

Superannuation complaints about PYS and insurance cover

This fact sheet provides information about how AFCA considers complaints about trustees cancelling insurance cover in a member's superannuation account because of the Protecting Your Super legislation (PYS).

Why was the PYS legislation introduced?

The purpose of the PYS legislation is to protect superannuation accounts from being reduced by unnecessary insurance costs (premiums). The legislation applies to both Choice and MySuper accounts.

PYS legislation introduced several initiatives to protect superannuation accounts. However, this factsheet is about the cancellation of cover for inactive accounts.

The relevant legislation is set out in Section 68AAA of the *Superannuation Industry (Supervision) Act 1994* Cth (SIS). These changes were introduced by the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* (Cth).

How does the PYS legislation affect superannuation insurance cover?

From 1 July 2019, a superannuation fund trustee (trustee) must not provide insurance cover to an account that has been inactive for 16 months. This provision applies unless the member has elected to keep their insurance cover. This is often referred to as 'opting in'.

Are there other circumstances where insurance cover can be cancelled?

Insurance cover held through a superannuation fund may also be cancelled in other circumstances, including if:

- the member has a low balance account or is under 25, under the Putting Members' Interests First legislation (PMIF); or
- there is not enough money in the member's account to pay premiums; or
- the policy terms or fund's trust deed require the trustee or the insurer to cancel the member's insurance cover.

See the AFCA fact sheet Superannuation complaints about PMIF and insurance cover for more information: [afca.org.au/publications](https://www.afca.org.au/publications)

Some fund governing rules may provide for a shorter period than 16 months. Cover may cease under the policy terms before cancellation occurs under PYS legislation.

Inactive accounts

What is an inactive account?

An account is considered inactive (and subject to the PYS legislation) if it has not received a payment, such as a rollover or contribution, for 16 months in a row. The account becomes active again when a contribution or rollover payment is made, starting the 16 month countdown again.

What if an account was already inactive before 1 July 2019?

If an account was already inactive for 6 months before 1 July 2019, transitional arrangements applied. After that date, ongoing arrangements apply. These arrangements are explained below.

What is a valid election to 'opt in' to insurance cover?

A trustee must ensure that a member with an account that has been inactive for 16 months can 'opt in' to take out or keep insurance cover. There are limited exceptions to this requirement.

An 'opt-in' notice from a member must be in writing, and as instructed by the trustee in the insurance inactivity notice. An opt in notice must also be received by the trustee to be effective. Once a valid opt in notice is in place, it stays in effect until the member tells the trustee they no longer want to have insurance cover.

In certain circumstances, the trustee will accept that a member has already opted in, for example, if they have opted in under PMIF legislation.

If you opt in, you should follow up by checking your account statement online to ensure you have insurance cover. If you have any questions or concerns, contact your fund immediately. If you decide you no longer want insurance cover (or a type of cover) at any time, you will need to tell your superannuation fund so that the trustee can make the necessary changes.

Insurance inactivity notices

What must the trustee do before cancelling insurance cover?

Before cancelling cover under PYS, the trustee has to send a notice to the affected member, telling them their insurance cover may be cancelled, and explaining how to 'opt in' to keep it. These are called 'insurance inactivity notices'.

Insurance inactivity notices are a legal requirement and are different for ongoing and transitional arrangements. In general terms, the notice needs to say that insurance cover in the inactive account may be cancelled if the account remains inactive for the period set out in the notice, unless the member elects to opt in to keep their insurance cover.

How are insurance inactivity notices given?

For ongoing insurance inactivity notices, a trustee can rely on notice requirements under the fund's trust deed and/or as set out in the trustee's disclosure material. It can also rely on law about electronic notices, if applicable. For example, the fund's trust deed may say that all notices, or certain types of notices, must be issued by mail. However, trustees generally have power to issue notices in different ways.

Different legislation applies to transitional insurance inactivity notices, which may mean the trustee needed a member's consent to give the notices by electronic means.

You should make sure your superannuation fund always has current contact details for you, including an up-to-date postal and email address. Otherwise, you may not receive important information issued by the trustee.

Ongoing arrangements

When will an ongoing insurance inactivity notice be issued?

The trustee must:

- identify if the member's account is inactive (no payments received) for 9, 12 and 15 months; and
- give the member an ongoing insurance inactivity notice for an account that is inactive for any of these periods.

These notices must be given at 7 months, 4 months and 1 month before the insurance cancellation date, and within 2 weeks after each respective date.

Example

The trustee identifies that Stasia's superannuation account has been inactive since 1 March 2023, and will reach 16 months of inactivity on 1 July 2024 if no payments are received over that period.

Under PYS legislation the trustee must cancel Stasia's insurance on 2 July 2024:

- if their account remains inactive; and
- they did not make a valid election to keep their insurance cover.

The trustee must give Stasia three insurance inactivity notices:

Account inactive	1 March 2023
Notice 1	1 December 2023 7 months before
Notice 2	1 March 2024 4 months before
Final notice	1 June 2024 1 month before
Insurance cancellation date	2 July 2024

What does the ongoing insurance inactivity notice need to say?

The content of these notices is prescribed by law and must include:

- the period the account has been inactive
- the date insurance cover will stop (if the account remains inactive)
- the insurance fees that apply (for the previous and current years)
- how to opt in to keep insurance cover
- an explanation the account will be active again if it receives a payment (contribution or rollover).

Transitional arrangements

When were transitional insurance inactivity notices issued?

Special rules applied to trustees with members whose accounts had already been inactive for 6 months when the PYS legislation started.

By 1 May 2019, trustees had to give a transitional insurance inactivity notice to members with insurance cover whose account had been inactive for 6 months before 1 April 2019.

That notice had to explain:

- that insurance cover would stop on 1 July 2019 if the member's account had been inactive for 16 months in a row, unless they 'opted in' to keep their cover; and
- how the member could opt in.

Confirmation that insurance cover has been cancelled

AFCA generally expects trustees to tell a member if their insurance cover has been cancelled under PYS legislation.

Relevant information

AFCA will consider if the trustee's decision to cancel insurance cover was fair and reasonable in all the circumstances, in its operation in relation to the complainant.

What is AFCA's approach to this type of complaint?

We will consider if the insurance cover was cancelled correctly by reviewing:

- the superannuation fund's trust deed and the insurance policy (group or individual retail policy)
- relevant disclosure material; and
- the applicable law.

What information does AFCA seek?

From your superannuation trustee:

- evidence your account was inactive for 16 months
- information to show whether the insurance inactivity notices met the legislative and regulatory requirements for content and delivery method
- evidence of valid despatch (postal or electronic) of the trustee's communication
- information about your communication preferences, online access, and last nominated address.

See AFCA's Approach to proof of despatch ([afca.org.au/afca-approach](https://www.afca.org.au/afca-approach)) for more information about the provision of documents, including via email.

We may also ask the trustee for:

- evidence you opted to keep insurance cover (if applicable)
- information about payments (contributions or rollovers) into your account over the relevant period
- details of any cover reinstatement options the trustee had arranged, or which the fund's policy allows
- information about how the trustee applied PYS legislation to your account, particularly if you say the trustee's conduct was misleading or deceptive.

What outcomes are available for superannuation complaints about insurance cover?

In a superannuation complaint about a trustee cancelling insurance cover under PYS legislation, AFCA will consider if the trustee's decision or conduct was fair and reasonable in all the circumstances. AFCA cannot, by law, issue a determination that would require a trustee to act contrary to its governing rules, an insurance policy, or the law.

Generally, remedies will be sought against the trustee only. However, AFCA may join an insurer to the complaint, if warranted by the circumstances of the complaint.

The remedy sought against the trustee will generally be compensation for a loss the complainant says they have suffered because the trustee cancelled insurance cover when it should not have done. This is because the law does not allow a trustee to provide life insurance cover itself; any insurance must be provided by an insurer.

AFCA will generally consider a trustee to have acted reasonably if it can show:

- the complainant's superannuation account had been inactive for 16 months
- the trustee gave the required notices, including information about how to 'opt in' to insurance cover by a permitted method; and
- the trustee did not receive a valid 'opt in' notice from the member.

If we are satisfied the trustee didn't meet the requirements of the PYS legislation when it cancelled insurance cover, we may go on to consider if you (the member) have suffered a direct financial loss as a result and should receive compensation from the trustee.