

21 August 2017

Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003

Dear Commissioners

We welcome the opportunity to provide a submission in response to the Issues Paper of July 2017 relating to the Inquiry in to Superannuation: Assessing Competitiveness and Efficiency.

I refer specifically to the Commission's request on page 14 of the Issues Paper:

*SUBMISSION EVIDENCE: GENERAL QUESTION FOR INDUSTRY
PARTICIPANTS AND REGULATORS*

Please provide case study and other evidence to address the evidence needs identified in table 2 as being relevant to you.

We refer specifically to the priority area detailed on page 15 of the Issues Paper:

Insurance ... Ease and extent of members opting out of insurance, amending cover or making claims

Given our daily experience of assisting working Australians who access their group insurance under superannuation, we believe that relevant case studies would assist the Commission.

Please do not hesitate to contact me and my colleagues if we can further assist with the Committee's important work.

Yours faithfully

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Principal
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Accredited Specialist Personal Injury Law





**Maurice
Blackburn**
Lawyers
Since 1919

**SUBMISSION TO THE
PRODUCTIVITY
COMMISSION**

August 2017

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Introduction

Maurice Blackburn Pty Ltd is a plaintiff law firm with 32 permanent offices and 29 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 Superannuation business

Maurice Blackburn assists more Australians every year in making Total and Permanent Disability (TPD) and other insurance claims under their superannuation policy than any other law firm.

Through the hundreds of clients we assist, we see the best of intentions and the best of performance from superannuation funds and their insurers.

We unfortunately also see the worst of culture and behaviour that has real and profound consequences for their members and our clients at a time they can least cope with such difficulty.

Many of these poor experiences have been reflected by media coverage of the wider life insurance industry. Most recently, this has included unethical behaviour by certain insurers such as disputing claims using out-of-date medical definitions, and delay tactics to avoid claims.

Default TPD in superannuation is a critically important resource for fund members. It is the means by which a disabled member can top up the shortfall in their superannuation retirement savings caused by the premature end to their career.

We know the personal story behind each of the claims we assist with each year, and the difference the financial assistance through superannuation based insurance makes in difficult personal and family circumstances.

Our contribution to this inquiry

Given the large volumes of disabled superannuation members that Maurice Blackburn represents, we submit some examples of their experiences by way of participation of superannuation members.

As noted in the issues paper, case studies can provide valuable evidence of the experiences of participants. We have focused on the ease and extent of members opting out of insurance (and potential consequences), amending cover (such as purchasing extra units of cover), and making claims. Clients, funds and insurers have been kept anonymous.

We would be pleased to discuss any of these cases further with Commissioners and Commission staff.

Members who have opted out and missed out

Case Study 1.1

Our client was employed for many years with an employer who contributed Superannuation Guarantee Contributions (SGC) on her behalf. At the end of that employment our client closed that account and allocated the account balance to manage some of her financial issues at the time. She then commenced another position in 2012 and joined a new super fund. She “opted out” of insurance at the time as she did not think she would need it. Unfortunately she was diagnosed with throat cancer some time after joining the fund and opting out. She contacted us for assistance but we were unable to help her with her claim as she did not have cover. This was most distressing for our client and she deeply regretted her decision to opt out, particularly given her life circumstances.

Members who have amended (increased) cover and unable to claim

Case Study 2.1

Our client’s claim was through a large super fund. He was approved for the default amount of insurance \$99,320. He applied for increased cover to \$700,680. In order to claim this additional amount, he needed evidence to confirm he was in “Active Employment” on 22 December 2011 (that is working more than 30 hours) when the increased cover commenced.

His income protection claim had also been declined due to eligibility criteria, because at the time he was accepted for cover on 22 December 2011 he was not earning at least \$16,000 per annum on an ongoing basis.

Our client was unaware of these eligibility barriers in the fine print of his policy. Increased engagement and understanding would have assisted this member and avoided payment of increased premiums for benefits he could never claim.

Case Study 2.2

Colin was a delivery truck driver. He suffered a stroke. While recovering in hospital and on sick leave, the fund underwent an insurance units upgrade from one unit to three units.

When Colin returned to work, he essentially did the same job and the same hours. However the only difference in his return to work was that he stopped ‘driving on freeways and long distances’ because it made him feel stressed post his stroke. Unfortunately he became unable to continue working in his usual capacity and ceased work.

The fund tried to deny eligibility for the upgrade, as they claimed his role had differed and he was undertaking alternate duties.

To rectify the situation, the employer helpfully provided a statement that his role had remained the same ‘in essence’ because he still worked the same amount of hours, and did the same amount of driving; he just wasn’t driving on freeways and long distances. This was the only way we could overcome the eligibility issue. If he had returned on reduced hours, it would have been impossible to overcome this hurdle and he would have only been entitled to the one unit.

Pleasingly the claim, including the insurance increase was approved; however without legal help it would have been very difficult for this client to know what evidence was required in order to challenge the initial decision of the fund.

Members who have insufficient default cover

Case Study 3.1

Our client was 33 years old and his only insurance available was a TPD benefit of \$26,000 when he became TPD as a result of a car accident. He was initially paid TAC payments, which stopped after a short time. Centrelink made it difficult for the client to receive payments. His heel bone was shattered; he underwent various surgeries including bone graft and fusion, and subsequently suffered from infections related to the complex surgery.

Our client's circumstances led to him being homeless and suffering from severe mental health issues – he could have amended his cover but wasn't aware and didn't apply; he wasn't sufficiently financially able to turn his mind to adequate levels of insurance cover and the fund did not draw his attention to the option of amending his cover.

Members who may experience barriers around opting out

This relates to those situations where if opt out was easier, there may have been negative consequences for the relatively young member.

Case Study 4.1

Our client was 36 years old and suffered symptoms whilst cleaning her bathroom including pain in her head, neck as well as having her hands seized. She called an ambulance and was told to rest. The next day she called a doctor and was diagnosed with gastro. The following day our client was taken to hospital and was diagnosed with a burst aneurysm, underwent a six hour surgery and was in an intensive care unit for six months. She was then admitted subsequently to a rehabilitation hospital.

She unfortunately suffered subsequent strokes.

We were able to successfully claim TPD benefits for her two fund memberships in sum of \$440,000 and \$254,724 respectively. Even though relatively young, an easier opt out system potentially taken up by this client would have had devastating consequences.

Young members who may opt out

This example relates to young members who have default cover and have suffered a catastrophic injury. The example demonstrates that whilst, in principle, "opt in" for young fund members is good policy, retaining cover for catastrophic injuries is important.

Case Study 5.1

Our client was a 20 year old apprentice who sustained a severe neck injury when diving into a pool leaving him with quadriplegia. He had cover with a fund from previous employment which he carried over to his apprenticeship employer. A claim was made on the basis of loss of use of limbs and he successfully obtained about \$200,000. Whilst the typical 20 year old

may not require default cover, this young man had let another super account lapse. If it hadn't lapsed he could also have claimed a second TPD benefit. The benefit obtained assisted him and his family with extra money to assist with his quality of life.

What would happen if the system was opt-in?

Case study 6.1

Our client was subject to a policy that requires contributions to be made by the participating employer within the initial 120 days of commencing employment, otherwise the member will only be eligible for limited cover, which covers for new events that first become apparent after cover commences.

Her disablement arises from pre-existing breast cancer and other health issues that arose before her cover commenced. Our client was only aware after she made a claim that her employer didn't pay SGC within first 120 days of her employment (opt out period). The only way to circumvent this and get full cover would be if one was aware that the employer had not made contributions right before the end of the 120 days and prompted them to do so, or contacted the fund after the 120 days to 'opt in' for full cover.

She is now effectively precluded from bringing a TPD claim for disablement arising from breast cancer. Very few people would ever discover or know to check, that their employer is/is not paying so they can get full cover. Her premiums paid are useless to her.

How multiple policies transform people's lives (experiences of making claims)

Case Study 7.1

Our client was a maintenance worker at a winery in South Australia. He had always worked full time in a heavy manual capacity. On 5 February 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 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 (DSP) and was not aware that he had any superannuation entitlements until he sought our assistance.

Our client was found to have the following several fund memberships and insurance policies that were of significant benefit to him:

- Fund A membership: Income Protection - \$3,000per month, payable for two years and TPD benefit - \$61,304.20
- Fund B TPD benefit - \$186,160.87
- Fund C TPD benefit - \$86,594.04
- Fund D Super TPD benefit - \$40,806.66
- Fund E Super TPD benefit - \$113,011.19

These claims meant that rather than relying on the DSP and living a meek existence, he and his family are now able to live a life of dignity. These claims have changed his life and he was very appreciative of our work.

Case Study 7.2

Our client is aged 50 years old and was a truck driver all of his life. The client injured his shoulder in a truck accident and had surgery, but has never been able to drive again.

Again, this client was found to have several policies that were of significant benefit to him:

- Fund A TPD - \$69,600 and Income Protection: \$3,000/month
- Fund B - \$78,380
- Fund C - \$107,600

Case Study 7.3

Our client is in his late forties 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:

- Fund A - \$239,000
- Fund B - \$279,143
- Fund C - \$65,460
- Fund D - \$20,900

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

Case Study 7.4

We have a client who has a young family and is only 27 years old. He suffered an injury to his right shoulder and right elbow. He is unable to use his right arm at all now and was a factory worker, who has only ever worked in factory. This client has had two claims accepted, which has made a significant difference to him:

- Fund A - \$197,000
- Fund B - \$166,800

This client was very emotional when we told him of the benefits he would be receiving, as it has allowed him to buy a small house and provide an appropriate standard of living for his family.

Case Study 7.5

This client has an acquired brain injury and is just 34 years old He has three successful TPD claims that have paid him a total of \$450,000 – significant particularly given his young age and loss of working ability.

These claims were as follows:

- Fund A - \$98,400.00
- Fund B - \$226,180
- Fund C - \$126,112

Members who are not covered by the insurance attached to their fund:

Case Study 8.1

Our client signed up to a racing industry fund where his occupation was as stablehand at a high profile horse training facility. He is a 27 year old stablehand who sustained serious injuries to his left hand in a workplace incident on 2 February 2014. A claim was lodged for TPD on 17 August 2016 and rejected on 28 September 2016 as the occupation of stablehand 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. It is effectively junk insurance and he is left without the support from insurance he badly needs and was paying for.

Case Study 8.2

Our client signed up to a fund where seasonal or contract employment is an “excluded occupation”. He is 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 on 6 October 2014. Claim lodged for Income Protection and TPD 7 July 2015 and rejected on 30 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 guarantee of continuity of employment, irrespective of hours worked or period of employment. He and his colleagues were all project workers – which were obviously very common during the recent boom in Western Australia – and they were issued with “termination notices” at the conclusion of the project. None of these workers, including our client, were ever going to have insurance cover under this policy despite paying contributions/premiums.

A recent development of multiple policy exclusions

Case Study 9.1

Our client had 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.

Shifting away from the Superannuation Industry Supervision Act definition

Case Study 10.1

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 per cent 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 that he can't perform any future retraining or rehabilitation that he could reasonably undertake or has undertaken. The balance of 20 per cent will only be paid if he shows he cannot perform at least three of six every day working activities which are defined as:

1. Walking/Bending:

(a) *The ability to walk more than 200m on a level 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 per cent cover.

Other clients affected by this policy include a 44 year old car detailer with a back injury; a 39 year old East Timorese lady who worked on a car assembly line and stopped work due to a back/bilateral hip injury whose employment history has been as a factory worker and housekeeper; and a 30 year old car detailer with early onset arthritis whose employment history has been as a panel beater, mechanic's assistant and car detailer.