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FSC Policy Paper for Consultation - Stapling and Group Life Insurance Policies in Superannuation

ASIC estimates that 86% of superannuation fund members with insurance are on the default settings.¹ From 1 November, individuals will be stapled to their superannuation fund when they change jobs and do not exercise choice to select a new fund. There is a real risk that stapling will cause unengaged consumers to be placed in inappropriate insurance if they are stapled to a fund which applies an occupational exclusion.

Under Section 52 of the SIS Act 1993, super funds have a clear obligation to negotiate insurance policies that are appropriate for their members. Occupational exclusions in default insurance do not seem aligned with these obligations. These terms have the potential to expose members and their families to extreme financial risk if they are **starting** or **moving** into jobs that are linked to these exclusions.

The majority of super funds do not apply these exclusions in their default cover, yet for the most part appear to be able to offer affordable cover to their members..

The FSC supported the stapling framework and is in a position to reduce the potential for consumer harm. We welcome the clear position the FSC has taken in calling for a prohibition on the use of any terms in MySuper group life policies that would cause a claim to be declined in default group life insurance in superannuation on the basis of a change in the occupational classification of the member.

We recommend the FSC take all steps within its power to remove all occupational exclusions from default insurance cover and ensure measures are in place to protect consumers who actively take out cover where exclusions exist.

Size and scope of the problem

To ensure all default members are protected, it will be important for the FSC to determine the size and scope of the problem in the industry. Treasury has committed to undertake a review into occupational exclusions in default insurance associated with MySuper products. The FSC should engage with this review as soon as possible. A full and comprehensive dataset is essential to ensure individuals do not fall through the cracks and are subject to inappropriate insurance offerings.

¹ ASIC Report 675: Default insurance in superannuation: Member value for money

In the meantime, there are steps the FSC can take to determine the size and scope of the problem. Firstly, the FSC should undertake a review of their membership to determine how many funds have occupational exclusions and the type of occupational exclusion they offer. Secondly, they should engage with existing data sets held by the industry. We are aware that CBUS has conducted research with Rice Warner regarding occupational exclusions.² We see value in the FSC taking a collaborative approach with industry funds to solve this problem.

Super Consumers Australia recently undertook analysis on our dataset from our 2020 research on Total and Permanent Disability Insurance.

We found a number of funds which have ‘occupational exclusions or restrictions’ which would render their default insurance extremely difficult to claim on for people working in certain industries.

Funds we are aware of that have occupational exclusions include:

- [Aon Master Trust \(SmartMonday\)](#) - Some occupations may not be eligible for any insurance cover in the fund because the trustee and the insurer considers them too hazardous.
- [Asgard](#) - Special Risk Occupations are subject to individual consideration by the insurer and special terms may apply.
- [IOOF](#) - Hazardous occupations are restricted from Income Protection and must apply a modified TPD definition.
- [Colonial First State First Choice Super](#) - MySuper cover does not apply to people in special risk occupations.
- [Super Directions for business](#) - Ineligible for cover if you are in an ‘excluded occupation’.
- [MLC Masterkey Business Super](#) - Special Risk Occupations are restricted from Income Protection. Some jobs are classified as not insurable.
- [BT MySuper](#) - Special Risk Occupations must apply a modified Income Protection definition.

We have written to these funds. The responses we received made it clear that even after some changes not all default members would be protected from inappropriate cover due to occupational exclusions. For example, MLC informed us that “new members from 13 August in MLC’s Business Super Fund will no longer be excluded on the basis of their occupation, *but “any previously uninsurable/excluded members will be able to **apply** for cover (and won’t be excluded on the basis of occupation). They will be subject to underwriting.”* [emphasis added]. These types of half measures are not appropriate and will place members in financial risk and potentially paying for cover they cannot claim on.

The scope of the problem

The FSC paper states that ‘unaffordable cover’ is out of scope for the purposes of this consultation. This is defined as not offering default insurance to certain members due to their occupation. It is understood these members will have no default cover but will also not pay premiums.

The implication of this decision will mean that members in high risk occupations may not be offered default insurance. One of the FSC’s justification for this carve out is that it will avoid members having disproportionately high premiums that may cause superannuation balance erosion.

We question if this is against the purpose of a group default insurance safety net.

Cross-subsidisation is an essential feature of group insurance.³ There are clear obligations on funds to design their insurance policies properly, including the duty to:

- **act fairly** when dealing with classes of beneficiaries, and with beneficiaries within a class (see s52(2)(e)–(f) of the SIS Act)
- formulate, review regularly and give effect to an insurance strategy that relates to the kind and level of insurance and has regard to the demographic composition of beneficiaries (see s52(7)(a) of the SIS Act)
- only offer insurance if the cost **does not inappropriately erode** the retirement income of beneficiaries (see s52(7)(c) of the SIS Act)
- annually assess whether the insurance strategy for each MySuper and choice superannuation product is appropriate for the beneficiaries and whether any insurance fees charged inappropriately erode the retirement income of beneficiaries (see s52(11) of the SIS Act)

There is also an argument that the exclusion of cover goes beyond the scope of the term ‘reasonable condition’ in s68AA of Sis Act. S68AA details a requirement to *provide a permanent incapacity benefit and death benefit to each MySuper member of the fund* but allows trustees to determine ‘reasonable conditions’ to which the provision of insurance is subject. The Explanatory Memorandum for the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 goes to conditions that may have to be fulfilled before a benefit can be provided such as, working a certain number of hours a week, but it does not bring any weight to the argument that a trustee should not offer a benefit.

The starting point should be to provide affordable cover on the best terms available on market to all members. We know the majority of funds have been able to achieve this. With no evidence to the contrary, the fact that some funds have elected to carve out certain occupations appears to place profit ahead of the best interests of members. In order to continue offering occupational exclusions, funds must be satisfied that it is **fair and reasonable** to that class of high-risk beneficiaries and justify that they cannot give effect to an insurance strategy that wouldn’t inappropriately erode their retirement incomes. To date we are unaware of any fund that has justified occupational exclusions on these grounds. This is despite funds being called on to make these types of justifications in instruments such as Member Outcomes Assessments.

³ Productivity Commission, 2018, ‘Superannuation: Assessing Efficiency and Competitiveness’, p. 389

It is also entirely unclear on what basis funds have come to the conclusion that they have satisfied the fairness requirements of the SIS Act. Funds typically do not undertake an underwriting process for default insurance or keep track of their members' occupations. This means they are not in a position to adequately assess whether their policies are fair, because they don't have a clear picture of who is impacted.

Current exclusions are certainly not fair to members who are likely to be completely unaware of these restrictions. Where 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 not in a position to undertake this level of analysis. When we conducted our own sweep for these terms we often came across complex definitions which required multiple messages with funds to clarify. In some cases the responses appeared to directly conflict with what was written in the policy. For example, AON Smart Monday stated to us "There are no occupational exclusions for current members' despite their policy clearly stating to be eligible for automatic cover you must work in a hazardous/uninsurable occupation. Given the difficulty a team of experts who knew what they were looking for faced, it is hard to see how the average consumer is meant to engage with this information.

Another issue that would need to be solved is how members who start in a high risk job and then move to an insurable job will be covered. These people would need to apply for cover when they changed jobs which will not be understood by the average default member.

There is simplicity and fairness in working towards a solution that provides all default members a safety-net regardless of their occupation. There is evidence of funds who have moved or are moving to this model. Colonial First State stated to us "The ensuing product will ensure default insurance is accessible to members regardless of their occupation rating". This further highlights that it is possible for funds to deliver affordable cover to all members.

Issues with potential solutions

The proposed solution and options to implement them must not create unintended consequences.

Binding life insurers - Binding life insurers to restrict occupational exclusions muddies the water on where the duty to offer appropriate default insurance lies. Super funds have the ultimate duty to offer appropriate insurance for their beneficiaries. These existing duties, if interpreted correctly, should be solving this problem already. That said the FSC can play an important role in interpreting the law to guide their member funds.

Binding only FSC members - We acknowledge that the FSC can only bind its members. Based on the FSC's member list published on its website, the membership only represents 22% of all APRA fund members. We encourage the FSC to take its part in the solution, but it should be acknowledged that further work will need to be done to make it industry wide. We encourage

the FSC to support industry wide solutions, such as advocating for a prudential standard which bans the use of occupational exclusions.

What does 'default' mean? - Determining when a member ceases to be in default insurance must form part of the proposed solution. The FSC has previously used a definition in 4.1 of the Insurance in Superannuation Voluntary Code of Practice. We propose that any MySuper member is subject to this default solution.

Solution should protect both new and current members - As we have highlighted throughout this letter, the proposed solution must protect both new and existing default members. It would be an absurd outcome if people were required to check whether the cover they are paying for continues to cover them everytime they change jobs.

Acting as soon as possible

We recommend the FSC act as soon as possible to take all steps within its power to remove occupational exclusions from default insurance cover and ensure measures are in place to protect consumers who actively take out cover where exclusions exist. Failure to do so will see people exposed to extreme financial risk from November 1 when stapling is introduced.

If you have any questions or would like to discuss this further, please contact Franco Morelli, Super Consumers Australia Policy Manager, fmorelli@superconsumers.com.au.

Kind regards,



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