



SENATOR THE HON JANE HUME
ASSISTANT MINISTER FOR SUPERANNUATION,
FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY

Ref: MS19-002918

26 NOV 2019

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Regulations and Ordinances Committee
Suite S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

I am writing in response to your letter on behalf of the Senate Regulations and Ordinances Committee (the Committee) of 14 November 2019 which requested advice relating to the *ASIC Corporations (Unclaimed Superannuation – Former Temporary Residents) Instrument 2019/873* (Instrument 2019/873).

In the letter, the Committee sought advice as to why it is considered necessary and appropriate to use delegated legislation to conditionally exempt superannuation fund trustees from sections 1017B and 1017D of the *Corporations Act 2001* (the Corporations Act) for a further 10 years, instead of amending the Corporations Act.

Background

As your letter mentions, Instrument 2019/873 remakes relief that was previously given by ASIC Class Order [CO 09/437] '*Departed former temporary residents superannuation – Disclosure relief*' with a minor policy change that shifts the location for the website disclosure required by the Instrument from the trustee website to the fund website.

The Australian Securities and Investments Commission (ASIC) chose to remake [CO 09/437] even though legislative instruments (not being regulations) relating to superannuation are not subject to formal sunseting. (section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* refers). The remaking of [CO 09/437] was to ensure that this instrument was kept up to date and remained fit for purpose, relevant and necessary.

ASIC conducted public consultation on its proposal to remake the relief in [CO 09/437], with the minor change, in Consultation Paper 318 '*Remaking ASIC class order on departed former temporary residents' superannuation*' (CP 318). No submissions were received in response to CP 318.

The use of delegated legislation and appropriateness of primary law changes

The modifications provided for in Instrument 2019/873 are not appropriate for inclusion in the Corporations Act. This is because they provide relief that is of a highly specific and detailed nature such as relief from the

requirement to notify and give exit statements to departed former temporary residents when their superannuation benefits are paid to the Australian Taxation Office under Part 3A of the *Superannuation (Unclaimed Moneys and Lost Members) Act 1999*.

Instrument 2019/873 uses powers in the Corporations Act given by Parliament to ASIC that allows ASIC to modify the operation of the Act to provide a tailored and flexible regulatory environment that can be adapted to deal with unusual or specific situations.

If the matters in Instrument 2019/873 were to be inserted into the Corporations Act, they would insert into an already complex statutory framework, a set of provisions that would apply to a relatively small group of individuals in specific circumstances as outlined above. This would result in additional and unnecessary complexity for other users of the Act.

As the matters contained in Instrument 2019/873 are unlikely to change in the near future, it is appropriate for the instrument to remain in force.

I trust this information will be of assistance to you.

Yours sincerely

Senator the Hon Jane Hume



Senator the Hon Anne Ruston

**Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate**

Ref: MB19-001723

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Concetta

Dear Senator Fierravanti-Wells

I am writing in response to your letter as Chair of the Senate Standing Committee on Regulations and Ordinances (the Committee) dated 14 November 2019.

You requested advice in relation to the Social Security (Reasonable Excuse – Student Payments) Determination 2019 (the 2019 Determination). Specifically, you requested advice as to why I consider it appropriate to specify the matters which must be taken into account in determining whether a person has committed a participation failure for the purposes of Youth Allowance or Austudy in a legislative instrument rather than in primary legislation.

The *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* established the requirement in the *Social Security Act 1991* (the Act) that the Secretary must, by legislative instrument, determine matters that must be taken into account in deciding whether a person had a reasonable excuse for committing a participation failure with regard to their Youth Allowance or Austudy payment.

The Secretary has the power to make the Determination under subsections 550(2A), 550B(2A), 576(2A) and 576A(2A) of the Act. Under these subsections the Secretary must, by legislative instrument, determine matters that must be taken into account in deciding whether a person has a reasonable excuse for not meeting study requirements.

The operational effect of the 2019 Determination is to provide a non-exhaustive list of circumstances that a decision-maker is to consider when determining that a person will continue to receive Youth Allowance or Austudy payments, despite committing a participation failure. The 2019 Determination does not constrain the “reasonable excuse” test in the Act.

The 2019 Determination helps ensure consistency in decision making and provides certainty for recipients of Youth Allowance and Austudy payments. Youth Allowance is administered by both the Department of Social Services (the department) and the Department of Employment, Skills, Small and Family Business (the Department of Employment). The 2019 Determination aligns with the Social Security (Administration) (Reasonable Excuse – Participation Payments) Determination 2018 (2018 Determination), administered by the Department of Employment. The 2018 Determination applies to Youth Allowance recipients who are not new apprentices or full-time students and other participation payments.

Delegated legislation allows for micro-policy details, administrative details and technical details to be adjusted comparatively quickly – providing flexibility to adapt without causing detriment to the administration of payments. The use of delegated legislation, such as the 2019 Determination, allows for administrative responsiveness to changing needs and priorities. This means that, if my Department becomes aware of additional types of circumstances that should be considered by decision-makers within Services Australia when determining whether payments should continue when a participation failure has occurred, the Secretary of the Department is able to respond quickly by amending or re-making a determination, without the need to change primary legislation.

The 2019 Determination is beneficial in nature. By requiring decision-makers to take a range of matters into account when deciding whether a “reasonable excuse” has been established, it makes it more likely that a decision-maker will decide that a reasonable excuse has been established, which would enable Youth Allowance or Austudy payments to continue. The determination does not operate to limit access to Youth Allowance or Austudy.

Thank you for bringing the Committee’s concerns to my attention. I trust this information is of assistance.

Yours sincerely

Anne Ruston



**The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet**

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Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee on Regulations and Ordinances
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02 DEC 2019

Dear Senator


I refer to your correspondence of 28 November 2019 regarding the timely implementation of amendments to the explanatory statements regarding the Asthma Control Questionnaire (ACQ) and the Psoriasis Area Severity Index (PASI) in the relevant Instruments.

In accordance with my response of 19 June 2019, the relevant documents were incorporated into the Federal Register of Legislation as listed below.

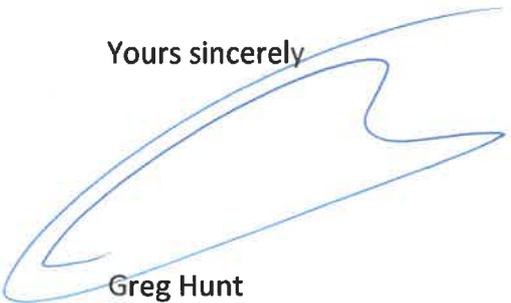
The ACQ was incorporated by reference in the explanatory statement for the *National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 3)* [F2019L00459] which commenced on 1 April 2019.

The PASI was incorporated by reference in the explanatory statement for the *National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 4)* [F2019L00661] which commenced on 1 May 2019.

Access to both explanatory statements is available through the Federal Register of Legislation at: www.legislation.gov.au.

Thank you for writing on this matter.

Yours sincerely


Greg Hunt