Policy Paper

Stapling and Group Life Insurance Policies in Superannuation

Submission to Financial Services Council

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Protecting and promoting justice, freedom and the rights of the individual.

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal of the Eora Nation.

[1] www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input in relation to the FSC's Policy Paper on Stapling and Group Life Insurance Policies in Superannuation (the Policy Paper).

2. We congratulate the FSC for the intent of the paper - to pro-actively address the some of the significant unintended consequences to consumers' default insurance arrangements caused by the Your Future Your Super (YFYS) laws.

3. The vast majority of submissions to the Senate Standing Committees on Economics' inquiry into the YFYS changes agreed that the inadvertent creation of multiple superannuation accounts is problematic, and that the end goal must be to maximise retirement savings for Australia's workers.

4. Many argued that the process of 'stapling' may create a number of negative unintended consequences for workers – in particular the potential impacts on workers being tied to a superannuation fund which provides insufficient or inappropriate insurance coverage.

5. We note the articulation of the problem in the Policy Paper:

   Problem: Where the default life insurance in a MySuper product has exclusions that apply to certain occupations (for example, working in a hazardous workplace), a member working in one of those occupations may be unable to claim for the default insurance for which they have been paying insurance premiums.

6. We further note FSC's proposed solution to the problem:

   Solution: The FSC proposes to introduce 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.

7. Our response to the Policy Paper is mainly centred around the FSC's articulation of the problem and solution. We also offer some brief commentary on other sections of the Policy Paper.

8. In short, we perceive the narrowly expressed problem and the resultant narrowly expressed solution proposed in the Policy Paper as 'a good first step', but it does not fully address the breadth of issues that need to be addressed in relation to stapling.

9. Getting this issue right is of crucial importance in ensuring that default superannuation insurance remains a fair and affordable safety net for ordinary working Australians.

Response to the Policy Paper

Articulation of the problem.

10. We see the articulation of the problem as quite narrow.

11. There is an implicit underlying assumption throughout the paper that the problem of having inappropriate insurance coverage through super, due to stapling, is restricted to:

    - Those changing jobs
    - Those whose occupational classification does not align with the insurance coverage offered by their stapled fund
    - Those in permanent work arrangements

12. There is a parallel assumption in the paper that, except for the identified *change in the occupational classification* problem, consumers are otherwise provided with insurance cover that is commensurate in quality with the premium amount paid.

13. With respect, these assumptions are incorrect.

14. Both the 'problem' and the 'solution' only address one element of the real issue, namely that:
    a. super fund members are at risk of being left with substandard or no cover based on their title or employment conditions; and

    b. that risk is heightened by the introduction of the 'stapling' reforms and that those reforms will most acutely but not exclusively impact those moving between employers.

15. This problem has persisted despite the regulated Trustees' legal duty to provide default death and permanent incapacity insurance that represents the best terms available on market to all members.

16. Retail funds in particular have commonly failed to provide adequate cover for members with particular occupations or employment conditions, where, conversely, industry funds have done so for the same member profile. Often, the decision making in relation to insurance offerings has been driven by the retail funds' relationship with an affiliated group life insurer, and thus may offer inappropriate or poor value insurance as part of their package.

17. In previous submissions[2] we have noted the following case example:

[2] https://www.lawyersalliance.com.au/documents/item/2028: para 23

We are aware of a logistics firm which entered into an agreement with a retail superannuation fund, whose death and TPD insurance coverage contained a specific 'hazardous occupation exclusion' for truck drivers. Around 50% of this firm's staff were truck drivers.

18. The employer, in this example, had numerous other funds he/she could have opted for which could have provided affordable insurance cover for its transport workers, such as TWU Super. Evidently, the wellbeing of his/her staff was of secondary importance to whatever other considerations were weighed up during the decision making process.

19. We see this as an extension of the 'fee for no-service' issue, which featured heavily in the outputs of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission):

    Workers in the above example are paying premiums for an insurance product they will never be able to benefit from which means the default insurance arrangements have failed them.[3]

20. The presupposition that members who do not have default cover are not charged premiums is demonstrably incorrect.

21. Premiums are deducted, sometimes for years, from members who are effectively uninsured by reason of their occupational classification or other employment conditions. This was a problem highlighted in the REST case study at the Royal Commission where a McDonalds employee was uninsured for years after ceasing work despite paying premiums at the time of her eventual accident that left her a paraplegic.[4]

22. A member's true uninsured status is often unknown unless and until he/she makes a claim. It is therefore crucial that an industry standard that addresses uninsured members rights be developed, which protects members from paying fees for no cover.

23. The ALA urges the FSC to ensure the defined scope of the problem in the policy proposal is sufficiently broad so that an appropriate solution may be articulated.

24. Alternatively, if the Policy Paper is intended to describe only one of a number of problems – and thereby represents one step toward the comprehensive solution needed, then the Policy Proposal should say so and a timeline for subsequent initiatives should be provided.

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[3] Ibid: para 24

[4] https://www.afr.com/wealth/superannuation/rest-industry-super-withheld-paraplegic-womans-disability-insurance-20160520-goztiy

Articulation of the solution.

25. We also see the articulation of the solution as narrow.

26. Firstly, basing the solution around "*…on the basis of a change in the occupational classification of the member"* means that workers who start their working careers stapled to a fund with inappropriate insurance coverage are not protected.

27. It would be an absurd outcome if a fund could be prohibited from applying an occupational exclusion to a member who changes to (for example) a construction job, but the same exclusion could be applied if it was their first job/fund.

28. The ALA recommends that the FSC ensure that the proposed solution recognises that this issue affects new workers as well as those moving into high risk jobs.

29. Exclusions that apply to 'occupations' are not the only factors that may cause a claim to be denied as a result of changing jobs. For example, exclusions related to employment conditions (such as exclusions related to casual or non-permanent workers) also exist.

30. By only focusing the solution on occupational exclusions, FSC is leaving open the moral hazard of Trustees excluding or limiting cover on the basis of employment conditions, such as non-permanent work, limited hours or broken work patterns.

31. There is therefore a clear need to avoid a situation where insurers can circumvent the intent of this policy by excluding members based on their employment conditions.

32. Such clauses have been roundly criticised by ASIC in their report Holes in the Safety Net: A Review of TPD Insurance Claims.[5] In their report they write:

    Many insurers selling policies with restrictive cover based on the 'activities of daily living' (ADL) disability test. These policies make some consumers eligible only for a narrow form of TPD cover due to their work status (e.g. non-permanent, casual or part-time employees). This narrow cover pays out only if consumers cannot perform several 'activities of daily living' such as feeding, dressing or washing themselves.

    We consider that these policies are not designed for, and do not operate to meet the needs of, the broad range of consumers who are funnelled into this type of cover. These policies do not appear to provide cover for all consumers who are unable to work again—they provide cover only to consumers who are so severely disabled that they cannot care for themselves.[6]

[5] https://asic.gov.au/media/5311117/rep633-published-17-october-2019.pdf

[6] Ibid: p.5

33. The report goes on to note very concerning statistics related to the decline rates of claims under these policies – ranging from 45% to 87% despite the same premiums being charged.[7]

34. The impacts on injured Australians of these somewhat arbitrary differences in coverage can be devastating for the individuals involved.[8] Indeed, it is disproportionately women, and those in low socio-economic demographics that are impacted by these group underwriting provisions; being cohorts which also tend to be less likely to have tailored life insurance elsewhere, and hence are most in need of a well-functioning default insurance safety net through super.

35. We also note that the proposed solution is only applicable to MySuper group life policies. We advocate that the provisions be extended to all regulated superannuation products (both MySuper and 'choice' products). We see no basis for limiting these consumer protections to MySuper products, as doing so would disincentivise member engagement and exercise of choice.

36. We also note the specific potential impacts on under 25 year old workers in implementing the proposed solution. Within the Putting Members First legislation, specific provision was made to protect those aged under 25 years of age in hazardous occupations. This represents an understanding that these workers are most in need of default insurance. The approach proposed by the FSP is directly inconsistent with this acknowledged need because it would allow funds/insurers to apply occupational exclusion clauses in all scenarios (other than a change in employment).

37. In light of the above, we perceive the narrowly expressed problem and solution proposed in the Policy Paper as 'a good first step' however the mere removal of occupational exclusions for those changing jobs does not adequately address FSC's position, as described in the overview section of the Policy Paper, that:

    … it is important that disengaged superannuation members do not inadvertently find themselves unable to claim against their life insurance coverage when they move between occupational classifications.

38. The starting point should be that TPD and life cover is provided on standard terms regardless of the occupation or employment conditions as mandated by the SIS Act s.68AA, noting that the non-provision of TPD cover is not a 'condition' but rather a limitation on the defined risk. Thereby, failure to provide such cover is not a legitimate condition but a failure to comply with the law.

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[7] Ibid: p.7

[8] See for example: https://www.abc.net.au/news/2020-01-23/junk-insurance-casual-workers-superannuation-injury-disability/11892884

We offer the following commentary on other elements of the proposed policy:

In relation to consumer disengagement.

39. FSC is correct in identifying consumer disengagement as an important issue.[9]

40. The ALA submits that it is simply implausible to expect workers to consider their changed insurance needs when changing occupations, when stapled to the superannuation fund associated with their first job.

41. Member disengagement data would indicate that worryingly few consumers consider their insurance arrangements at all. PWC found that 71% '*were not engaged when considering life insurance [within super]*', and that 66% of 25 to 34 year olds do not read their annual superannuation statement.[10]

42. We encourage FSC to advocate that the stapling system must be sufficiently intelligent to ensure that consumers are equipped to make informed decisions about the adequacy of their stapled fund.

In relation to the proposed mechanism to implement change.

43. We agree with the proposal to:

    Implement a prohibition on these terms on life insurers through an Appendix to the FSC's Life Insurance Code of Practice (Life Code)

44. We agree this is an appropriate mechanism.

45. We would add that it is important that the aim should be that the prohibition be an enforceable code provision, and that FSC work toward provisions of the code being made enforceable. Breaches need to come with consequences. A breach of the prohibition should be subject to civil penalties.

46. We agree with the suggestion of the introduction of an enforceable FSC Standard, and the development of industry guidance. We also suggest the FSC work with other key industry bodies such as ASFA and ISA to achieve broader binding commitments from super fund Trustees.

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[9] Policy Paper, Overview: para 4

[10] https://www.pwc.com.au/publications/assets/superannuation-data-risks-insurance-superannuation-jun16.pdf

In relation to non-occupational exclusions.

47. The Policy Paper notes a couple of examples of non-occupational exclusions which "apply equally to all members", including intentional self-inflicted injuries and injuries sustained while committing a crime.

48. These extreme examples gloss over the non-occupational exclusions which directly or indirectly disadvantage the most vulnerable workers who are in broken and precarious employment arrangements. These clearly should be within scope.

49. The ALA suggests the FSC should review the non-occupational exclusions which unfairly disadvantage the most vulnerable and marginalised cohorts of workers and ensure the eradication of those exclusions form part of the incremental process of reducing the impact of stapling reforms.

Conclusion

50. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the FSC Policy Paper on Stapling and Group Life Insurance Policies in Superannuation.

51. We would be pleased to meet with FSC to discuss these important issues in more detail, if that would helpful.

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