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26 April 2019

Division Head Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

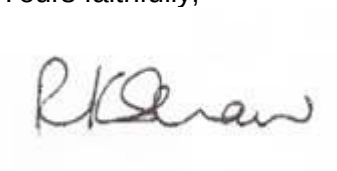
By email: superannuation@treasury.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to Treasury's inquiry into universal terms for insurance within MySuper.

Please do not hesitate to contact me and my colleagues on 03 9605 2792 or at KShaw@mauriceblackburn.com.au if we can further assist with the Working Group's important work.

Yours faithfully,



Kim Shaw
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Superannuation and Insurance
MAURICE BLACKBURN

Submission in response to Treasury's inquiry into Universal Terms for Insurance within MySuper

April 2019

TABLE OF CONTENTS

PAGE

Introduction

Maurice Blackburn Pty Ltd is a plaintiff law firm with 32 permanent offices and 31 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

Maurice Blackburn employs over 1000 staff, including approximately 330 lawyers who provide advice and assistance to thousands of clients each year. The advice services are often provided free of charge as it is firm policy in many areas to give the first consultation for free. The firm also has a substantial social justice practice.

Our Submission

Maurice Blackburn submits that there would be significant benefit to consumers in standardising the key terms and definitions associated with TPD coverage.

We also recognise that standardisation would lead to a reduction in flexibility for trustees in the development of appropriate insurance products for their members. This flexibility is an essential element in the obligations of trustees to match the insurance needs of members to the risks associated with their work.

Maurice Blackburn believes it would be a retrograde step to remove this capacity for tailoring insurances to the specific needs of industry groups, and the creation of a one-size-fits-all approach to insurance provision.

Maurice Blackburn believes that legally compliant trustees should be permitted to offer TPD insurance that differs from the definition of 'Permanent Incapacity' in the SIS Act, **as long as that is clearly articulated in information provided to the consumer**.

Maurice Blackburn submits that the solution to creating the required balance lies in accountability, transparency and clarity. Consumers need to be able to clearly understand how the terms and definitions of their chosen product compare to other policies, through being able to access side-by-side comparisons and industry data.

One of the major issues related to the benefits of coverage from the consumers' perspective is that, currently, a fund member may not detect the inadequacy of their insurance coverage until such time as they make a claim.

Standardisation would be appropriate for definitions in relation to:

- Permanent Incapacity;
- 'At Work' requirements; and
- Payout methodology.

Standardisation would also be appropriate for definitions in relation to exclusions such as:

- Occupational exclusions; and
- Multiple fund exclusions.

Maurice Blackburn notes the important role that standardisation or terms and definitions can play in areas where eligibility rules could exacerbate gender based disadvantage.

Responses to questions from the Issues Paper.

Part 1 - The merits of setting standard terms and definitions

1. What are the costs and benefits of standardisation of terms and definitions for default MySuper group life policies?

Maurice Blackburn submits that there would be significant benefit to consumers in standardising the key terms and definitions associated with TPD coverage.

We also recognise that standardisation would lead to a reduction in flexibility for trustees in the development of appropriate insurance products for their members. We agree with the observation in the Issues Paper, which reads:

> *The variations in the definition of TPD can be a result of trustees tailoring their insurance offering to their membership*.[1]

Maurice Blackburn notes that this flexibility is an essential element in the obligations of trustees to match the insurance needs of members to the risks associated with their work. One of the great advantages of industry superannuation funds is their capacity to understand the needs of their membership base. For example, CBUS trustees should be able to tailor their insurance products to the needs of construction workers, whilst the HESTA trustees should be able to focus on the very different needs of healthcare professionals.

It would be a retrograde step to remove this capacity for tailoring insurances to the specific needs of industry groups, and the creation of a one-size-fits-all approach to insurance provision.

Maurice Blackburn submits that the solution to creating the required balance lies in accountability, transparency and clarity.

Consumers need to be able to clearly understand how the terms and definitions of their chosen product compare to other policies, through being able to access side-by-side comparisons and industry data.

For example, a consumer should be able to see the 'Permanent Incapacity' definition (see our response to Question 2) of their chosen fund, and compare it to others. The information presented should clearly show consumer-centred information such as the payout ratio under that definition, compared to others.

One of the major issues related to the benefits of coverage from the consumers' perspective is that, currently, a fund member may not detect the inadequacy of their insurance coverage until such time as they make a claim. Maurice Blackburn encourages Treasury to look to find ways to ensure funds provide consumers with correct and practically useful information upfront, with which to make an informed decision about their insurances arrangements.

In short, the costs and benefits of standardising terms and definitions could be summaries thus:

Costs: Reduction in flexibility for trustees to adjust coverage in line with industry or member needs.

[1] Issues Paper, p6

Benefits: Reduced ability for insurers to use inappropriate definitions in order to avoid claims.

Consumers may not know how poor their policy is until they go to claim against it due to small print eligibility terms and conditions.

It avoids the risk of creating 'junk insurance' for consumers – policies where consumers pay for insurance that will never provide appropriate cover for their circumstances.

There are a number of terms and definitions that could be standardised without compromising the trustee's capacity for flexibility. Some of these, based on our experience and those of our clients, are outlined in the next section.

2. What terms and definitions would benefit from standardisation? Are there particular terms/definitions where the case for standardisation is stronger or should be prioritised?

i. Definition of Permanent Incapacity

Over recent years, some insurers have effectively created 'junk insurance' through new, unreasonable thresholds, terms and definitions. This has been most pervasive in the conduct of bank owned retail funds which have customarily insured through a related insurance entity.

The most pervasive change across the industry is the subtle but highly consequential substitution of the key legal test of 'unlikely' with the more onerous 'unable'.

The Superannuation Industry (Supervision) Act (The SIS Act) allows for early release of funds in a member's retirement saving account in limited circumstances including 'Permanent Incapacity', which applies the 'unlikely' test and is defined as:

> *if a trustee of the fund is reasonably satisfied that the member's ill health (whether physical or mental) makes it **unlikely** that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience.*

Any TPD insurance definition must be 'consistent' with that condition of release[2], however the industry interprets that to mean it cannot be *less* onerous, and has, in recent years provided TPD definitions that depart substantially from this 'Permanent Incapacity' requirement.

Any comparison of products should consider whether there is departure from the SIS Act and the onus threshold of the definition relative to the SIS Act benchmark.

'Unlikely' has been interpreted by Australian Courts to require a consideration of claimants' employment opportunities in '*the real world',* namely market conditions and the practical prospects of the disabled job applicant obtaining and maintaining employment in those conditions, in assessing whether the person is unlikely to return to work given their injuries or illness.

[2] Superannuation Industry (Supervision) Regulations 1994 - REG 4.07D.

By contrast, sections of the industry apply 'unable' as a medical assessment without consideration of 'the real world'. For instance, it is possible to argue that even someone who has suffered quadriplegia is theoretically capable of work and may not satisfy an 'unable' definition, notwithstanding that their actual employment prospects in a competitive employment market are negligible.

As a consequence, if one only considers the theoretical work capacity of a claimant, the automatic cover deviates markedly from the SIS Regulations 'Permanent Incapacity' early release provision, and may constitute junk insurance.

This fundamental deviation from the regulatory threshold for early release on incapacity is a deliberate decision by insurers, intended to limit their liability to pay claims by toughening the test for claimants.

Further, the standard of work that is considered appropriate is lower than that provided for in the SIS Regulations. Ultimately this means that claimants may have claims rejected, even if it is unlikely that they will engage in employment similar to that which they were performing before the accident.

The NSW Court of Appeal recently considered the 'unlikely' TPD test and found that: "*a real chance that a person will return to relevant work, even if it is less than 50%, will preclude an Insured Person being unlikely ever to return to relevant work.*" We advocate that such a test is sufficiently onerous.

It is pleasing to see that some other major funds have resisted pressure from insurers to depart from the 'Permanent Incapacity' test and have kept the 'unlikely' definition. The fact that such definitions are being retained by some confirms the viability for doing so across all insurers.

The case studies below demonstrate the impact of the current lack of standardised definitions underpinning the 'Permanent Incapacity' test.

Case Study #1

Client is 43 years old and worked for 19 years as a storage assistant during that time. Our client has no formal qualifications and prior to this employment he was mostly unemployed with a few odd jobs here and there. He first injured his right hand in a workplace accident in 1999 and suffered several subsequent breaks to it. He has had around 13 operations on his hand/wrist and it is now so damaged he can barely use it (dominant hand). He has no experience in any work that isn't manual. He hasn't worked since 30 November 2016.

The relevant Policy requires that our client be unlikely ever to engage in work for which he is reasonably capable, taking in to account his education, training and experience. He will only be entitled to 80% of the insured cover if he remains absent for all work, is under the regular and ongoing care of a doctor and must satisfy that he is continuously unable to ever engage in work for which reasonably suited taking in to account his education, training and experience . He must also satisfy he can't perform any future retraining or rehabilitation that he could reasonably undertake or has undertaken. The balance of 20% will only be paid if he shows he cannot perform at least 3 of 6 every day working activities which are defined as:

I. Walking/Bending:
(a) The ability to walk more than 200m on a lever surface without stopping due to breathlessness, angina or severe pain elsewhere in the body; and
(b) the ability to bend, kneel or squat to pick something up from the floor and straighten up again; and the ability to get into and out of a standard sedan car.

2. Vision (reading):
The ability to read, with visual aids, to the extent that an ophthalmologist can certify that:
(a) visual acuity is equal to, or better than, 6/48 in both eyes; or
(b) constriction is within or greater than 20 degrees of fixation in the eye with the better vision.

3. Lifting:
The ability to pick up an object weighing 2kg at table height and hold for 60 seconds before replacing the object on the table.
4. Manual dexterity:
The ability, with reasonable precision and success, to:
(a) use at least one hand, its thumbs and fingers, to manipulate small objects, or
(b) use a keyboard if the Covered Person was required to use a keyboard in his/her previous job.

5. Communication:
They cannot:
(a) clearly hear (with a hearing aid or other aid if normally used) conversational speech in a quiet room in their first language; or
(b) speak with sufficient clarity to be clearly understood in their first language.

Many if not all claimants under this policy will be unlikely to meet this onerous definition that has significantly drifted from the SIS Act definition and will at best be entitled to 80% cover.

ii. At-work requirements

Different policies have different requirements in terms of how a claimant should prove that they satisfy criteria around active employment.

It is important that there is clarity around what is and what is not acceptable from an industry perspective in relation to this matter.

Maurice Blackburn notes the important role that standardisation or terms and definitions can play in areas where eligibility rules could exacerbate gender based disadvantage.

Case Study # 2

Our client worked part time in a supermarket and is now unable to work due to a debilitating back injury. Insurer and Fund submit client does not satisfy eligibility criteria; specifically, that she does not meet the requirement that she be in active employment/at work defined as more than 30 hours per week. Medical evidence shows client had medical capacity to be doing 30 hours of work at relevant date.

Claims are made to two Funds and both say because she is not actually performing the work she is ineligible. Both policy definitions state you must demonstrate a capacity. Our client was a working mum and had to work 15 to 20 hours due to family responsibilities. These decisions are being appealed on the basis that she did have **capacity** to work more than 30 hours but her family circumstances prevented her from doing so.

iii. Standardisation of payout methodology

Maurice Blackburn notes that this issue is discussed in the Issues Paper, where it is noted that an insurer:

> *…. developed a product that provides payouts in up to six annual payments depending on whether members are assessed as able to return to work. The changes to this fund's TPD product have reduced premiums by approximately 30 per cent. At the same time, the fund has been criticised for offering a product paying TPD payouts in instalments to members who would otherwise receive a lump sum TPD payout.* (p.6)

What the summary of this product in the Issues Paper fails to address is that consumers who are subject to this payout methodology are people who have already been proven to be totally and permanently disabled. Under other policies, they would have been paid out in full. But under this system, they are required to obtain continuous medical assessments and prove over and over that they are disabled, in order to receive the next payment.

Our concern about the impacts that this claims payout methodology has on consumers led to us bringing it to the attention of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission):[3]

> *A move toward incremental payments rather than lump sum TPD payments, requiring claimants to undergo ongoing medical and other checks over a period of years. For example, Sunsuper for their TPD Assist policy (effective 1/7/16) pays the lump sum over five years, requiring the claimant to reapply each year. This often deprives seriously ill and injured people the opportunity to effectively retire debt and pay for much needed medical treatment*. (p.8)

We also noted that, regardless of its legality, the main reason for this policy to be in place is to delay and confound the claims process, and to increase opportunities for insurers to avoid making the payout.

It is difficult to draw any other conclusion than insurers who adopt this payout methodology believe that it will be more profitable to pay people out over time for a number of reasons:

- Many claimants suffering terminal illnesses such as some cancers and chronic heart disease will die and not receive the balance of their instalments,
- The insurer will be hoping that a change in medical practitioner might lead to a change in diagnosis, and thereby get them out of having to pay the balance of instalments,
- It enables them to spread the payouts over a number of years. It is unlikely that payouts would be indexed to increase with time.

It is little wonder that this policy has reduced premium costs. It is an inferior product. It also detracts from the overall purpose of insurance in superannuation, which is to make up for lost contributions via the Superannuation Guarantee Charge (SGC) as a consequence of being out of the workforce. A TPD payout is not like a lottery windfall or anything closely resembling it. It is there to shore up post-work income for the consumer.

[3] https://www.mauriceblackburn.com.au/media/4018/maurice-blackburn-submission-to-the-financial-services-royal-commission.pdf

3. Should trustees be permitted to offer TPD insurances that differs from the definition of 'Permanent Incapacity' in the SIS Act? Is the current legislated definition of 'Permanent Incapacity' an appropriate standard definition of TPD?

Yes.

Maurice Blackburn believes that legally compliant trustees should be permitted to offer TPD insurance that differs from the definition of 'Permanent Incapacity' in the SIS Act, **as long as that is clearly articulated in information provided to the consumer**.

Maurice Blackburn submits that Treasury, if it decides that such deviations from the Act should be permissible, must ensure that consumer information about the product clearly spells out how it differs from the Act, and the potential ramifications.

For example, if a policy is using 'incapable ever' instead of 'unlikely', it should clearly show:

- That the definition differs from the Act
- That the definition differs from that used in other policies
- The relevant statistics related to claims rates under both.

Maurice Blackburn has read Australian Lawyers Association's (ALA) proposal in its submission to this inquiry and supports their recommendation regarding the potential tiering of product offerings in the KFS.

If Treasury decides that trustees should not be permitted to offer TPD insurances that differ from the definition of 'Permanent Incapacity' in the SIS Act, Maurice Blackburn submits that any product offerings should be clearly consistent with the definition.

Given the manner in which it has been interpreted to date, this may necessitate an amendment to the legislation to clarify the meaning of 'consistent'.

4. Should the definition of TPD allow for rehabilitation or return to work initiatives? Why/Why not?

Maurice Blackburn understands the benefits of rehabilitation in improving the physical, mental and social wellbeing of injured consumers. We believe, however, that caution should be exercised in allowing the insurance industry to drive this process.

Maurice Blackburn notes that the Parliamentary Joint Committee on Corporations and Financial Services (the PJC) recently conducted an inquiry into options for greater involvement by private sector life insurers in worker rehabilitation[4].

The inquiry was in response to a Financial Services Council (FSC) suggestion that private sector insurers be given the freedom to play a much greater role in rehabilitation processes.

FSC argued that:

> *"Specifically, life insurers wish to offer targeted rehabilitation payment for medical treatment or therapy that **they** determine to be relevant, appropriate and necessary to assist the life insured return to work."* [5]

[4]https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Rehabilitation/Report

[5] Financial Services Council submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Life Insurance Industry. Submission 26. P.14. Our emphasis.

Maurice Blackburn expressed concern at the willingness of the insurance industry to promote **their** perception of appropriate treatment over that of treating medical practitioners. The primary motivation of the insurer is profitability, through minimising the number and quantity of payments.

The PJC made the following recommendation[6]:

> *The committee recommends that the government not proceed with the Financial Services Council's proposal.*

Maurice Blackburn would only support the definition of TPD allowing for rehabilitation or return to work initiatives, on the following conditions:

- The rehabilitation must be cost effective for both the consumer and the insurer;
- The rehabilitation must be with the approval and supervision of the consumer's treating physician;
- The rehabilitation must be dependent on the claimant's agreement and participation;
- No consumer is to be forced to receive unwanted rehabilitation; and
- Any claimant who chooses not to receive rehabilitation must not have their TPD insurance claim stopped or used as a basis for declining a TPD claim.

5. Is there a need for universal insurance exclusions in MySuper products? Why/Why not? If yes, should exclusions be standardised across all types of insurance provided within MySuper products? What standardised exclusions would deliver the greatest benefit to consumers?

i. Occupational exclusions

Maurice Blackburn has assisted a number of clients whose claims have been denied because the insurer has relied on an exclusion related to occupational definitions to avoid the claim.

In the majority of these cases, the use of these exclusions have relegated the coverage to 'junk insurance' status, as the claimant never had any opportunity to make a claim against it.

This supports an argument to say that standardised exclusions should exist and be clearly outlined at the commencement of the insurance cover – thereby not coming as a shock at the time a claim is made.

If funds require exclusions in order to manage administration and premium costs then full disclosure should be made at the outset. Maurice Blackburn has seen too many instances of terrible consequences for clients where they discover they do not have cover when they thought they were protected.

The case studies below demonstrate how these exclusions are used by insurers to deny claims.

Case Study # 3

Our client signed up to a racing industry fund where his occupation was as stable-hand at a high profile horse training facility. At the time, he was a 27 year old stable-hand who sustained serious injuries to his left hand in a workplace incident in 2014.

[6] Ibid, recommendation #5

A claim was lodged for Total and Permanent Disability (TPD) in August 2016 and rejected in September 2016 as the occupation of stable-hand is an 'excluded occupation'.

The Occupation Classifications for the Policy specifically exclude: Farm employee or labourer 'not insurable'; Horse strapper: 'not insurable'.

Our client therefore was never entitled to insurance cover under this policy at the outset. It is effectively junk insurance and he is left without the support from insurance he badly needs and was paying for.

Case Study # 4

Our client signed up to a fund where seasonal or contract employment is an 'excluded occupation'. He was a 41 year old plant operator employed on contract basis via a labour hire company in the mining industry and is suffering from chronic schizophrenia and chronic lower back pain. He injured his back in October 2014.

A claim was lodged for Income Protection and TPD in July 2015 and rejected in late August 2016, as seasonal or contract employment is an 'excluded occupation'.

Seasonal or contract employment is defined as work that is not fixed term employment but employed for a fixed term/contracted to complete a specific job and without guaranteed of continuity of employment, irrespective of hours worked or period of employment. He and his colleagues were all project workers — which is obviously very common in the mining industry — and they were issued with 'termination notices' at the conclusion of the project.

None of these workers, including our client, was ever going to have insurance cover under this policy even though they paid contributions.

ii. Multiple Fund Exclusions

It has come to our attention that a number of insurers have chosen to incorporate a form of exclusion clause which excludes an individual that holds another insurance policy – whether that be a retail policy or through a second superannuation fund. Of course, Australians being members of multiple funds is commonplace.

An example of such a clause is:

"Excluded Member": Means a Member to whom any of the following applies:

> *(a) a terminal illness, total and permanent disablement, trauma or similar benefit has been paid or is payable or can be claimed in respect of the Member under any insurance policy, whether that policy be owned by the Member or another person (including the Fund or another superannuation scheme);*
>
> *(b) the Member has received, or is eligible to receive, a benefit, or has had a claim for a benefit admitted, from:*
>
> > *(i) the Fund; or*
> > *(ii) another superannuation scheme;*

on the basis the fund or scheme has found the Member to suffer from 'Permanent Incapacity' or a terminal medical condition' under the Superannuation Industry (Supervision) legislation or any legislation which replaces it; or

(c) the Member had or was eligible to have cover under any group life policy issued to the Fund and the Member:

(i) opted out of being covered; or
(ii) cancelled the cover; or
(iii) ceased being a member of the Fund.

Another manifestation of this clause from a current insurance policy reads:

4.2 Pre-existing conditions
An insured member who became covered for TPD Cover under automatic acceptance or transfer terms is not covered for total and permanent disability that is caused directly or indirectly, wholly or partially, by a pre-existing condition if a similar benefit could be claimed by the insured member under another insurance policy.

The Royal Commission heard numerous examples of circumstances where consumers were paying fees for services they never received. It is difficult to see these exclusion clauses as anything other than another example of such misconduct.

The case studies below demonstrate the impact of such insurer behaviours on clients.

Case Study # 5

Client has two lots of TPD insurance - one in Group Super and one under his employer's group insurance plan. He had worked in high level IT / management. Despite having a past history of periods of 'depression', mostly related to life stressors such as his wife undergoing successive miscarriages, he never had any significant time absent from work. He is now moribund with severe mental illness and this is supported by a psychiatrist's opinion. The Group Insurance Policy under his Super fund includes the following offset / exclusion clause:

Pre-existing conditions: An insured member who became covered for TPD Cover under automatic acceptance or transfer terms is not covered for total and permanent disability that is caused directly or indirectly, wholly or partially, by a pre-existing condition if a similar benefit could be claimed by the insured member under another insurance policy.

Yet he has paid the premiums. This is not a case of double dipping. He will not work again in his pre disability management field.

Conversely, paying premiums for multiple policies through multiple funds can be of great benefit.

Case Study # 6

Our client was a maintenance worker at a winery in South Australia. He had always worked full time in a heavy manual capacity.

In early 2014 he suffered a stroke and lost the use of the right side of his body, as well as suffering from memory loss, difficulty with speech and a numbness/tingling over his entire body.

Because he did not suffer with a work-related injury, he did not think he could claim any benefits. He was struggling on a Disability Support Pension and was not aware that he had any superannuation entitlements until he sought our assistance.
Our client was found to have the following several insurance policies that were of significant benefit to him:
• Australian Super Income Protection: $3,000.00 per month payable for two years.
• Australian Super TPD benefit: $61,304.20
• Plum Super TPD benefit: $186,160.87
• Statewide Super TPD benefit: $86,594.04
• NFS Super TPD benefit: $40,806.66
• MLC Super TPD benefit: $113,011.19

These claims meant that rather than relying on the Disability Support Pension, struggling financially and being unable to provide adequately for his family, he and his family are now able to live a life of dignity. These claims have changed his life and he is very appreciative of our work.

Case Study # 7

Our client is in his late 40's and a mechanic with a bad lower back injury; he had been a mechanic and storeman all of his working life. He has subsequently had to have surgeries to his back.

Upon investigating his claim we found several insurance policies this client was entitled to, again which were of significant benefit to him:
• Mercer: $239,000.00
• Asgaard: $279,143.00
• Australian Super: $65,460.00
• One Path: $20,900.00

This client has used the money he has received to pay off his house and to support his family together with ongoing medical bills.

6. What lead time would be required for the industry to implement standardised terms, definitions and exclusions if this reform was implemented?

Maurice Blackburn notes that both relevant industry codes of practice (FSC and Insurance in Super) are currently up for review.

We note the wording of Recommendation 4.9 of the Royal Commission[7]:

> *Recommendation 4.9 – Enforceable code provisions:*
> *As referred to in Recommendation 1.15, the law should be amended to provide for enforceable provisions of industry codes and for the establishment and imposition of mandatory industry codes.*

[7] https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf, p.33

> *In respect of the Life Insurance Code of Practice, the Insurance in Superannuation Voluntary Code and the General Insurance Code of Practice, the Financial Services Council, the Insurance Council of Australia and ASIC should take all necessary steps, by 30 June 2021, to have the provisions of those codes that govern the terms of the contract made or to be made between the insurer and the policyholder designated as 'enforceable code provisions'.*

We would submit that it would be appropriate to implement standardised items, definitions and exclusion in time to coincide with the introduction of enforceable of industry codes of practice, or codes with enforceable code provisions.

Part 2 - Impact on premiums

7. To what extent would standardising terms, definitions and exclusions across MySuper products impact the price of premiums?

No response to this question.

8. Would the impact on premiums outweigh the benefits of standardising the definition of TPD, or other definitions, terms and exclusions?

No response to this question.

9. How could the impact on the price of premiums be mitigated, without incentivising the creation of 'junk insurance policies'?

No response to this question.

10. If terms, definitions and exclusions for MySuper products were standardised, how long would repricing of premiums take to flow through to members?

No response to this question.

Part 3 - Improving consumers' understanding of insurance in superannuation

11. To what extent would standardised terms, definitions and exclusions for MySuper products improve consumer understanding of insurance in superannuation? What particular changes would deliver the greatest benefits to consumer outcomes?

Maurice Blackburn suggests that one of the major reasons that insurers have been able to get away with terms and definitions that are not in the best interests of claimants is consumer disengagement.

In our experience, of the consumers who are aware that they have insurance coverage through their superannuation, very few have taken the time to examine the wordings of policy settings. In this regard, consumers are compliant and complicit.

However, we believe that the onus should be on the industry to ensure consumers have access to information upon which they can make informed decisions about their insurances.

Maurice Blackburn urges Treasury to view this from the perspective of enhancing the need to encourage competition in the industry.

Direct comparisons between super/insurance packages are the most effective means to do this. Consumers need to be able to compare price and coverage against industry standards and other products in order to determine whether they believe there is value in a product, and that it best meets their own personal needs.

We note ALA's submission to this inquiry, and endorse their suggestions for enhancing consumers' capacity to make informed decisions about their insurances. We note the principles underpinning their suggestion for a tiering system for informing consumers about the **value proposition** of the policy they are about to sign up to:

- That definitions in the policy should be benchmarked against definitions stipulated in the act,
- That where trustees, acting in the bests interests of their members, decide to adopt an insurance product whose definitions deviate from the legislated definition, they should be able to do so.
- That there should be regulatory oversight for:
    - Accuracy in the trustees' disclosures to their members, and
    - Clear and prominent definitions spelled out in the KFS,
- That there should be a practical hierarchy of definitions developed, for example:
    - Gold = In line with SIS Act Early Release requirements
    - Silver = Akin to SIS Act Early Release provisions, but with deviations from the legislated definitions (for example, the use of 'unable' rather than 'unlikely')
    - Bronze = Everything else

Like the ALA, we acknowledge that improved disclosure will not be a panacea, given the high rates of consumer disengagement. But we believe that providing disincentives for trustees to adopt inappropriate or inadequate insurance products – often through related entity conflicts – would be a useful start.

12. Are there other ways to improve consumer understanding of insurance in superannuation without standardising terms/definitions/exclusions?

No response to this question.

Part 4 - Merits of prescribing minimum, maximum or set levels of cover

13. Should maximum, minimum or set levels of cover be prescribed for MySuper products? Why/Why not? Should these apply to all types of insurance provided within MySuper products?

No.

As discussed in response to Question 1, the trustees of industry funds need the flexibility to match insurance coverage with the relative dangers of the industry. The insurance needs of someone working in the building industry are very different to those of an employee in hospitality.

There may be an argument for defined minimums and maximums to be set for retail funds, given that the majority of findings of misconduct by the Royal Commission related to the

trustees and insurers of retail funds. Retail funds are obviously less capable of industry-based self-monitoring of what's reasonable.

14. What factors should be taken into account if a minimum, maximum or set level of cover were to be prescribed?

No response to this question.

15. Are there any unintended consequences of mandating a minimum, maximum or set level of cover for MySuper products?

Maurice Blackburn submits that if Treasury is exploring the possibility of dictating the levels of cover, say, through more enforceable industry codes of practice, it is essential to keep in mind the overall, original purpose of insurance in superannuation. As detailed earlier, the purpose of insurance in superannuation is to make up for lost SGC contributions as a consequence of being out of the workforce.