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TREASURY LAWS AMENDMENT (PROTECTING SUPERANNUATION)  
BILL 2018

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# **Glossary**

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
APRA	Australian Prudential Regulation Authority
ATO	Australian Taxation Office
Bill	Treasury Laws Amendment (Protecting Superannuation) Bill 2018
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMSF	Self managed superannuation fund
SUMLM Act	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
TAA 1953	<i>Taxation Administration Act 1953</i>



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# **Chapter 1**

## **Overview of the protecting your super reforms**

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### **Outline of chapter**

- 1.1 This exposure draft Bill contains amendments to the SIS Act, SUMLM Act and TAA 1953 that will protect individuals' retirement savings from erosion, ultimately increasing Australians' superannuation balances.
- 1.2 This Chapter provides an overview of those amendments.

### **Context of amendments**

- 1.3 Superannuation is a major part of Australia's retirement income system. Together with the Age Pension and savings outside superannuation, it supports Australians in their retirement years.
- 1.4 Superannuation is now the second-largest savings vehicle for Australian households (accounting for 17 per cent of household assets). Its importance is projected to grow rapidly in the coming decades, as the superannuation system matures.
- 1.5 Given the importance of superannuation to Australians, the Government is seeking to ensure that people's hard-earned savings are not unnecessarily eroded by fees or inappropriate insurance arrangements.
- 1.6 In 2015-16, accounts with balances below \$6,000 comprised over 40 per cent of all accounts in the system. These accounts face disproportionately high fees and insurance premiums.
- 1.7 For these accounts, the principal source of growth is through compulsory contributions; however, high passively incurred fees (such as administration and investment fees) largely mute this growth. These fees are imposed under the equal fee structures built into nearly all default MySuper products and many choice products, which are highly regressive in their impact on low balance accounts.
- 1.8 In addition, a significant number of people hold duplicate or inappropriate insurance policies, in large part due to the current default MySuper settings and the relative ease with which an individual can inadvertently create duplicate accounts. The current MySuper settings mandate the provision of death and total and permanent disability

insurance, primarily on an opt out basis and allow for income protection insurance to be provided on an opt out or opt in basis.

1.9 Insurance premiums are a key driver of account balance erosion, and can reduce a low income earner's retirement balance by 10 per cent or more (compared to no insurance) – with the effect increasing for every set of policies held.

1.10 While there is a current regime for transferring lost superannuation balances to the Commissioner of Taxation (the Commissioner) to protect them from erosion, this regime requires longer periods of inactivity before amounts are transferred, assuming that the low balance account has not been entirely eroded by fees by this time. In addition, numerous exceptions permit trustees to not transfer balances below \$6,000 to the Commissioner, allowing these balances to be subject to ongoing fee and premium erosion.

1.11 Historically, there have been high levels of member disengagement with the superannuation sector. In addition, past and current restrictions on a member's ability to choose a fund have forced individuals to hold multiple accounts. The combination of these factors has led to market outcomes that do not reflect the needs of the default and low balance cohorts of members.

1.12 The changes in the exposure draft Bill will not replace existing account consolidation processes which will remain available to members. The changes supplement the current arrangements to streamline consolidation for disengaged members, ensuring that superannuation savings are better protected from inappropriate or excessive erosion by fees and insurance premiums.

1.13 Reducing the number of low balance accounts will generate system-wide efficiencies by reducing administration costs for funds and better targeting default insurance coverage.

1.14 The amendments in the exposure draft Bill are intended to protect members' superannuation savings from erosion by:

- limiting fees on superannuation products so that these accounts can grow and are protected from disproportionately high fees;
- ensuring that arrangements for insurance in superannuation are appropriate so that members are not paying for insurance coverage that they do not know about or premiums that inappropriately erode their retirement savings; and
- strengthening the ATO's role in reuniting small, inactive balances to reduce the costs to members and consolidate the accounts of members that have accrued multiple superannuation accounts.



1.15 Together, these changes will provide a comprehensive solution to many of the issues faced by Australians with low balance, inactive and multiple accounts.

## **Summary of new law**

### **Fees charged to superannuation members**

1.16 Schedule 1 to this exposure draft Bill prevents trustees of superannuation funds from charging administration and investment fees exceeding 1.5 per cent of the balance of accounts with balances below \$6,000 for the six month period immediately following the date on which the balance is calculated.

1.17 The Schedule also prevents trustees from charging exit fees on all superannuation products, regardless of member's account balance.

1.18 This will prevent inappropriate erosion of low balance accounts by high passively-incurred fees, and will remove a disincentive to account consolidation or rollovers by members.

### **Insurance for superannuation members**

1.19 Schedule 2 to this exposure draft Bill prevents trustees from providing opt out insurance to accounts of new members aged under 25 years, all accounts with balances below \$6,000, and all inactive accounts unless a member has directed otherwise.

1.20 This will better target default insurance cover and prevent inappropriate erosion of retirement savings caused by insurance premiums.

### **Inactive low-balance accounts and consolidation into active accounts**

1.21 Schedule 3 to this exposure draft Bill requires the transfer of all superannuation accounts with balances below \$6,000 to the Commissioner if the accounts have been inactive for a continuous period of 13 months.

1.22 The Schedule also enables the Commissioner to proactively pay balances held by the ATO into a member's active superannuation account, where the reunited balance would be greater than \$6,000.

1.23 This will increase the rate of account consolidation in the superannuation industry, decrease low-balance account erosion and reduce insurance premium and fee duplication for many members.



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## **Chapter 2**

# ***Fees charged to superannuation members***

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### **Outline of chapter**

2.1 Schedule 1 to this exposure draft Bill prevents trustees of superannuation funds from charging administration and investment fees exceeding 1.5 per cent of the balance of accounts with balances below \$6,000 for the six month period immediately following the date on which the balance is calculated.

2.2 The Schedule will also prevent trustees from charging exit fees on all superannuation products.

### **Context of amendments**

2.3 Currently, the SIS Act does not limit the amount of administration fees and investment fees that can be deducted from a member's account for either choice or MySuper products.

2.4 While MySuper charging rules provide consistency amongst members in a given MySuper product, this does not always result in equitable outcomes as particular charging structures can result in low balance accounts paying disproportionately high fees.

2.5 A trustee of a superannuation fund can only charge certain fees in relation to a MySuper product if they meet the charging rules. These charging rules generally apply so that the trustee must charge the same flat fee, same percentage of the account balance, or combination of both, for all members of a MySuper product.

2.6 The charging rules do not impose a limit on the amount of fees that can be charged to a member and, in the absence of such a limit, flat passively-incurred fees disproportionately erode the balances of low balance accounts.

2.7 Administration and investment fees represent the majority of fees charged by funds. These fees are incurred by members simply by virtue of holding an account and are a significant cause of account erosion, particularly for inactive accounts.

2.8 Further, exit fees are a disincentive for members to consolidate accounts or exercise a choice to roll their balance into another fund. Consolidation of accounts, in particular, reduces members' exposure to

duplication of fees across multiple low balance accounts and reduces undue erosion of their aggregate superannuation account balances.

2.9 The amendments are to protect superannuation members so their superannuation accounts can grow faster by not being subject to disproportionately high fees while they remain at low balances.

## Summary of new law

2.10 This measure amends the general fee rules in Part 11A of the SIS Act to restrict the total amount of administration and investment fees that can be deducted from an account that has a balance of less than \$6,000.

2.11 The general fee rules are also amended to prohibit exit fees for all superannuation accounts, regardless of the balance.

2.12 The amendments apply equally to choice and MySuper products.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>If the balance of a member's superannuation account is less than \$6,000, the maximum amount of administration and investment fees that can be deducted from the account in the following six month period is 1.5 per cent of the balance.</p> <p>Otherwise, there is no maximum amount of administration and investment fees that can be deducted.</p>	<p>There is no maximum amount of administration and investment fees that can be deducted from a member's superannuation account.</p>
<p>When a member withdraws part or all of their account balance from a fund, the fund cannot charge that member an exit fee.</p>	<p>A member can be charged an exit fee, limited to cost recovery, when the member withdraws all or part of their account balance from a fund.</p>

## Detailed explanation of new law

### Cap on administration and investment fees

2.13 From 1 July 2019, the total amount of administration fees and investment fees that can be deducted from a member's account

is 1.5 per cent (the fee cap percentage) of the account balance, if the account balance in relation to a choice or MySuper product is less than \$6,000. *[Schedule 1, item 16, section 99G of the SIS Act]*

2.14 To ensure that the fee cap percentage remains appropriate and if necessary can be adapted to reflect changes in fee structures over time, regulations can prescribe a fee cap percentage of less than 1.5 per cent. *[Schedule 1, item 16, paragraph 99G(3)(b) of the SIS Act]*

2.15 The calculation of the account balance is to occur on the balance test day, which is prescribed by regulations. *[Schedule 1, item 16, paragraphs 99G(1)(b) and (3)(a) of the SIS Act]*

2.16 It is envisaged that the balance test days will be 30 June and 31 December to align with the existing unclaimed money days under the SUMLM Act which requires the fund to report unclaimed money to the Commissioner.

2.17 Operating standards can prescribe how the amount of the account balance is calculated. *[Schedule 1, item 12, paragraph 31(2)(dc) of the SIS Act]*

2.18 The amount of the fee cap will apply to the following six month period. *[Schedule 1, item 16, subsection 99G(2) of the SIS Act]*

### **Example 2.1**

Amy has an account balance of \$5,400 at 30 June 2019. Amy's fund is only able to deduct 1.5% of her account balance in the following six months for administration and investment fees. Amy's total amount of administration and investment fees from 1 July 2019 to 31 December 2019 are capped at \$81.

2.19 If a member starts to hold a choice or MySuper product during the six month period before a balance test day, then the total amount of administration and investment fees that can be deducted from the member's account during that period is based on the amount calculated on the balance test day and apportioned to the number of days that the member held the product. *[Schedule 1, item 16, subsection 99G(4) of the SIS Act]*

2.20 An administration or investment fee that is deducted at a reduced rate for a member of a MySuper product to align with the fee cap is not a contravention of a trustee's obligation to only charge fees in accordance with the charging rules. *[Schedule 1, items 8 to 10, subsection 29VA(11) and section 29VB of the SIS Act]*

### **Prohibition on exit fees**

2.21 From 1 July 2019, a trustee of a superannuation fund or an approved deposit fund cannot charge a member an exit fee when the member withdraws all or part of their interest from the fund or when the total account balance of the member is transferred out of the fund, such as

a transfer to the ATO under the SUMLM Act. *[Schedule 1, item 13, section 99BA of the SIS Act]*

2.22 When a member withdraws all or part of their account balance from a superannuation fund, or transfers that balance to another fund, the costs involved can relate to:

- the cost of disposing the member's interest in the fund; and
- the transaction costs, in relation to selling and purchasing fund assets, known as buy-sell spreads.

2.23 The prohibition on exit fees is only for the cost of disposing the member's interests in the fund, thus the definition of **exit fee** excludes buy-sell spreads. *[Schedule 1, item 13, subsection 99BA(2) of the SIS Act]*

## Consequential amendments

2.24 The definition of exit fee will be moved to the provision prohibiting exit fees and all references in the SIS Act will be updated. *[Schedule 1, items 1 to 7, 11, 14 and 15, definition of 'exit fee' in subsection 10(1), sections 29V, 29VA, 29VB and 99C of the SIS Act]*

## Application and transitional provisions

2.25 The amendments apply to administration and investment fees deducted on or after 1 July 2019. *[Schedule 1, item 17]*

2.26 Exit fees cannot be applied to the balance or interest that is fully or partly withdrawn or transferred out of the fund on or after 1 July 2019. *[Schedule 1, item 17]*

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## **Chapter 3**

# ***Insurance for superannuation members***

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### **Outline of chapter**

3.1 Schedule 2 to this exposure draft Bill will prevent trustees from providing insurance to accounts of new members under 25 years old, all accounts with balances below \$6,000, and all inactive accounts unless the member has directed the fund to provide that insurance.

### **Context of amendments**

3.2 Currently, many superannuation trustees automatically provide insurance coverage to members upon joining the fund (including all trustees offering MySuper products). This arrangement is commonly referred to as ‘default insurance’ and requires a member to proactively ‘opt out’ of insurance if the member considers the insurance to be inappropriate for them.

3.3 Default insurance is part of the legislative framework for MySuper products. That is, the MySuper settings generally mandate the provision of death and total and permanent disability insurance on an opt out basis, and also allow income protection insurance to be provided on an opt out basis at the trustee’s discretion. Some choice products also include default insurance.

3.4 Under the insurance covenant in the SIS Act, trustees must only offer insurance that does not inappropriately erode the retirement income of members. Despite the covenant, insurance premiums are a key driver of account balance erosion for certain member cohorts.

3.5 Young members, members with multiple and/or inactive accounts, and members with low balances can face significant erosion due to insurance premiums.

3.6 In addition, as a result of the default nature of the insurance and of members being disengaged, many members may not be aware that insurance premiums are being deducted from their account or that they have multiple insurance policies. This leaves the member’s retirement savings at risk of being significantly eroded by those premiums.

## Summary of new law

3.7 From 1 July 2019, if a member’s account meets certain criteria, the trustee may only provide insurance on an opt in basis.

3.8 Trustees must notify the affected members on or before 1 May 2019 of the changes so as to give these members an opportunity to elect to continue to have insurance coverage beyond 1 July 2019 through their fund.

3.9 The changes do not apply to existing members under the age of 25 with active accounts with balances over \$6,000.

3.10 The changes do not replace the existing broader obligations that apply under the insurance covenant in the SIS Act.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Trustees can only provide insurance to a member of a choice or MySuper product when directed by the member with:</p> <ul style="list-style-type: none"> <li>• a new account who is under 25 years old;</li> <li>• an account with balances below \$6,000; or</li> <li>• an account that has been inactive for 13 months.</li> </ul>	<p>Trustees of choice products are not limited in how they can offer insurance beyond the restriction in the insurance covenant of the SIS Act.</p> <p>For MySuper products, trustees must generally provide death and total and permanent disability insurance on an opt out basis. Income protection insurance may also be offered on an opt out basis at the trustee’s discretion.</p>

## Detailed explanation of new law

3.11 Each trustee of a superannuation fund must offer or maintain insurance for its members holding a choice or MySuper product only if the member has directed the trustee in relation to:

- a new account held by a member who is under the age of 25;
- an account that has a balance of less than \$6,000; or
- an account that has been inactive for 13 months or more.

*[Schedule 2, item 1, subsections 68AAA(1), 68AAB(1) and 68AAC(1) of the SIS Act]*

3.12 The timing and frequency of assessing whether an account meets one of the criteria listed above is at the trustee’s discretion. However, the



requirements imposed on trustees to not offer opt out insurance to these members, as well as the notification requirements for inactive members, necessitate that trustees make these assessments at a reasonable frequency.

3.13 To manage potential administrative and compliance burdens in relation to accounts with balances that fluctuate around the threshold amount, the new insurance rules apply to accounts that have not reached \$6,000 at any point in time on or after 1 July 2019. *[Schedule 2, item 1, paragraph 68AAB(1)(b) of the SIS Act]*

3.14 That is, once an account balance has reached the \$6,000 threshold on or after 1 July 2019, the requirement to offer or maintain the insurance on an opt in basis ceases unless the account becomes inactive.

3.15 The new arrangements apply to an account that may have had a balance greater than \$6,000 at some stage before 1 July 2019 provided that, on 1 July 2019, the account balance is below \$6,000.

3.16 A choice or MySuper product will be considered inactive if no contributions or rollovers have been received for the previous continuous period of 13 months. *[Schedule 2, item 1, subsection 68AAA(3) of the SIS Act]*

3.17 The period of inactivity includes the continuous period of inactivity up to 1 July 2019. *[Schedule 2, subitem 3(2)]*

3.18 The period of inactivity is reset when a contribution or rollover is received. That is, the contribution or rollover resets the clock on inactivity for another 13 months. *[Schedule 2, item 1, subsection 68AAA(4) of the SIS Act]*

3.19 It is expected that the regulations will require a trustee to provide a written notification from 1 July 2019 to members whose accounts have been inactive for six or nine months. This is designed to communicate that if the account continues to be inactive for a total of 13 continuous months, insurance will be only offered or maintained on an opt in basis.

3.20 The notices are to cover how the member can maintain insurance coverage and what will happen if no direction is made to the trustee.

3.21 From 1 July 2019, the trustee must ensure that each member affected by these amendments can direct the trustee to take out or maintain their insurance. Directions by members in respect of their insurance must be made in writing. *[Schedule 2, item 1, subsections 68AAA(2), 68AAB(2) and 68AAC(2) of the SIS Act]*

3.22 A written direction by a member to maintain insurance will be valid indefinitely unless another criterion is met.

3.23 Regardless, the amendments do not affect a member's right to be covered by insurance until:

- the end of the period for which premiums have been deducted; or
- the expiry date of the term of the member's existing insurance contract.

*[Schedule 2, item 1, subsections 68AAA(6), 68AAA(7), 68AAB(4) and 68AAB(5) of the SIS Act]*

3.24 The application and transitional provisions section in this Chapter explains how these amendments affect the existing insurance arrangements of members holding a choice or MySuper product in the lead up to 1 July 2019.

## Consequential amendments

3.25 Section 68AA of the SIS Act requires trustees to provide MySuper members with death and permanent incapacity insurance on an opt out basis unless a reasonable condition applies.

3.26 Amendments are made to section 68AA to ensure that the section does not apply to new MySuper members under 25 years old, all MySuper members with an account balance of less than \$6,000 or with an account that has been inactive for 13 months or more. *[Schedule 2, item 2, subsections 68AA(8A) and (8B) of the SIS Act]*

3.27 This preserves the operation of the provision for MySuper members who are not subject to these amendments so that insurance coverage will continue to be or will be offered on an opt out basis.

3.28 Further, subsection 68AA(9) provides that section 68AA does not apply to defined benefit members or ADF Super members. *[Schedule 2, item 1, subsections 68AAA(5), 68AAB(3) and 68AAC(3) of the SIS Act]*

## Application and transitional provisions

3.29 The amendments apply to members who are under 25 years old and start to hold a choice or MySuper product on or after 1 July 2019. *[Schedule 2, item 5]*

3.30 The amendments also apply to members with an account balance of less than \$6,000 or whose account has been inactive for 13 months or more on or after 1 July 2019. *[Schedule 2, items 3 and 4]*

3.31 There are particular rules and application provisions for existing accounts before 1 July 2019 that have balances below \$6,000 or have been inactive for 6 months on 1 April 2019. For these members a trustee must

provide a written notice on or before 1 May 2019. *[Schedule 2, paragraphs 3(3)(b) and 4(2)(b)]*

3.32 To determine the relevant accounts, a trustee must, on 1 April 2019, review all member accounts and determine which accounts:

- have an account balance below \$6,000; or
- have been inactive for six months or more.

*[Schedule 2, paragraphs 3(3)(a) and 4(2)(a)]*

3.33 The written notice must provide that:

- from 1 July 2019, the fund will not provide the member with an insurance benefit, if the account balance remains below \$6,000 or it is inactive for 13 months;
- the benefits can be provided if the member elects to continue their cover; and
- set out the election method.

*[Schedule 2, subitems 3(4) and 4(3)]*

***Elections for insurance on accounts with balances less than \$6,000 made before 1 April 2019***

3.34 If a member has a balance of less than \$6,000 and has made an election prior to the 1 April 2019 stocktake, then the election is deemed to be effective on or after 1 July 2019 and the member does not need to be provided with a written notice. An election made prior to the 2018-19 Budget night will also be effective after 1 July 2019. *[Schedule 2, subitems 4(4) and (5)]*

3.35 While the amendments do not require a member to have made the election in writing, if insurance is provided by the trustee after 1 July 2019, and the member has not asked for it to be provided, the trustee may breach the trustee's licensing obligations. A trustee will need to be able to demonstrate that consent was given, for example, either through a record of a meeting, a note following a telephone conversation, or holding a record of a written consent.

3.36 It would be unlikely that a trustee could demonstrate that a member had given his or her consent where a member had simply contacted the fund to make a claim on their existing insurance, made an enquiry about the insurance offered by the fund or made a general enquiry about their account.

**Example 3.1**

Lola has recently joined the workforce and her superannuation savings are low, \$2,000. She is worried her employer has not been making superannuation guarantee contributions so she calls her fund to find out

if the right contributions have been made. The fund representative provides Lola with details on the contributions that have been made and her account balance and Lola is comforted that her employer is making the right contributions.

The representative asks Lola if she had any other questions, or wanted to know about the insurance the fund offers but Lola declines as she is running late to her next university lecture.

This conversation should not be taken to be Lola electing to have insurance provided by her fund.

### **Example 3.2**

Emily is consolidating her multiple superannuation accounts and wants to improve her understanding of the types of insurance offered by each provider. She makes enquiries with each provider and after some thought decides to roll all her superannuation into one particular fund given its insurance policies. The combined balance of her consolidated superannuation is \$4,500.

She contacts her fund and explains to the fund representative that she would like total permanent disability and income protection insurance provided on her consolidated account.

The fund representative makes the necessary arrangements including by making a note of the conversation on Emily's file. The trustee would be able to use this to demonstrate that Emily has elected to have insurance.

### ***Elections for insurance on inactive accounts***

3.37 There will be different election arrangements for members holding inactive accounts. These members must be sent written notices and must elect in writing to maintain insurance cover, unless the member has made a written election between 2018-19 Budget night and the 1 April 2019 stocktake. *[Schedule 2, subitem 3(6)]*

3.38 An election made before 2018-19 Budget night is not deemed to be effective on or after 1 July 2019.

3.39 This reflects that the account has been inactive and there is a higher risk that the insurance associated with these accounts may no longer be appropriate. Therefore, it is important to ensure that the member makes a conscious decision for premiums to continue to be deducted.

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## **Chapter 4**

# ***Inactive low-balance accounts and consolidation into active accounts***

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### **Outline of chapter**

4.1 Schedule 3 to this exposure draft Bill amends the SUMLM Act to require superannuation providers and retirement savings account (RSA) providers to pay the balances of accounts to the Commissioner where the account has been inactive for 13 months and the balance of the account is less than \$6,000.

4.2 The Schedule also gives the Commissioner greater powers to consolidate amounts held for a person who has an active account with a superannuation provider or RSA provider, without needing to be directed to do so by the person.

### **Context of amendments**

4.3 Historically, there have been high levels of member disengagement with the superannuation sector. In addition, past and current restrictions on a member's ability to choose a fund, have forced individuals to hold multiple accounts. Consequently, current outcomes do not reflect the needs of the target cohort of members.

4.4 Currently, the SUMLM Act requires a superannuation provider or RSA provider to pay the balances of accounts to the Commissioner where:

- the person has reached preservation age and the fund has not received an amount in respect of the person within the last two years and the fund has been unable to contact the person after five years;
- the person is deceased and the fund has been unable to pay the benefit to the rightful owner;
- the amount from a super-split on divorce cannot be paid to a fund for the receiving spouse;
- a member meets the definition of 'lost member' and the account balance is less than \$6,000;

- a member meets the definition of ‘lost member’ and their account has been inactive for 12 months and the fund is unable to contact the member; or
- a member was a temporary resident who has left Australia.

4.5 The SUMLM Act also only allows the Commissioner to consolidate the amounts he or she holds for a person with amounts held in a superannuation account when the person directs the Commissioner to do so. This can mean the Commissioner holds amounts for an individual without the individual being aware and where the amounts could instead be consolidated in a superannuation fund.

## **Summary of new law**

4.6 While there is a current regime for transferring lost superannuation balances to the ATO to protect them from erosion, that regime is complex, limiting the effectiveness and integrity of the policy.

4.7 The amendments in Schedule 3 provide greater protections for people with low balances and inactive accounts by requiring a superannuation or RSA provider to pay these amounts to the Commissioner where the balance of these inactive accounts is below \$6,000.

4.8 The amendments in Schedule 3 complement the transfer of inactive accounts to the Commissioner by giving the Commissioner the power to proactively consolidate the amounts he or she holds with an active account held by the person in a superannuation fund where the reunited balance would be greater than \$6,000.

4.9 The initial transfer of inactive low-balance accounts to the Commissioner will take place during the 2019-20 financial year which will also be when the Commissioner begins to proactively reunite monies currently held. For the transfers to begin at the commencement of the 2019-20 financial year, the first unclaimed money day is taken to be 30 June 2019.

4.10 The changes in the exposure draft Bill do not replace existing account consolidation processes which will remain available to members. These changes supplement the current arrangements to streamline consolidation for disengaged members, ensuring that superannuation savings are protected from erosion by fees.

4.11 Reducing the number of low balance accounts will generate system-wide efficiencies by reducing administration costs for funds and better targeting default insurance coverage.

4.12 Overall, the amendments in Schedule 3 will increase the rate of account consolidation in the superannuation industry, decrease low-balance account erosion and reduce insurance premium and fee duplication for many members.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>In addition to the existing conditions for transfers to the Commissioner, the balance of an account must be paid to the Commissioner where:</p> <ul style="list-style-type: none"> <li>• no contribution has been received for 13 months; and</li> <li>• the balance of the account is less than \$6,000.</li> </ul>	<p>Amounts are paid to the Commissioner where the definition of ‘unclaimed money’ is met, the amounts relate to lost members, or the amounts relate to temporary residents who have subsequently departed Australia.</p>
<p>Without being directed by the person, the Commissioner must pay the amounts he or she holds on behalf of a person to an active superannuation account when the balance of the consolidated account will be equal to or greater than \$6,000.</p>	<p>The Commissioner may only pay an amount to a superannuation fund where directed to do so by the individual.</p>

## Detailed explanation of new law

4.13 The amendments in Schedule 3 do not replace existing rules in the SUMLM Act which set out when statements and payments must be provided to the Commissioner. Schedule 3 supplements the current arrangements to streamline consolidation for disengaged members, ensuring that superannuation savings are protected from erosion by fees.

### Payments and statements for inactive low-balance accounts

4.14 Schedule 3 amends the SUMLM Act to insert a new circumstance when statements and payments of account balances must be provided to the Commissioner—inactive low-balance accounts.

4.15 The amounts transferred to the Commissioner as inactive low-balance accounts will be included on the Unclaimed Money Register to assist people to find their superannuation balances. *[Schedule 3, item 10, paragraph 19(1)(d)]*

**Statements on inactive low-balance accounts**

4.16 An inactive low-balance account means an account with a superannuation provider or RSA provider for which:

- no amount has been received in the last 13 months by the superannuation provider in respect of the member for whom the account is held, including the period before the measure commences;
- the balance of the account is less than \$6,000; and
- the account does not support a defined benefit interest.

*[Schedule 3, items 6 and 15, sections 8 and 20QA of SUMLM Act]*

4.17 An amount that could be received, so that the account was not inactive, includes a superannuation guarantee payment from an employer or another type of concessional contribution, a personal after-tax contribution or other non-concessional contribution, an amount rolled-over from another superannuation provider or the Commissioner, or a co-contribution amount. An account would not be considered 'active' because earnings had been attributed to the account.

**Example 4.1**

Madeline has an account with a superannuation fund that was opened by a previous employer. Madeline did not choose a fund.

Madeline has since left that employer and the employer contributions from her new employer are being paid into an account in a different fund.

The first account has not received an amount in more than 13 months (other than investment earnings), and so is inactive. Its balance is \$3,000. This account would meet the definition of inactive low-balance account.

4.18 The amendments inserted into the SUMLM Act by Schedule 3, and the obligations on a superannuation provider to submit statements to the Commissioner about inactive low-balance accounts and pay these amounts to the Commissioner, are modelled on the existing lost member regime in Part 4A of the SUMLM Act.

4.19 That is, a superannuation provider is required to give the Commissioner a statement which includes details of the inactive low-balance accounts in the fund. The provider must identify the accounts on the 'unclaimed money day'. The statement is due on the scheduled statement day that relates to the unclaimed money day. *[Schedule 3, item 15, section 20QB of the SUMLM Act]*

4.20 The Commissioner already has the power to specify in a legislative instrument the unclaimed money day and the scheduled statement day that relates to that unclaimed money day. The existing



instrument specifies those days as 30 June and 31 December and the scheduled statement days as 31 October and 30 April respectively. The power which allows the Commissioner to specify these days in a legislative instrument is expanded to also apply to inactive low-balance accounts. *[Schedule 3, items 8 and 9, section 8 and paragraphs 15A(a) and 15A(b) of the SUMLM Act]*

4.21 The first unclaimed money day for inactive low-balance accounts is 30 June 2019.

4.22 The Commissioner may, under the TAA 1953, defer the time for the superannuation provider to give the statement. If the information is not given by the required time, the TAA 1953 provides for offences and administrative penalties.

4.23 The statement from the provider must be given in an approved form. The Commissioner can require information about the administration of inactive low-balance accounts and tax file numbers to be in the form. *[Schedule 3, item 18, subsection 25(2A) of the SUMLM Act]*

4.24 If the statement includes false or misleading information, the TAA 1953 provides for offences and administrative penalties. This will make the penalties for inactive low-balance accounts consistent with broader taxation administration.

4.25 If there are no accounts that are inactive low-balance accounts at the end of the unclaimed money day the provider is still required to submit a statement to the Commissioner which includes this information. *[Schedule 3, item 15, subsection 20QB(2) of the SUMLM Act]*

4.26 The requirement for a superannuation provider to give a statement does not apply to a regulated superannuation fund with fewer than five members if there are no inactive low-balance accounts at the end of the unclaimed money day. *[Schedule 3, item 15, subsection 20QB(4) of the SUMLM Act]*

4.27 That is, small APRA regulated superannuation funds and SMSFs will only be required to give a statement to the Commissioner if they have inactive low-balance accounts in the fund at the end of an unclaimed money day.

4.28 The statement must also include information about an account that, between the end of the unclaimed money day and the day on which the superannuation provider gives the statement to the Commissioner, ceases to be an inactive low-balance account. *[Schedule 3, item 15, subsection 20QB(3) of the SUMLM Act]*

#### **Example 4.2**

On 30 June 2020, Max's superannuation provider considers the amount payable to Max is an inactive low-balance account as it satisfies all the conditions in subsection 20QA(1) of the SUMLM Act.

The statement is due by 31 October 2020.

However, on 2 August 2020 Max's employer makes a superannuation guarantee contribution to Max's account.

Although the account is no longer an inactive low-balance account Max's superannuation provider is still required to include, in the statement to the Commissioner, information for Max's account.

4.29 Where an account meets more than one definition in the SUMLM Act and therefore would meet more than one requirement to provide a statement, Schedule 3 sets out how the account should be treated and on which statement it should appear. That is, the priority for statements to the Commissioner for amounts payable under the SUMLM Act will be: unclaimed money, an amount for a temporary resident who has departed Australia, then a lost member. *[Schedule 3, item 15, subsection 20QB(6) of the SUMLM Act]*

4.30 Where the account would meet those definitions, the account would be reported to and payable to the Commissioner under those Parts of the SUMLM Act. Only where the account did not meet those definitions would the account be an inactive low-balance account and included in a statement under this new Part in the SUMLM Act.

4.31 Where a superannuation provider is required to give the Commissioner a statement and the provider becomes aware of a material error in, or omission from, that statement, the provider must give the Commissioner the corrected or omitted information in the approved form no later than 30 days after becoming aware of the error or omission.

#### ***Paying inactive and low-balance accounts to the Commissioner***

4.32 As with the existing provisions in the SUMLM Act, Schedule 3 of the exposure draft Bill requires a superannuation provider to pay the balance of an inactive low-balance account to the Commissioner by the scheduled statement day. *[Schedule 3, item 15, section 20QD of the SUMLM Act]*

4.33 However, the requirement to pay an amount does not apply until the insurance cover for which a member has paid has expired. *[Schedule 3, item 15, paragraph 20QD(1)(d) of the SUMLM Act]*

4.34 The amount payable is the amount that would have been due and payable by the superannuation provider if the lost member had requested that the balance be rolled over to a complying superannuation fund (within the meaning of the SIS Act), this includes earnings.

4.35 If the amount to be paid to the Commissioner is nil or below nil then no amount is payable. *[Schedule 3, item 15, subsection 20QD(7) of the SUMLM Act]*

### **Example 4.3**

The balance of an inactive low-balance account in a fund on the unclaimed money day is \$5,997. No amount has been received for the account in more than 13 months. Therefore, it is an account balance that must be paid to the Commissioner.

Between the unclaimed money day and the scheduled statement day the fund credits the account with earnings of \$30, bringing the balance to \$6,027.

As the value of the account was below \$6,000 on the unclaimed money day — details of the account must still be included in a statement to the Commissioner. However, as the balance is now greater than \$6,000, the balance of the account is no longer payable to the Commissioner.

4.36 The Commissioner may, under section 255-10 in Schedule 1 to the TAA 1953, defer the time at which the amount is due and payable by the superannuation provider. The amount the provider must pay is a tax-related liability for purposes of the TAA 1953 and as such a general interest charge and administrative penalties are connected with such liabilities. The amendments in Schedule 3 make the penalties for inactive low-balance accounts consistent with broader taxation administration.

4.37 The Commissioner is able to refund an overpayment made to the Commissioner by a provider. *[Schedule 3, item 15, section 20QJ of the SUMLM Act]*

4.38 Where a family law payment split applies to an account, that is part of the member's account is payable to the non-member spouse, and the account is an inactive low-balance account, the superannuation provider must pay the amount for the non-member spouse to the Commissioner. *[Schedule 3, item 15, subsection 20QD(4) of the SUMLM Act]*

4.39 The requirement to pay an amount to the Commissioner does not apply to a superannuation provider which is a trustee of a State or Territory public sector superannuation scheme which gives a statement and makes a payment to a State or Territory authority as provided for in section 18 of the SUMLM Act. *[Schedule 3, item 15, sections 20QG and 20QH of the SUMLM Act]*

4.40 In the same way that there is a priority order for including accounts that meet numerous definitions in the SUMLM Act in a statement, there is also a priority order as to how amounts must be paid to the Commissioner. Where an account also meets the definition of 'unclaimed money', 'temporary resident' or a 'lost member', it will be paid to the Commissioner under those requirements in the SUMLM Act. *[Schedule 3, item 15, subsection 20QD(5) of the SUMLM Act]*

4.41 A provider has no further liability for an amount paid to the Commissioner. That is, the former member or a beneficiary is unable to

seek the balance of the account from the provider. *[Schedule 3, item 15, subsection 20QD(6) of the SUMLM Act]*

***Paying out amounts paid to the Commissioner as inactive low-balance accounts***

4.42 Amounts that have been paid to the Commissioner as inactive low-balance accounts must be paid by the Commissioner:

- to a superannuation fund if directed by the member;
- to the person's beneficiaries, if the person has died and the Commissioner is satisfied that the original fund would have paid the amount to the beneficiaries; or
- to the person if the person has reached eligibility age, the amount is less than \$200 or the person has a terminal medical condition within the meaning of the ITAA 1997.

*[Schedule 3, item 15, section 20QF of the SUMLM Act]*

4.43 If a provider receives an amount in respect of a person but is unable to credit an account held by the provider on behalf of that person within 28 days, the provider must return the amount to the Commissioner.

*[Schedule 3, item 15, section 20QL of the SUMLM Act]*

4.44 If an amount is overpaid by the Commissioner, the Commissioner is able to recover that amount from the provider or the person to whom the overpayment was made. *[Schedule 3, item 15, section 20QK of the SUMLM Act]*

**Consolidating accounts with the Commissioner into active superannuation accounts**

4.45 Schedule 3 to this exposure draft Bill inserts a new Part into the SUMLM Act giving the Commissioner greater powers to consolidate amounts that have been paid to him or her as unclaimed money, inactive low-balance accounts and lost member accounts into an active superannuation account without needing to be directed to do so by the person to whom the amount relates. *[Schedule 3, item 17, section 24NA of the SUMLM Act]*

4.46 The Commissioner must rollover amounts to a superannuation account for the person where:

- the amount has not already been paid out under Part 3 (unclaimed money), Part 3B (inactive low-balance accounts) or section 24E (lost members);
- the fund has an active account for the person;
- the fund will accept amounts from the Commissioner; and

- the balance of the account, once the Commissioner has transferred the amounts held by the Commissioner is greater than \$6,000.

*[Schedule 3, item 17, subsections 24NA(1) and (2) of the SUMLM Act]*

4.47 An account will be considered active if it has received an amount for the person in the last financial year. Paragraph 4.17 includes examples of what it means for an account to receive an amount in respect of a member. *[Schedule 3, item 17, paragraph 24NA(2)(c) of the SUMLM Act]*

4.48 A person may also request that the Commissioner transfer an amount to a superannuation fund in the approved form. *[Schedule 3, item 17, paragraph 24NA(1)(c) of the SUMLM Act]*

4.49 There may be circumstances when a person holds more than one product within the same superannuation fund, or across multiple funds that would meet the conditions that would mean the Commissioner had to pay the amount to that fund or funds.

4.50 Similar to the approach used for the Government co-contribution payment rules, regulations will include rules to direct the Commissioner as to which fund or product the amount should be paid to. These rules would consider the balance of the account, the types of contributions being made to the account and any directions from the person about the payment of co-contributions. *[Schedule 3, item 17, subsections 24NA(3) to (6) of the SUMLM Act]*

4.51 There is no prescribed timeframe for the Commissioner to transfer the amounts. However, the Commissioner will transfer the amounts as soon as practicable taking into account the information available to the Commissioner to identify an active account.

4.52 If the Commissioner pays an amount for a person to a superannuation provider but the provider cannot credit the amount into an account held on behalf of the person, the provider has 28 days in which to refund the amount to the Commissioner. *[Schedule 3, item 17, section 24NB of the SUMLM Act]*

4.53 The new rules also apply to amounts paid to the Commissioner before Schedule 3 to this exposure draft Bill commences but do not apply to amounts transferred to the Commissioner as a non-member spouse amount. An amount transferred to the Commissioner as a non-member spouse amount will only be transferred to a superannuation fund at the direction of the non-member spouse. *[Schedule 3, item 17, paragraph 24NA(1)(b) and subsection 24NA(6) of the SUMLM Act]*

## Consequential amendments

4.54 The objects and simplified outline of the SUMLM Act are amended to reflect the changes made by this Schedule. *[Schedule 3, items 1 to 4, paragraphs 6(d), 6(e), 6(ea) and section 7 of the SUMLM Act]*

4.55 Amendments are required to the TAA 1953 to make clear when the general interest charge is payable for breaches of the new provisions inserted in the SUMLM Act. New items are added into the table in subsection 8AAB(4) of the SUMLM Act to provide that a provider will be liable for the general interest charge if:

- a payment of an inactive low-balance account is not made to the Commissioner;
- a provider fails to repay an amount which was an inactive low-balance amount to the Commissioner that cannot be credited to an account; or
- a provider fails to repay an amount to the Commissioner paid under the new reunification rules that cannot be credited to an account.

*[Schedule 3, items 19 and 20, subsection 8AAB(4) of the TAA 1953]*

4.56 The TAA 1953 is also amended to provide that the liabilities listed above are tax-related liabilities. *[Schedule 3, items 21 and 22, subsection 250-10(2) in Schedule 1 of the TAA 1953]*

## Application and transitional provisions

4.57 The first unclaimed money day for inactive low-balance accounts will be on 30 June 2019. *[Schedule 3, subitem 23(1)]*

4.58 The period to determine whether an account is inactive will include the period before the measure commences. *[Schedule 3, subitem 23(2)]*