HESTA 2017 Submission- Consultation Paper:

Insurance in Superannuation Code of Practice

H.E.S.T. Australia Ltd ABN 66 006 818 695 AFSL 235249, the Trustee of Health Employees Superannuation Trust Australia ABN 64 971 749 321 (HESTA)

Consultation Paper: Insurance in Superannuation Code of Practice

Response to the Consultation Paper: Insurance in Superannuation Code of Practice

HESTA welcomes the opportunity to submit a response to the Consultation Paper: Insurance in Superannuation Code of Practice.

About HESTA

HESTA is an industry superannuation fund, established in 1987 to provide retirement benefits for workers in the Health and Community Services Sector, and we operate only to benefit members. We have over 830,000 members and manage over $40 billion of members' assets. Approximately 83% of our members are women.

HESTA members are vocational employees, they join their sector as a skilled professional they largely remain in that sector for their working lives. The Health and Community Services Sector includes:

- Nursing and midwifery
- Early childhood education
- Community services
- Aged care
- Primary health care

The typical HESTA member is aged 43, is female and has a balance of approx. $19,000 in superannuation.

Because of our traditional industry base our members are:

1. More likely to live for five years longer than an average Australian male
2. More likely to suffer the inconsistencies and discrimination of the gender pay gap
3. More likely to take time out of the workforce on periods of unpaid leave
4. More likely to be at risk of poverty in retirement.

Our mission is to make a real difference in the retirement outcome of every member. The settings of the system impact our members, both in the way they enter and interact with superannuation.

This submission focuses primarily on issues that impact our typical member and the way in which they rely on insurance through superannuation. We have also contributed to submissions from industry bodies.

We welcome the opportunity to discuss the submission further, should you have any queries please contact Mary Delahunty, General Manager Business Development and Policy 03 8660 1673 mdelahunty@hesta.com.au

HESTA Draft Code response

HESTA has participated in the Insurance in Super Working Group (ISWG) in a variety of ways. We have dedicated resources to the Technical and Income Protection Working Groups and have had the opportunity to review and provide feedback to the various position papers throughout the process.

This has taken considerable time and effort, we believe it to be important work given the unique nature of our insurance arrangements and our public dedication to the integrity of insurance within superannuation.

We endorse the view of the ISWG that automatic group insurance has been a successful policy for Australia and has provided a safety net for those who would otherwise be completely uninsured.

We also agree that this is important for our individual members and plays an important social role, alleviating pressure from the social security system and the healthcare system.

We agree that the objective of insurance in superannuation is to *support the purpose of superannuation by providing a measure of financial support to members and/or their families if the member is prevented from working, either temporarily or permanently, to retirement age by death, terminal illness, injury or ill-health*[1].

However, we believe that this objective statement could have been strengthened by making reference to an obligation we should all have to help a member return to work where possible. The HESTA insurance structure plays both a safety role and a rehabilitation role and this should be enhanced in superannuation more broadly.

HESTA members are some of the most vulnerable and marginalised workers of Australia. Time and time again we help our low paid, hardworking members and their families who have had to cease work due to injury or who have died prematurely. Time and time again they tell us that they were unaware of the insurance they had within superannuation until this critical time. Their lack of awareness does not diminish the importance of this protection in their lives. This lack of awareness is a failure of policy settings which should be aimed at increasing the level of education around our compulsory superannuation system, and not constantly aimed at attacking the protections that exist even if people don't engage.

In Australia, one of the biggest assets a person has is their ability to generate an income. In a social sense we are all insuring this asset for one another through the social security system. Any changes that diminish the insurance cover within super will need to be met by the rest of the taxpayers through the social security system.

The work of the ISWG is not in vain, it has produced some interesting research but the attention of the policy makers would be best directed to ensuring that the protections provided by insurance in superannuation are of high quality. That insurance is affordable to purchase, of an appropriate design and above all, that it is useable.

The ISWG correctly identifies that our challenge as trustees is a balancing act between the provision of a real insurance benefit and the inappropriate erosion of member's balances. HESTA believes that account balances are not inappropriately eroded simply by the inclusion of automatic insurance. If the insurance product is well designed, affordable and members are actually able to derive benefit from it then it is an important part of the construct of the system. To demonise

[1] Consultation Paper: Insurance in Superannuation Code of Practice, September 2017, The Insurance in Superannuation Working Group, pg. 1

insurance premiums as merely "erosion" is a misrepresentation of the facts. Insurance premiums are paid to provide a product. The product should be valuable but this value doesn't diminish simply because a member doesn't realise they have purchased it.

As described above, HESTA has primarily attracted members from the Health and Community Services Sector. Our members typically draw a wage and are usually in a traditional employment arrangement under a collective agreement or award. They are predominantly light blue / blue collar workers. Often required to lift and perform medium duty manual tasks as a part of their role.

Our ability to identify the best insurance design for this group of workers is one of our strengths as a fund. We believe our structure is an example of a quality insurance design which should be enhanced by a Code not restricted.

With our traditional member base in mind we designed an insurance structure that would provide for members if they could no longer perform their vocational role.

We provide low-cost default insurance, Income Protection (IP) to age 67 and Death cover to age 75. This is different to the majority of superannuation funds who mainly provide Total Permanent Disability (TPD) and Death cover as their default or automatic arrangement. We have chosen our unique structure for three main reasons;

1. The provision of an income through insurance in place of income lost is the most sensible and manageable structure for our members.
   Typically our members are in traditional employment arrangements, we believe that an insurance arrangement that mirrors this is most appropriate – as opposed to a lump sum arrangement which the member would then have to invest and draw an income from.
2. Well-designed IP can help members do better than TPD over time.
   TPD is typically paid in a lump sum to members. A member is then required to invest or save that money in a manner that provides for them for the continuation of a typical working life. This is a difficult task for the most experienced of investors. A well designed IP structure releases funds to members in instalments over a period of time. Under the HESTA structure, this period of time matches a typical working life – that is, up until the age of 67 when a member can then access social security benefits.
   These instalment amounts are indexed, so the investment challenge to maintain the buying power of the money does not rest with the member – it stays with the insurance provider.
   A member receiving IP payments who then dies is entitled to their death benefit. A member who has received a lump sum TPD who later dies is entitled to the death benefit LESS the TPD amount. TPD and Death covers are related and off-set one another. This is not the case with IP and Death.
3. IP encourages rehabilitation.
   The HESTA IP structure encourages a continuing relationship with the member and naturally incentivises return to work through occupational rehabilitation.
   The best chance our members have of a dignified retirement is long and meaningful participation in the workforce. Our members are skilled and motivated. The most appropriate insurance structure for them is one which encourages and provides mechanisms to aid this participation.

   Recent research by Insurer AIA states that
   Work is an important part of life regardless of whether it is paid or unpaid. It positively influences our mental health as in most cases it provides an opportunity for social interaction, skill development, structured time and routine, a sense of identity and purpose

and, in the case of paid work, income. Work therefore is considered a determinant of health[2]. Progressive insurance design responds to the challenges of ill-health

AIA:
Insurers, funds and intermediaries need to respond to the complexity of these issues by working collaboratively and relationally with their members and their treating professionals, as well as supporting early rehabilitation intervention and effective return to-work programs to promote and restore positive health outcomes[3].

This design is useable regardless of work classification, it is important for our members that they can make claims even if they are employed on a casual basis. Many superfunds have similarly tailored their approach to insurance design to ensure it is equally as appropriate for their member base.

While there are improvements that can be made in the provision of insurance within superannuation, it is important that policy makers agree that safety nets in super are worthwhile.

Any Code therefore should not erode this premise.

We strongly recommend that a gender analysis is conducted to understand what the proposed changes under this Code will do to both men and women. As we have argued many times prior, retirement is a gendered concept because labour market interaction is a gendered reality. Insurance in superannuation is designed to offer protection for those labour market interactions and therefore has different requirements for men and women. It is imperative that these impacts are understood before a Code is enshrined.

We have focused our feedback on the areas where the Code suggests changes that will overwhelming impact our typical members and have the potential to erode their retirement outcomes.

[2] AIA, A critical equation: balancing Australian worker health and company wealth, August 2013, p.6
[3] AIA, A critical equation: balancing Australian worker health and company wealth, August 2013, p.6

Cancellation and cessation of cover

This section of The Code requires us as trustees to make the process of cancelling, or 'opting out' of automatic cover straight-forward and transparent for members. Members must be able to cancel through a fund's website, over the phone or via email. Instructions on how to cancel must be provided clearly in member communications. This improvement and clarity of process is not disputed. In all aspects of their superannuation, members should be well informed and should be able to engage easily through mediums that are suitable to them. We support the progress towards consistency of the engagement process.

One of the Code's most controversial obligations is the requirement that trustees cease a member's cover where no eligible contributions have been received for 13 months, unless the member advises that they want to retain the cover.

HESTA has significant concerns about the impacts of cessation. The ISWG seems to pursue this despite the apparent contradiction between a cessation clause and the objective of automatic cover.

The 13 month period is measured from the end of the period covered by the most recent eligible contribution, where this is known by the trustee; otherwise the measure is the date of the most recent eligible contribution. The intention is for the period of no contributions to not exceed 13 months wherever possible.

The Code also includes an ability for a member's cover to be reinstated within 60 days after it has ceased. The ability to have automatic cover re-established is necessarily limited, due to the anti-selection risk of allowing members to receive cover without underwriting[4].

This proposed change is aimed at combatting what is perceived to be the paramount concern – that members are purchasing insurance with their retirement savings and therefore having less to retire on. We contend that this is the purpose of insurance in superannuation and that the policy intervention should be focused on making sure that the insurance products purchased are of value.

Given our typical member, we are alarmed at the cessation proposal. Introducing cessation of cover provisions will overwhelming impact women. It is a retrograde consideration which threatens those who already rely heavily on the social security system for periods out of paid work. HESTA members are over represented in this cohort.

A cessation clause is incredibly detrimental to those taking time out of the paid workforce for unpaid caring roles. We argued strongly through the drafting process and maintain the position that if cessation was to be pursued it should at least be longer than what we understand to be a typical parental leave timeframe. This is often discussed as being 12 months, so a 13 month period would seem to capture this. However, parental leave patterns are not well understood and not well researched.

The National Employment Standards establish minimum entitlements to unpaid parental leave and related entitlements, which apply to all employees in Australia. Parental leave provisions include birth-related leave and adoption-related leave, and also recognise same sex de facto relationships. Each eligible member of an employee couple may take a separate period of up to 12 months of unpaid parental leave. However, if only one person is taking leave, or if one member of

[4] Consultation Paper: Insurance in Superannuation Code of Practice, September 2017, The Insurance in Superannuation Working Group, p.9

an employee couple wishes to take more than 12 months leave, the employee may request a further period of up to 12 months, from their employer[5]*.*

As the legislation enshrines a 24 month option, it is ludicrous that the Code would opt for a different time period.

The research on labour market participation post-childbirth is far from comprehensive. HILDA data 2017 shows that while approximately 3% of employed men and 7% of employed women leave the labour force from one year to the next. The reasons for women's higher rate of movement out of the labour force are not explored, although withdrawal to have children is undoubtedly a major driver of the difference[6].

Australian Bureau of Statistics Labour Force Survey data (ABS, 2017b) show that a substantial proportion of mothers with young children are employed either fulltime or part-time. Less clear from this Australian Bureau of Statistics' data, however, are patterns in women's employment participation in the periods leading up to and following childbirth[7].

Table 4.2: Time out of paid employment before and after most recent birth—Women aged under 45 with a youngest child aged 2 to 5 (%)

	2005	*2008*	*2011*	*2015*
Before birth				
≤ 2 weeks	22.5	21.7	25.7	27.8
> 2 weeks and ≤ 1month	7.9	13.4	11.1	11.5
> 1 month and ≤ 3 months	19.8	19.7	21.1	15.1
> 3 months and ≤ 12 months	11.1	12.1	11.1	7.5
More than 12 months	20.2	16.7	15.3	16.3
Never worked before birth	18.5	16.4	15.7	21.8
Total	100.0	100.0	100.0	100.0
After birth				
< 3 months	12.8	11.4	9.8	8.2
≥ 3 months and < 6 months	9.8	9.7	7.8	8.5
≥ 6 months and < 12 months	13.7	17.1	18.5	20.9
≥ 12 months and < 2 years	17.0	20.5	21.7	18.3
≥ 2 years	46.7	41.4	42.2	44.1
Total	100.0	100.0	100.0	100.0

Note: Cells may not add up to column totals due to rounding.

[5] Fair Work Ombudsman, Parental leave and related entitlements, https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/parental-leave-and-related-entitlements
[6] The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 15, Commonwealth of Australia 2017, p.44
[7] The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 15, Commonwealth of Australia 2017, p.51

This lack of understanding of labour market interaction post-childbirth is compounded by the ABS categorisation. The ABS considers people on paid parental leave to be "employed". Paid parental leave is the only type of leave that discriminates by not attracting superannuation payments. Therefore under this proposed Code a person can be considered "employed" and also have their pre-cessation period begin by a lack of contributions.

Between 2005 and 2015, the proportion of mothers returning to work less than six months after childbirth declined, while the proportion returning to work in the six-to-12-month window rose. For children born from 2000 to 2003, 22.6% of mothers reported returning to work less than six months after the birth and 13.7% returned to work in the six to-12-month window. For children born from 2010 to 2013, only 16.7% returned to work less than six months after birth, but 20.9% returned to work in the six-to-12-month window[9].

Between 2005 and 2008, there was a decline in the proportion of mothers reporting being out of paid work for two or more years after giving birth, falling from 46.7% in 2005 to 41.4% in 2008. However, after 2008, the proportion reporting being out of paid employment for at least two years rose slightly, to 42.2% in 2011 and 44.1% in 2015[10].

The labour market research struggles to capture a typical post-childbirth scenario but it is clear, that 12 months is not a "normal" period of time – it shows that "normal" cannot actually be defined. The only common trajectory between all the waves i.e. HILDA cohorts, is periods of non-employment.

Further data needs to be explored on self-employed women and the trend towards this as a category after childbirth to deal with the demands of working and caring.

The 2012 census data shows the following –

- Of all female primary carers in 2012 (536,700), there were 174,200 (32%) who were mothers whose main caring responsibility was for their child with a disability.
- In 2012-13 101,800 (37%) women aged 18 years and over who wanted a job or to work more hours, but were unavailable, reported that 'caring for children' was the main reason for their unavailability. This is the most common reason given by women for not being available.
- In November 2013, 304,700 of 622,700 (49%) self-employed women were mothers with dependent children. 1,680,500 of 4,681,200 (36%) female employees were mothers with dependent children[11].

This is the greatest risk of the cessation provision. That women's work patterns, already poorly catered for in the current superannuation system, are further ignored by limiting the protection insurance can provide them. The only reasonable action for the ISWG to take prior to the finalisation of this Code is to undertake a gender analysis of the possible consequences of cessation on women.

---

[8] The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 15, Commonwealth of Australia 2017, Table 4.2, p.51
[9] The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 15, Commonwealth of Australia 2017,pg.52
[10] The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 15, Commonwealth of Australia 201, pg. 52-53
[11] Australian Bureau of Statistics, Caring in the Community, Summary of Findings 2012

HESTA is committed to financial inclusion outcomes. Even in our established financial services system women and more often than men excluded from the purchase of financial products. This automatic cover which protects a woman's ability to earn an income is crucial to our inclusion goals.

It is naïve to think that a woman returning to the workforce after having given birth can demand the same cover as she would have if she maintained her automatic entitlements.

The provisions to allow for members to stay in their insurance product by responding to correspondence shows an alarming lack of regard for how automatic protections should operate. Already, due to the compulsory nature of our retirement system and the lack of policy intervention to ensure better education we see that members are most likely not engaged. Unfortunately, this has been interpreted by some in the ISWG and beyond to mean that members are being taken advantage of.

In profit-to-member funds we are not motivated by shareholder interests. Our mission is to improve retirement outcomes for our members and we provide good quality, well designed insurance to protect those outcomes. The greatest risk here is that unengaged members will find themselves without that protection, they will overwhelmingly be female, be mothers and already be facing poor retirement outcomes because the structure of the superannuation system does not account for their typical working lives.

Further, The Code measures the cessation rules from the period end date of a member's last contribution. In reality this may mean that in circumstances where an employer acquits their SG on a quarterly cycle, some members on 12 months of parental leave may not be in a position that their cover would recommence when they rejoin the workforce.

If cessation continues to be entertained, it would be appropriate that the recommencement window is increased to 90 days.

Our strong recommendation is that the ISWG and others research the possible detrimental outcomes this provision has on those who take time out of the workforce to care for others. It is alarming to see yet another measure built in to the superannuation system that fails to pay regard to the realities of a woman's working life.

Premium Limits

We reject the argument that premium limits are required; we maintain the view that balances are not inappropriately eroded if the insurance design provides a real benefit for members.

If the system must accommodate premium limits we are concerned that the level of cover, the nature of cover and the terms upon which cover is provided will be impacted.

While we understand that the adoption of premium limits will mean less superannuation goes out to pay for an insurance product, we have significant concerns that the style of implementation will have discriminatory consequences, especially to women.

HESTA believes:

- Generic premium limit criteria do not take into account the nature of membership and therefore limit the Trustee's ability to apply member best interests
- Premium limits can be perceived as discriminatory if applied at a member level particularly against women who have broken work patterns
- Premium thresholds may discriminate against funds catering for high risk industries
- There may be ways to implement caps at a fund-level or member cohort level, but it should be separated from contributions, to avoid discriminating against people with broken work patterns and casual employment

As outlined in the Code, asking funds to include a maximum premium limit that trustees must use when designing benefits for automatic cover- 1% of ordinary time earnings and in addition for *trustees to further set their premiums for the segment of members that are under the age of 25- not exceeding 0.5% earnings*[12] is an additional administrative burden on funds. It asks trustees to make dangerous assumptions that could have potentially devastating consequences.

Alternative approaches are possible, including taking consideration of the average member age at joining and the average duration of their membership, or using more intricate models that include the provision and projection of investment returns.

Furthermore, fund specific earnings basis may be problematic and impact on the competitive nature of the superannuation industry more broadly as some funds may need to adjust cover levels as a result of the demographics of their membership while others may be able to provide more competitive automatic acceptance levels for new members. Fund specific earnings basis could prove to be anti-competitive as a result.

Premium limits are less problematic than cessation but our concern is that the rhetoric and attention of the discussion has focused mainly on the top end of savers. There is missing analysis on the premium limits for those with small balances. We encourage more fulsome research into the most vulnerable of superannuates.

[12] Consultation Paper: Insurance in Superannuation Code of Practice, September 2017, The Insurance in Superannuation Working Group, pg. 7-8

Duplicate Insurance Cover

We support efforts to improve the quality of the insurance provision within super, this includes making efforts to improve the ability of premiums that provide value.

Ideally members should be able to access information about the nature and amount of cover and the benefit payment period for any IP cover so that they are better placed to consider the cover they have. It is important that members are alerted about referencing the details of their other insurance arrangements before they make a commitment to consolidate ceasing cover with their previous arrangements. For example, it would produce a poor member outcome in commencing "new events" only cover in circumstances where a member is ceasing full cover.

Ideally consideration of an insurance consolidation protocol that ensures members receive standard outcomes (based on key criteria) would provide a much better pursuit for members.

Complaints

Under the proposed Code, there is a requirement for complaints to be dealt with within 45 days. Progress reports must be provided to the complainant at least every 20 business days, with a final response given within 45 days, unless there is an exceptional circumstance that requires additional time (which cannot exceed 90 days).

This is at odds with the SIS Act which requires a decision within 90 days. And at whichever occurs first, a decision or 90 days, a member can make a complaint to the SCT.

The draft recognises that the Superannuation Complaints Tribunal will be incorporated into AFCA, however there is no indication the 90 day time frame will change and the reduction in time to adequately address a complaint. The Code appears to accept the FOS timeframe without acknowledging this is ISWG and superannuation trustees are not subject to FOS jurisdiction.

It must be considered that the contract of insurance is between the insurer and trustee, not the member and insurer. Insurance within super is a superannuation benefit. All complaints must be addressed to the trustee and there is ultimately a communication lag between the insurer and trustee. It seems unreasonable to impose a tighter timeframe than what is required under legislation without taking into consideration the unique nature of the trustee- insurer relationship.

The Code should consider then, where the arbitrary timeframe of 45 days is breached, what is the expected penalty to be imposed by the Code administrator?

Conclusion

HESTA has publically called for improvements to the superannuation system to better cater for a women's working life. It is widely accepted that the structural architecture of our system needs some improvements to help women's retirement outcomes. It is therefore alarming to see the codification of another change that will have detrimental impacts on women without proper gender based research to fully appreciate if this delivers value.

HESTA supports efforts to increase the value of insurance in superannuation. The idea of a Code is a worthy pursuit but it begins with a flawed premise – that the greatest concern is members buying insurance with money that is taken from their retirement accounts.

This is consistently referred to as "erosion".

Group insurance provided within superannuation needs to be appropriate for members, of a high quality and useable. If the product provides genuine value for members, then this should never be described as 'eroding' their savings. An insurance code should begin with the absolute focus on the need to provide quality protective arrangements regardless of a member's engagement level.

This code, by enshrining a cessation clause shows little regard for a typical HESTA member, for the majority of health and community service members and for women in Australia. The design of the code elevates the concept of 'erosion' over the protection of women who take time out of the workforce to care for others.

We recommend a gender analysis be conducted on aspects of the code – particularly cessation and premium limits. For HESTA to support this code we need to be sure that it advances women's retirement outcomes.