian Institute of Superannuation Trustees (AIST), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 16], 15 July 2019, p. 2; Berrill & Watson, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 19], p. 4; TAL, Submission, op. cit., p. 6.
identify members with an account balance that is less than $6,000 on 1 July 2019 and notify them by 1 August 2019 about the changes that are set to apply on 1 October 2019.87

Superannuation funds also argue they require sufficient time to implement system changes as well as communicate with members in such a way so as to ensure that members understand how the changes will affect them—for example, AustralianSuper submits that ‘it is important that each member has time to make an informed assessment of whether they need that cover based on their own particular circumstances’. 88 MetLife also notes that member confusion may arise as a result of the communication required by the PYSP Act:

Providing notice to members of a change to their insurance from 1 October will cause member confusion, as they have recently received notices required by the provisions of the Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019 (PYSP Act), which took effect from 1 July 2019… Major communication campaigns have been run by the industry to ensure that members understand these changes. To provide a similar communication within a short timeframe to members regarding insurance, but with different messages, will cause confusion to members and lead to an extremely poor customer experience. Confidence in the superannuation system will be negatively impacted by this messaging. 89 [emphasis added]

Various super funds also consider that a sufficient amount of time is required so that insurance offerings can be repriced and underwritten by insurers; according to APRA ‘These processes can be highly complex and time consuming for individual funds, and will be even more so when the industry as a whole is impacted’. 90

Alternate implementation dates range from a minimum of six months to no earlier than 1 July 2020—APRA recommends a minimum implementation date of six months but favours a 12 month period. 91 The Committee has recommended that the Government change the commencement date to 1 December 2019. 92

High risk occupations and new members under 25 years

Many stakeholders express concern about the effect the proposed changes may have on members in high-risk occupations, which include for example occupations in the building and construction industry, mining, and first responders and emergency services. 93 The primary concern is that the changes may result in members in high-risk occupations being unable to secure adequate insurance at a reasonable price, if at all—for example CBUS claims that many of its members affected by the Bill will be unable to opt back in:

There are around 200,000 members who are under 25 years or with balances under $6,000 who will be impacted. Based on our underwriting experience of members, around a third of those excluded from

87. Item 8 in part 2 of Schedule 1 to the Bill; see for example: Berrill & Watson, Submission, op. cit., pp. 4–5; QSuper, Submission, op. cit., pp. 4–6; Chartered Accountants ANZ, Submission, op. cit., p. 1; FSS, Submission, op. cit., p. 4; CSA, Submission, op. cit., p. 2; WIS, Submission, op. cit., p. 1; APRA, Submission, op. cit., p. 2; AIST, Submission, op. cit., p. 2; AustralianSuper, Submission, op. cit., p. 3; ACTU, Submission, op. cit., p. 1; AustralianSuper, Submission, op. cit., p. 3.
89. Australian Prudential Regulation Authority (APRA), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 12], 15 July 2019, p. 1.
90. APRA, Submission, op. cit., p. 2; AIST, Submission, op. cit., p. 1; MetLife, Submission, op. cit., p. 6.
91. Senate Standing Committee on Economics, Report, op. cit., p. 18.
cover will be unable to opt in to obtain the cover needed in the future due to conditions which were pre-existing or identified in underwriting processes, and there will be significantly increased premiums for remaining members. In addition to the increased cost it is highly likely that there will be more restrictive terms to the commencement of cover rules for all members making insurance harder to claim when members need it.94 [emphasis added]

The ACTU notes that group insurance enables members to decrease their insurance premiums and argues that those who choose to opt-in may be denied coverage, for example, because of pre-existing medical conditions, or because their policies will need to be individually underwritten.95

Some stakeholders also disagree with the Government’s position that default TPD and in some cases default life insurance is not well suited to members under the age of 25 years. For example, the CFMMEU submits that the construction industry ‘has a relatively young workforce, with 43.3% of workers aged 15 to 34 years, compared to 38.8% across all industries’.96 Similarly, Mine Super submits:

Rates of claims among younger Mine Super members are higher than those observed in other industries. These members often provide the sole source of income for their families. They often have young dependent children, reside in regional areas where well paid jobs are relatively scarce and have limited transferable skills that could readily be deployed toward other types of employment... In working in a high-risk occupation, these members have a higher chance of being exposed to a severe workplace accident and an increased probability of being off work due to illness or injury which renders them and their dependents financially vulnerable. If our members can find insurance outside of superannuation in the retail environment, the cost of the insurance is often significantly higher than what Mine Super can provide.97 [citation omitted and emphasis added]

Metlife Insurance Limited (Metlife) recommended that ‘if there is an age to be established in legislation’ then they recommend the age of 21 on the basis that ‘many young people in blue collar occupations and in rural and remote regions engage with the work-force earlier and become household heads at an earlier age’.98 Similarly QSuper recommends that the Government change the age limit to one where the member is ‘most likely to be in full-time work and/or have financial dependants’.99 AIA Australia considers that the risk to young members is not limited to members in high risk occupations given the volume of claims relating to metal illness:

... at AIAA mental illness is the largest claim cause for TPD up to the age of 25. Mental illness is the largest cause of AIA claims for professional and white collar workers – more than twice as common compared to heavy blue collar/hazardous occupations.100

94. CBUS, Submission, op. cit., p. 3.
95. ACTU, Submission, op. cit., p. 2.
96. Construction Forestry Maritime Mining and Energy Union (CFFMEU), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 15], 15 July 2019, p. 2.
97. Mine Super, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 4], July 2019, p. 6.
98. Metlife Insurance Limited (Metlife), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 14], 15 July 2019, p. 4. See also Corporate Super Association (CSA), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 8], 5 July 2019, p. 3.
99. QSuper, Submission, op. cit., p. 4.
100. AIA Australia (AIAA), Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 28], 15 July 2019, p. 5.
Positions are likely to vary depending on the member composition of the funds, for example, AustralianSuper supports opt-in insurance for its members under the age of 25 years, and indeed it has already voluntarily implemented this change. Conversely, the positions of Mine Super and CBUS discussed above likely reflect the composition of their member profile.

**Adequacy of other compensation schemes**

As identified by the Productivity Commission, there are various schemes in place which may provide assistance in the event of injury or death, including:

- sick leave
- social security payments
- workers’ compensation schemes
- the National Disability Insurance Scheme and
- other arrangements such as motor vehicle CTP insurance.

Some stakeholders consider that workers’ compensation provides an adequate safety net in the event that a member is not covered. For example, in relation to high-risk industries, the Grattan Institute argues ‘the primary need for insurance is typically for incapacity unrelated to work’ because ‘workplace injuries are usually covered by workers’ compensation schemes that typically pay benefits an order of magnitude larger than the amount paid under default superannuation insurance’. Accordingly, it argues that insurers could offer policies which do not cover workplace incapacity which is covered by workers compensation.

Conversely, Maurice Blackburn argues that there are a number of factors why workers’ compensation schemes should not be considered an alternative to default insurance and concludes:

> In summary there are large numbers of injured workers who cannot access a lump sum or common law damages to stabilise their finances in all jurisdictions. In some jurisdictions there are significant restrictions on the criteria for claiming. There are variations between schemes as to weekly payments to replace lost wages. There are also variations as to how long weekly payments may be paid and what medical expenses are covered. Invariably injured workers must make up the gap for medical expense between what the doctor charges and what the insurer will cover.

> To assert that TPD insurance is not necessary for under 25’s because workers’ compensation is available is ignoring significant systemic issues in workers’ compensation schemes in each jurisdiction.

> Finally even if there is reasonable workers’ compensation coverage it is still not adequate to financially stabilise an injured worker under 25 years of age, facing many years out of the workforce. Nor does it address the loss of superannuation contributions due to absence from the workforce.

The PC concluded that ‘The fiscal impact of insurance in superannuation is complex and multifaceted’ and considers Government Age Pension payments resulting from superannuation

101. AustralianSuper, Submission, op. cit., p. 1;
103. SCA at CHOICE, Submission, op. cit., p. 2; Grattan Institute, Submission, op. cit., p. 6.
104. Grattan Institute, Submission, op. cit., p. 6.
105. Ibid.
balance erosion ‘could materially offset any savings to government in social security outlays’ which may have otherwise been paid to insurance recipients.\textsuperscript{107} Given the complex interaction, the PC considered that a separate inquiry is necessary to consider the question as to how to best provide assistance to people in the event of illness and injury.\textsuperscript{108}

**Accounts below $6,000**

Several stakeholders consider that default insurance should be retained where the account is active but less than $6,000.\textsuperscript{109} ISA asserts that the policy rationale for removing default insurance for low-balance accounts is ‘ill-conceived’ for the following reasons:

- funds report that members with low account balances make a significant number of claims
- the changes are likely to disproportionately impact certain cohorts, including new or returning workforce entrants and those re-entering the workforce from an extended period of casual or part-time work, in particular, women
- ISA analysis indicates that low-balance account holders are exposed to risks which should be insured against, for example they have a spouse/and or dependants and
- ISA considers it likely that the resulting increase in insurance premiums will ultimately result in lower retirement balances.\textsuperscript{110}

Similarly, QSuper contends **proposed section 68AAB** of the SIS Act is ‘largely redundant’ because the issue it seeks to address—the erosion of low-balance superannuation accounts—‘will be protected by [this Bill] and the Protecting Your Super provisions’—that is, the consolidation of inactive accounts by the ATO (discussed in greater detail under Key issues and provisions) and also the PC’s acknowledgment that ‘there is a high degree of overlap between members under 25 years of age and those with balances under $6000’.\textsuperscript{111} Regarding the latter point, TAL, one of the primary insurance providers to superannuation funds, sampled four of its largest funds; of the 980,000 insured members with account balances below $6,000 it submits around 50 percent are under 25 years and around 35% have not received a contribution for more than four months.\textsuperscript{112}

TAL also submits that **proposed section 68AAB** may lead to members being ‘subject to “at work” tests, health eligibility conditions or other conditions to commence cover once their balance reaches $6,000’.\textsuperscript{113} TAL considers that this may arise because the two to three year period in which a member is not insured, means that the ‘good health of the member is less assured than the day they commenced employment without cover’; accordingly insurers may consider the use of additional risk controls which may result in less comprehensive policies.\textsuperscript{114}

**Premium increases and cross-subsidisation**

Various stakeholders including APRA submit that the changes are likely to result in increased premiums—for example, APRA notes that the proposed measures together with the changes made under the *PYSP Act* ‘represent a significant shift in the provision of insurance to

\textsuperscript{107} Superannuation: assessing efficiency and competitiveness, Inquiry report, op. cit., p. 60, (finding 8.3).
\textsuperscript{108} Ibid., pp. 605–6.
\textsuperscript{109} AustralianSuper, Submission, op. cit., p. 2; AIST, Submission, op. cit., p. 2; ISA, Submission, op. cit., pp. 7–8; Berrill Watson, Submission, op. cit., p. 4; QSuper, Submission, op. cit., p. 4.
\textsuperscript{110} ISA, Submission, op. cit., pp. 7–10.
\textsuperscript{111} QSuper, Submission, op. cit., p. 4; Superannuation: assessing efficiency and competitiveness, Inquiry report, op. cit., p. 401.
\textsuperscript{112} TAL, Submission, op. cit., p. 6.
\textsuperscript{113} Ibid., p. 5.
\textsuperscript{114} Ibid.
superannuation fund members’, one likely impact being ‘upward pressure on premiums for remaining insured members’.115

ISA submits that a likely impact of the removal of default insurance from low-balance accounts is diminished retirement savings.116 ISA argues that premiums will be impacted not only because of a reduction in the insured group, but also because of the impact of ‘adverse selection (the risk to insurers of members at higher risk opting in)’.117 ISA estimates that the premium increases ‘could be as high as 7-10 per cent’ and accordingly any initial reduction in balance erosion ‘will be reversed overtime by the resultant increase in the cost to the remaining insured group, that the member soon joins’.118

While acknowledging that the changes may lead to an increase in premiums for other members, the PC concluded ‘much of this increase will likely reflect the removal of inefficient (and inequitable) cross-subsidies’.119 Clearview asserts that there is ‘no transparency around these many cross-subsidies’ and such cross subsidies contribute to ‘illusory cost savings’ as compared to retail products.120 The Explanatory Memorandum notes that there will be a transaction cost for individuals and businesses wishing to opt-in, particularly if the insurance is individually underwritten.121

As a result of the tight implementation timeframe under Schedule 2 of the PYSP Act, TAL estimates that more than 75 per cent of funds have deferred their premium increases until 1 January 2020.122 While it is not clear what the resulting fee increase will be, a range of estimates were provided when the PYSP Bill was being considered. The Australian Government Actuary estimated at that time that premiums could rise in the order of:

- under 25 and less than $6,000—90 per cent
- under 25 and greater than $6,000—five per cent
- accounts held by over 25s after impact of cessation and opt-in for those with less than $6,000 and inactive accounts—seven per cent to ten per cent.123

AIA Australia estimated that commencing premiums at age 25 would lead to premiums increasing for the remaining insured members by up to 15 per cent.124

KPMG’s 2018 analysis estimates that the removal of default insurance for balances with less than $6,000 may result in premium increases of 20 per cent and an increase of two per cent as a result of the removal of default insurance for members under 25.125

117. Ibid.
118. Ibid.
120. Clearview, Submission, op. cit., p. 5.
122. TAL, Submission, op. cit., p. 5.
125. KPMG, Insurance in superannuation: the impacts and unintended consequences of the proposed Federal Budget changes, June 2018, p. 4.
Financial implications

For the Government
According to the Explanatory Memorandum, the measures are estimated to have a gain to the budget of $605.4 million over the forward estimates.\(^{126}\)

For business and individuals
A regulation impact statement (RIS) was prepared in relation to the measures contained in the PYSP Bill as originally introduced. Combined with the amendments contained in the PYSP Act, the amendments in the Bill are expected to have a regulatory cost of $28.5 million to business and $71.4 million to individuals averaged over ten years.\(^{127}\)

The RIS does not separately identify the cost of the measures contained in the Bill as distinct from the Protecting Your Super Package as whole.

Key issues and provisions

Schedule 2 of the PYSP Act prevents superannuation trustees from providing insurance such as death, total and permanent disability (TPD) or income protection insurance on an opt-out basis where the member’s account has not received a contribution for 16 months and is inactive.

The amendments in Schedule 1 to the Bill operate to prevent superannuation trustees from providing insurance on an opt-out basis where:

- the member’s account balance is below $6,000 or
- the member is under the age of 25 years and begins to hold a new superannuation account on or after 1 October 2019.

Low-balance accounts

Key provisions

Proposed section 68AAB of the SIS Act prevents a regulated superannuation fund from taking out or maintaining insurance under a choice product or MySuper product for a member of the fund if:

- the member has an account balance with the fund that relates to the product that is less than $6,000
- on or after 1 July 2019, the member has not had an account balance with the fund that is $6,000 or more and
- the member has not made an election in writing to otherwise take out or maintain insurance under the choice or MySuper product.\(^{128}\)

If the member makes an election to otherwise take out insurance notwithstanding an account balance of less than $6,000, the member is also taken to have made an election under proposed subsection 68AAC(2) (members under 25 years old) and vice-versa.\(^{129}\) While such an election remains valid indefinitely, a fund is prohibited from providing opt-out insurance if the product subsequently becomes inactive—that is, it has not received a contribution for 16 months.\(^{130}\)

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126. Explanatory Memorandum, Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, p. 3.
127. Ibid., p. 23.
128. SIS Act, proposed subsections 68AAB(1) and (2).
129. SIS Act, proposed subsections 68AAB(3) and 68AAC(3).
Interaction with transfer and consolidation of inactive account provisions

The changes made by Schedule 3 of the PYSP Act to the SUMLM Act require superannuation funds to pay an **inactive low-balance account** to the Australian Taxation Office (ATO). The ATO is then generally required—subject to some exceptions—to consolidate these amounts into an account in which the member is active and where the consolidated account balance will be $6,000 or more. The ATO is required to action the consolidation within 28 days after the day it is satisfied that it is possible to consolidate the amount.

An account relating to a MySuper or choice product will generally be an inactive low-balance account if the trustee has not received an amount in respect of the member within the last 16 months and the balance of the account that relates to that product is less than $6,000. However, an account will not be considered to be an inactive low-balance account if:

- the member changed the member’s investment options
- the member made changes in relation to the member’s insurance coverage
- the member made or amended a binding beneficiary nomination
- the member notifies the ATO that the account is not an inactive low-balance account or
- the superannuation provider was owed an amount on behalf of the member.

Inactive low-balance accounts will begin to be transferred to the ATO from 31 October 2019 and consolidated into a member’s account from 7 November 2019. AIST and Women in Super note that in this case, insurance may be removed only for it to be later reinstated once an account is consolidated and over $6,000. AIST argues that these already legislated measures ‘effectively address the impact of insurance premiums on the retirement savings of members with inactive and multiple superannuation accounts’.

Key issue—lack of clarity

While proposed section 68AAB applies from 1 October 2019, it only applies if the member’s balance does not reach $6,000 at any time on or after 1 July 2019. This means that once a member’s account balance reaches $6,000 on or after 1 July 2019, the proposed amendments will not apply unless the member’s account subsequently becomes inactive.

Stakeholders consider that it remains unclear whether the $6,000 threshold in the Bill and under the changes made by the PYSP Act applies to the member’s entire interest at the account level or...
their potential separate interests at the product level.\textsuperscript{141} APRA has issued guidance which states that changes made by Schedule 2 of the \textit{PYSP Act} apply at the product level.\textsuperscript{142} Notwithstanding this position, APRA submits:

Recently, the Government indicated that it will progress amendments to address concerns regarding the \textit{PYSP Act}’s product level application. However, at this time it is not clear whether the proposed amendments will also apply to the PMIF Bill measures. APRA’s view is that it is important that there is alignment in the application of the PMIF Bill measures with the \textit{PYSP Act}. Hence if the \textit{PYSP Act} is amended to address concerns regarding application at the product level, similar amendments should be made to the PMIF Bill measures.\textsuperscript{143}

From 1 July 2019, superannuation funds are prohibited from providing default insurance under Choice and MySuper products if the member’s account has been inactive for 16 months—that is, broadly, it has not received a contribution in 16 months. \textbf{Proposed section 68AAB} of the \textit{SIS Act} does not distinguish between an account which is receiving contributions, and is therefore, in the general sense, ‘active’ and one that is not—it is primarily targeted at accounts that have not yet accumulated sufficient contributions ($6,000), for example, new workforce entrants or those in part-time or casual jobs. This means that, \textbf{proposed section 68AAB} will affect:

- new and existing account holders receiving superannuation contributions but who have not yet accumulated a balance of $6,000 and
- existing account holders whose balance has fallen below $6,000 because for example, they are no longer receiving contributions.

Note however that in the latter case, changes made by Schedule 3 of the \textit{PYSP Act} will result in many of these accounts being transferred to the ATO and potentially consolidated into another of the member’s superannuation accounts. As noted above, identified by the PC and addressed by stakeholders, there is also considerable overlap between \textbf{proposed sections 68AAB} and \textbf{68AAC}—that is, many members captured by the low-balance account provisions will be members under the age of 25 years or who have inactive accounts.

\textbf{Key issue—no carve out of members affected by the \textit{PYSP Act}}

The changes made by Schedule 2 of the \textit{PYSP Act} prohibit superannuation funds from providing \textbf{opt-out} insurance to members if:

- the account has not received a contribution for 16 months and
- the member has not elected to maintain insurance.\textsuperscript{144}

Members with inactive accounts may have already been notified that they have or are likely to have an inactive account and decided to elect to maintain their insurance.\textsuperscript{145} Some of these members are likely to also have low-balances and be affected by \textbf{proposed section 68AAB} of the \textit{SIS Act}.

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\textsuperscript{141} \citeauthor{QSuper}, \textit{Submission}, op. cit., p. 6; \citeauthor{ISA}, \textit{Submission}, op. cit., p. 18; \citeauthor{Metlife}, \textit{Submission}, op. cit., p. 6; \citeauthor{FSS}, \textit{Submission}, op. cit., p. 4; \citeauthor{AIST}, \textit{Submission}, op. cit., pp. 6–7; \citeauthor{FSC}, \textit{Submission}, op. cit., p. 7; \citeauthor{Mercer}, \textit{Submission}, op. cit., p. 2; \citeauthor{ASFA}, \textit{Submission}, op. cit., p. 8.
\textsuperscript{142} \citeauthor{APRA}, \textit{‘Protecting your super package - frequently asked questions’}, \textit{APRA website}, added 28 June 2019.
\textsuperscript{143} \citeauthor{APRA}, \textit{Submission}, op. cit., p. 2.
\textsuperscript{144} \textit{SIS Act}, subsection 68AAA(1) inserted by item 1 of Schedule 2 of the \textit{PYSP Act}.
\textsuperscript{145} \textit{PYSP Act}, subitem 3(3) in Part 2 of Schedule 2. The continuing notification obligation has been inserted into the \textit{Corporations Regulations 2001} by item 1 in Part 1 of Schedule 1 to the \textit{Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019}.
\end{flushright}
For members who have inactive accounts and have elected to maintain insurance, they will once more be required to elect to maintain insurance if they have a low-balance account. Some stakeholders have expressed concern that this is likely to create confusion for these members and consider that the action that they have already taken is sufficient to retain their insurance.\(^{146}\)

This issue does not affect members under 25 because proposed section 68AAC only applies to new account holders, unless the member has opted-in and the account subsequently becomes inactive—in this case insurance will cease.\(^{147}\)

**Key issue—risk-only policies not exempted**

Various stakeholders expressed concern that ‘risk-only’ products are not exempted from section 68AAA and proposed section 68AAB of the SIS Act.\(^ {148}\) TAL explains the operation of risk only policies in superannuation:

Risk-only members have chosen to open superannuation accounts, typically with no accumulation balance, for the purpose of maintaining insurance coverage. These members regularly contribute to their accounts (at least annually, through direct contributions or rollover from their primary superannuation account), and these contributions or rollovers are used to fund insurance premiums. Risk-only policies require a member to apply for specific types and levels of insurance of their choosing through superannuation, and the members are subject to underwriting, unlike default group insurance cover. The level or features of the insurance cover held through risk-only accounts may not have been available through the member’s primary superannuation account. Moreover, a significant proportion of these members have received personal financial advice on these arrangements.\(^ {149}\)

Given the active engagement of such members, some stakeholders consider they should be explicitly exempted from the application of the Bill.\(^ {150}\)

**Key provision—existing insurance coverage**

Proposed section 68AAB of the SIS Act does not affect a member’s right to be covered by insurance until:

- the end of the period for which the premiums have been deducted or
- the expiry date of the term of the member’s existing fixed term insurance cover.\(^ {151}\)

**Key issue—fixed term insurance cover**

IOOF submits that there is industry confusion about the application of subsection 68AAA(8) and proposed subsection 68AAB(6) of the SIS Act—that is, what is ‘insurance coverage for a fixed term’ and exempted from the changes.\(^ {152}\) According to APRA, it understands that the Government will pursue amendments to ensure:

- the rights of members under fixed term insurance cover are not affected and insurance cover is not inappropriately removed. This may affect conventional products where the switching off of cover would

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146. IOOF, Submission to Senate Standing Committee on Economics, Inquiry into the provisions of the Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, [Submission no. 18], 15 July 2019, p. 4; FSC, Submission, op. cit., p. 19.
147. Item 9 in Part 2 of Schedule 1 to the Bill.
148. TAL, Submission, op. cit., p. 3; FSC, Submission, op. cit., p. 16; AIAA, Submission, op. cit., p. 6; AFA, Submission, op. cit., p. 5.
149. TAL, Submission, op. cit., p. 3.
151. Explanatory Memorandum, Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, p. 8; proposed subsections 68AAAB(5) and (6) of the SIS Act.
152. IOOF, Submission, op. cit., p. 4.
have a demonstrable adverse financial effect on the member, such as products that are already fully paid up or currently non-premium paying, whole of life and endowment products, and certain legacy products.\textsuperscript{153}

IOOF considers that such changes should be simultaneously progressed under the Bill to avoid further confusion.\textsuperscript{154}

**Key issue—members with active insurance claims**

As identified by APRA in relation to the inactive account provision under section 68AAA of the SIS Act, there is no exemption under the proposed changes for accounts which may currently have an active insurance claim.\textsuperscript{155} While the proposed changes do not affect a member’s right to claim for a period for which they are covered, the FSC considers that members who have an active insurance claim should be exempted given the confusion they may face when they are ‘unwell or injured’, as well as the difficulties they may face opting back in should they inadvertently lose insurance coverage.\textsuperscript{156}

*Members under 25 years of age*

**Key provisions**

Proposed section 68AAC of the SIS Act prevents a regulated superannuation fund from taking out or maintaining insurance under a choice product or MySuper product for a member of the fund if:

- the member is under 25 years and
- the member has not made an election in writing to otherwise take out or maintain the insurance under the choice or MySuper product.\textsuperscript{157}

If the member makes an election to otherwise take out insurance, even if they are under 25, the member is also taken to have made an election under proposed subsection 68AAB(2) (low-balance accounts) and vice-versa.\textsuperscript{158}

The proposed changes prohibiting funds from providing default insurance to under 25 year olds applies to new members who begin to hold a choice or MySuper product on or after 1 October 2019.\textsuperscript{159}

**Key issue—commencement of insurance once a member turns 25 or an account reaches $6,000**

Once an account balance reaches $6,000 or a member turns 25, the trustee no longer enjoys the protection of the exception under subsection 68AA(8A) and (8B) of the SIS Act as amended by item 5 in Part 1 of Schedule 1 to the Bill—that is, the trustee is then under an obligation to opt the member into life and TPD insurance coverage. The Explanatory Memorandum to the Bill states that ‘the requirement under the MySuper rules for the trustee to provide opt out death and permanent disability insurance applies again’ once a member no longer meets the criteria of proposed section 68AAB or 68AAC.\textsuperscript{160} The Explanatory Memorandum to the PYSP Bill stated ‘the


\textsuperscript{154} IOOF, Submission, op. cit., p. 4; FSC, Submission, op. cit., p. 14.


\textsuperscript{156} FSC, Submission, op. cit., p. 9; ASFA, Submission, op. cit., p. 11.

\textsuperscript{157} SIS Act, proposed subsections 68AAC(1) and (2).

\textsuperscript{158} SIS Act, proposed subsections 68AAB(3) and 68AAC(3).

\textsuperscript{159} Item 9 in Part 2 of Schedule 1 to the Bill.

\textsuperscript{160} Explanatory Memorandum, Treasury Laws Amendment (Putting Members’ Interests First) Bill 2019, p. 8.
Timing and frequency of assessing whether a member holds a product that meets one of the criteria... is at the trustee’s discretion.  

Mercer questions the lack of clarity about when exactly the trustee is required to opt members into default insurance, while noting along with other stakeholders that it is likely to be difficult for trustees to immediately opt-in members, either when their balance reaches $6,000 or they turn 25, putting pressure on superannuation fund systems.

**Exceptions**

**Exceptions—key provisions**

The prohibition on providing opt-out insurance under proposed sections 68AAB and 68AAC of the SIS Act is not universal. It does not apply to:

- regulated superannuation funds with fewer than five members
- a defined benefit member
- a member that is or would be an ADF Super member or
- a member to whom the *employer-sponsor contribution exception* applies.

The *employer-sponsor contribution exception* applies where a member’s employer makes contributions in addition to the superannuation guarantee which is equal to or greater than the insurance fees relating to insurance benefit for each *quarter*. The quarter is a period of three months beginning on 1 January, 1 April, 1 July or 1 October. Some stakeholders including First State Super are concerned that this exception may not necessarily extend cover in cases where the insurance premium is partly covered by salary sacrifice arrangements.

The proposed amendments to subsection 68AA(8A) and (8B) of the SIS Act ‘turn off’ a fund’s legislative requirement to provide TPD and life insurance to MySuper members, if such insurance is prohibited by the proposed amendments.

**Low-balance accounts notification requirements**

**Key provisions**

Part 2 of Schedule 1 to the Bill contains the application, transitional and fund notification requirements to give effect to the proposed changes.

Trustees will be prohibited from providing default insurance where a member has a low balance account from 1 October 2019. By 1 July 2019, superannuation funds must identify all members...
with a choice or MySuper product with an account balance less than $6,000, and on or before 1 August 2019 the member must be given written notice specifying:

- that from 1 October 2019, the fund will not provide the member with insurance if they have not had an account balance of $6,000 or more on or after 1 July 2019 and
- the member can by written notice elect to take out or maintain that insurance.\textsuperscript{172}

Notice does not need to be given by the fund if before 1 July 2019 the member gives the fund notice by taking out or maintaining insurance in relation to the product.\textsuperscript{173}

If a member begins to hold a product under which insurance may be provided after 1 July 2019 but before 1 October 2019, the fund must provide the member with written notice stating that the fund will not provide the member with insurance from 1 October 2019:

- if the member has an account balance of less than $6,000 and
- on or after 1 July 2019, the member has not had an account balance of $6,000 or more and
- the member has not elected to take out or maintain insurance notwithstanding a low balance account.\textsuperscript{174}

As noted by IOOF, members who acquire a product after 1 July 2019 but before 1 October 2019 will be provided notice under subitem 8(6) in Part 2 of Schedule 1 to the Bill irrespective of the member’s account balance. While this provision intends to capture new account holders who have a low-balance, it will also apply to those members who may have opened a new product and transferred a substantial balance—IOOF considers that implementing a threshold test for this provision would reduce member confusion by ensuring members who are not at risk of having a low-balance are not sent a notice.\textsuperscript{175}

**Key issue—interaction of various trustee notification and election provisions**

In addition to the practical system difficulties that funds may face as a result of the changes, the interaction of ongoing notification provisions may result in member confusion as illustrated by IOOF in the following example:

For example, consider a member over 25 who joins their employer plan as a MySuper member with a balance of $5,000, however shortly thereafter the employer ceases making contributions to the fund. After 13 months, the member’s balance has increased to $6,000 so the trustee is required under section 68AA to provide certain insurances as the restriction in section 68AAC no longer applies. This would involve the trustee sending a communication to the member informing them of the insurances that have been obtained. However, after two months the trustee would then be required to send an insurance inactivity notice under Corporations Regulations 2001 7.9.44B stating the cover will be cancelled within 30 days if a contribution is not received or an inactivity election is not made...

Furthering the example above, if after 13 months the member’s balance was under $6,000 but they elected to obtain cover under section 68AAB [low-balance account provisions], they would still receive their insurance inactivity notice requesting them to either make a contribution or an election. The member may falsely believe they had already made an election only a few months ago and not take any

\textsuperscript{172}. Subitems 8(2) and (3) in Part 2 of Schedule 1 to the Bill.
\textsuperscript{173}. Subitem 8(5) in Part 2 of Schedule 1 to the Bill.
\textsuperscript{174}. Subitem 8(6) in Part 2 of Schedule 1 to the Bill.
\textsuperscript{175}. IOOF, Submission, op. cit., p. 3.
action to keep their insurance. Under current legislation this would result in the trustee ceasing their cover after the policy had been in place only three months. 176