

Universal terms for insurance within MySuper

Issues Paper released in March 2019

AFCA submission

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Executive summary

The Australian Financial Complaints Authority¹ (AFCA) welcomes the opportunity to provide feedback to the Issues Paper *Universal terms for insurance within MySuper* released by the Treasury on 28 March 2019. This submission² draws on the experience of AFCA and its predecessors – organisations that have handled life insurance disputes for more than 25 years.

Key points in this submission are:

Benefits of standardising definitions

AFCA supports initiatives to standardise definitions of terms used in MySuper insurance. Our view is that standardisation of the definition of ‘flood’ has benefitted general insurance consumers and industry by reducing dispute levels and consumer confusion. Similar benefits should apply if definitions are standardised for insurance products within MySuper.

Matters to address when standardising definitions

Our experience in complaint resolution suggests standardised terms:

- must be written in plain English, expressed as clearly and simply as possible, with minimal use of technical language and jargon
- should be based on the ordinary meaning of the defined terms
- should apply to all MySuper insurance policies
- could be explained in straightforward documents such as key fact sheets to help consumers understand what is covered and what is not covered.

Definition of ‘total and permanent disability’

AFCA believes that the definition of ‘total and permanent disability’ (TPD) should be standardised within MySuper insurance policies. To provide the greatest benefit to consumers, the standardised definition should align with the definition of ‘permanent incapacity’ in the *Superannuation Industry (Superannuation) Regulations 1994* (Cth). A fund member should satisfy the definition of TPD where:

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.

¹ The Appendix provides a brief overview of AFCA. For comprehensive information about AFCA, see our website www.afca.org.au.

² This submission has been prepared by the staff of AFCA and does not necessarily represent the views of individual directors of AFCA.

Section 3.2 of this submission outlines issues relating to current TPD definitions observed through our complaint resolution work. They support our recommendation for a single, objective, broad definition of TPD to be used in all MySuper insurance products.

Further standardisation

Further standardisation could enhance consumer protection. AFCA suggests:

- standardisation of a common exclusion from MySuper insurance
- consultation with industry and consumer groups to identify areas where inconsistent terms create problems.

Improving consumer understanding

To improve consumer understanding, AFCA suggests MySuper fund members should receive:

- more, or more effective, information to outline default insurance arrangements in simple terms
- a standard guide to claims addressing key issues such as
 - > What information do claimants need to provide and why is it needed?
 - > How long is it likely to take to process a claim?
- material that prominently discloses any major limitations on claims.

1. Benefits of standardising definitions

The Issues Paper outlines the case for and against standardising definitions of terms used in insurance in MySuper. We support this initiative and note the benefits of standardisation seen recently in the context of general insurance.

AFCA's view is that the standardisation of the definition of 'flood' has benefitted consumers and industry by reducing dispute levels and consumer confusion. We believe general insurance dispute statistics reflect that, since standardisation, consumers are clearer about what flood insurance covers.

The table below provides information relating to two natural disasters – the Brisbane floods that occurred before the flood definition was standardised and Cyclone Debbie, which occurred after the standardisation was implemented. For Cyclone Debbie, estimated insured losses were higher and more insurance claims were lodged, but far fewer disputes reached external dispute resolution (EDR).

	Brisbane floods January 2011	Cyclone Debbie March - April 2017
Insured loss³	\$1,356m	\$1,775m
Claims lodged	58,463 ⁴	73,258 ⁵
Disputes received by AFCA/FOS⁶	1301	374

2. Matters to address when standardising definitions

As a general observation, based on our experience in complaint resolution, AFCA believes that standardised definitions of terms used in MySuper insurance:

- must be written in plain English, expressed as clearly and simply as possible, with minimal use of technical language and jargon
- should be based on the ordinary meaning of the defined terms
- should apply to all MySuper insurance policies
- could be explained in straightforward documents such as key fact sheets to help consumers understand what is covered and what is not covered.

³ Source: estimate by Insurance Council of Australia (ICA) as at 2017 in ICA Catastrophe Dataset linked to page 22 of the report [General Insurance in Australia 2016-17 released by the General Insurance Code Governance Committee in March 2018](#).

⁴ Source: estimate by ICA referred to on page 289 of [Queensland Floods Commission of Inquiry Final Report](#) released in March 2012.

⁵ Source: Page 22 of [General Insurance in Australia 2016-17 released by the General Insurance Code Governance Committee in March 2018](#).

⁶ The Financial Ombudsman Service, one of AFCA's predecessors.

To ensure consistency of approach and to reduce complexity for consumers, legislation to standardise definitions should apply to all MySuper insurance policies entered into after a specified date. There should also be a mechanism to bring earlier insurance policies into line over time. For example, the legislation could require changes to be made within a transition period.

3. Definition of 'total and permanent disability'

3.1 Suggested definition

AFCA believes that the definition of TPD should be standardised. To provide the greatest benefit to consumers, the standardised definition should align with the definition of 'permanent incapacity' in the *Superannuation Industry (Superannuation) Regulations 1994* (Cth). A fund member should satisfy the definition of TPD where:

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.

The courts have already interpreted terms used in this definition:

- Unlikely to engage in gainful employment

This has been interpreted to take into account whether suitable post disablement work is reasonably available.

- Employment for which the member is reasonably qualified by education, training or experience

This has been interpreted to mean work of a kind that the member has been prepared for by their education, training or experience – not a job that the member has never actually done or isolated tasks that do not constitute a real job.

As the permanent incapacity definition operates as the minimum test at present, funds may currently impose stricter tests such as **unable** to engage in gainful employment or **unable** to engage in gainful employment after retraining. In AFCA's view, these stricter tests are inappropriate for simple default MySuper products and should not be allowed. It is unfair in our view that some fund members may not be entitled to benefits for the same disability because of a stricter definition applied by some funds.

AFCA considers that standardising the definition of TPD as suggested above could help a fund member understand the degree of disablement they must have, to be entitled to payments. However, applying the definition to a person's condition will always be complex in practice, because it requires consideration of their individual education, training and experience.

3.2 Issues

This section outlines additional issues relating to current TPD definitions observed through our complaint resolution work. They support the recommendation above for a single, objective, broad definition of TPD to be used in all MySuper insurance products.

Definitions set according to occupation

For default cover in some funds, stricter definitions apply for members in certain occupations. AFCA believes this approach should not be permitted because it gives rise to unfair outcomes, including:

- members who most need cover – those doing arduous, demanding or hazardous work – receive inferior cover
- members who receive inferior cover do not pay lower premiums
- funds do not keep track of their members' occupations, meaning that members subject to stricter definitions are not informed of these restrictions in their annual statements.

Where TPD definitions vary according to occupation, it may be difficult for a member to work out what definition applies to them. This task would involve a forensic examination of various documents and making a judgement about what occupation title on a list best fits their current job. Many people are unable to do this and the vast majority of fund members with default cover will not do this, even if they can.

Subjective definitions

TPD definitions are objective or subjective. To satisfy an objective definition, a member simply needs to be totally and permanently disabled. To satisfy a subjective definition, the insurer has to **form an opinion** that a person is totally and permanently disabled.

AFCA considers that a TPD definition should be objective. In our view, it facilitates fairer and more consistent outcomes for members. Subjective definitions introduce a great deal of unnecessary legal complexity. They also increase the time limit for bringing claims to court or EDR, because the time limit runs from the date the insurer makes its decision - not from the date when the person became totally and permanently disabled.

'Activities of daily living' test

Some funds only pay TPD claims where a member meets an 'activities of daily living' (ADL) test. AFCA's view is that this test is too strict and inappropriate for TPD insurance in simple MySuper products.

ADL tests commonly apply to people who are not working, are working less than full time hours or are in precarious employment (such as casual or contract work). ADL tests are much more difficult to satisfy than standard occupational TPD definitions, but the premium for members with ADL cover is the same as for members with the vastly superior standard occupational cover. Under-employment and precarious work is an unfortunate fact of life for many workers in Australia. This should not be compounded by inferior insurance cover for the same premium.

People generally understand TPD cover to be related to an inability to work - not an inability to perform ADL - and the definition of TPD should reflect that understanding. Applying an ADL test in a MySuper product adds to confusion for members about the circumstances in which insurance cover will apply.

Prohibiting ADL tests could prompt insurers to either increase premiums to cover increased risks or provide an end date (linked to employment) for standard occupational cover. To avoid or mitigate the impacts of these outcomes, approaches of the kind outlined below are recommended:

- Have a standard TPD definition for everyone but have cover (and premiums) end, say, six months after the last employer contribution is received by the fund, and conditional on the fund giving written notice to everyone who is about to lose their cover. Cover will restart at the commencement of the period of employment for which the next contribution is made.
- Have a standard TPD definition for everyone but change to an ADL test on an opt-in basis six months after the last employer contribution is received by the fund (with a consequent reduction in premiums) and only after written notice is given to the member. The standard TPD definition (and higher premium) will apply from the commencement of the period of employment for which the next contribution is made.

Employees on approved leave

It is important to ensure that employees do not lose their TPD cover when they are on approved leave, such as parental leave. AFCA suggests that a safeguard to address this should, if possible, be introduced.

4. Further standardisation

As explained above, AFCA's view is that the definition of TPD should be standardised.

We also suggest standardisation of a common exclusion from MySuper insurance. This exclusion operates where a member is off work when a policy comes into effect, so that limited cover is provided. The limited cover is only for new events until the member has undertaken usual duties for a period of time. Suggested wording for the standardised exclusion is:

If the insured member is

(a) not at work or

(b) at work but doing only light or restricted duties

on the day when cover (or additional cover) first applies to the insured member, then the cover will only apply to an illness or injury that first occurs after that day. This is called 'new events' cover.

New events cover will become full cover once the insured member returns to work or returns to their usual duties (as applicable).

AFCA recommends consideration be given to further standardisation of terms used in MySuper insurance. Consultation with industry and consumer groups should identify areas where inconsistent terms currently create problems.

5. Improving consumer understanding

The Issues Paper describes consumer engagement with insurance in superannuation as 'notably low'. We acknowledge the challenge that member engagement presents. In our complaint resolution work, it is common that superannuation fund members do not read material provided to them. Areas in which consumer understanding needs to be improved are noted below.

5.1 Outline of insurance arrangements

Our experience with MySuper default insurance arrangements indicates that fund members often do not understand why they have insurance cover that they did not apply for or even authorise. More, or more effective, information should be provided to outline the arrangements for members in simple terms when they join a fund and in annual statements.

5.2 Claims processes

Complaints about MySuper insurance considered by AFCA often relate to delays in handling claims. Some delay complaints arise where the complainant objects to providing information requested by the insurer or the trustee in order to assess the claim.

There is scope to reduce complaints by giving greater guidance to members during claim processes, so they understand what information they need to provide and why it is needed, and have reasonable expectations about how long their claim will take to process. AFCA suggests that a standard guide for members be developed to set out key information about claims.

We note that the Life Insurance Code of Practice⁷ imposes requirements relating to claims. Examples are requirements in:

⁷ See Financial Services Council's [Life Insurance Code of Practice](#).

- section 3.4j), to provide information about claims processes
- claims provisions in section 8, which cover matters including requests for information, timeframes for claims decisions, communication of those decisions and support provided for claimants
- the Key Code Promises, which state obligations in broad terms.

5.3 Date of disablement

The standard situation under MySuper default insurance is that a member can only claim a benefit if they are totally and permanently disabled when they cease employment or at the end of the waiting period (usually three or six months). Complaints indicate this is an area where consumer misunderstanding is common.

Due to superannuation's occupational nexus, there will typically be a requirement for the fund member to have **ceased employment because of TPD**. If someone becomes disabled some years later, they cannot claim a benefit from the fund, because they will likely have lost cover, and group insurance is negotiated around covering employees with known employment risks. It is not intended to provide cover if someone becomes totally and permanently disabled after they have left employment (unless special arrangements are in place).

However, cover should be provided where a person stops work because of a condition which leads to TPD, even if the seriousness or permanence of the condition is not clear when the person ceases work.

AFCA considers that limits to eligibility based on the date of disablement – and any other major limitations on claims – should be disclosed prominently. The disclosure could be set out in the standard guide to claims suggested above as well as in the product disclosure statement.

Appendix – About AFCA

AFCA is the new independent EDR scheme for the financial sector. It replaces FOS, the Credit and Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal.

AFCA sees its purpose as providing fair, independent and effective solutions for financial complaints. It does this not only by providing fair complaint resolution services free to consumers, but also by working with its members to improve their processes and drive up industry standards of service, thereby minimising complaints.

More broadly, AFCA will play a key role in restoring trust in the financial services sector.

In addition to providing solutions for financial complaints, AFCA has responsibilities⁸ to identify, resolve and report on systemic issues and to notify ASIC, and other regulators, of serious contraventions of the law.

On 23 April 2018, AFCA was authorised pursuant to the *Corporations Act 2001*. The AFCA Rules, which govern our operations, were approved by ASIC in September 2018. We began to receive complaints under these rules on 1 November 2018.

AFCA's service is offered as an alternative to tribunals and courts to resolve complaints consumers and small businesses have with their financial firms. We consider complaints about:

- credit, finance and loans
- insurance
- banking deposits and payments
- investments and financial advice
- superannuation.

AFCA's role is to assist consumers and small businesses to reach agreements with financial firms about how to resolve their complaints. We are impartial and independent. We do not act for either party to advocate their position. If a complaint does not resolve between the parties, we will decide an appropriate outcome.

Decisions made by AFCA can be binding on the financial firm involved in a complaint. We can award compensation for losses suffered because of a financial firm's error or inappropriate conduct. For superannuation complaints, we can set aside a trustee or insurer's decision to deny a claim and substitute a decision that the claim be paid. AFCA's determination of a superannuation complaint has immediate effect, as if it were the original decision of the superannuation trustee or the insurer. We do not, however, award compensation to punish financial firms or impose fines.

⁸ See [ASIC's Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority*.

AFCA is not a government department or agency, and is not a regulator of the financial services industry. We are a not-for-profit company, limited by guarantee, governed by a board with equal numbers of industry and consumer representatives. AFCA's Chief Ombudsman is responsible for the management of the organisation.

Under transitional arrangements that have been put in place with ASIC's approval, AFCA is currently resolving complaints made to FOS and CIO and will continue to do so until they are resolved. These complaints will be handled in accordance with the FOS Terms of Reference or CIO Rules, as applicable and in force when the relevant complaint was lodged.