

# **Insurance provided through superannuation: Update and policy implications**



## **About ASFA**

ASFA, the voice of super, has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers. We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

We unite the superannuation community, supporting our members with research, advocacy, education and collaboration to help Australians enjoy a dignified retirement. We promote effective practice and advocate for efficiency, sustainability and trust in our world-class retirement income system.

## Executive Summary

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This paper presents a range of research findings and policy recommendations:

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- Provision of default levels of insurance associated with superannuation has been common throughout the long history of superannuation in Australia.
- The late 2010s saw several policy reviews and policy changes that cut back on default arrangements, with multiple measures addressing the multiple accounts problem and issues related to inactive accounts. Around 5 million individual accounts lost insurance cover.
- As a result, some 5,000 individuals a year are missing out on around \$670 million in death benefits, but they did not have premiums deducted. For TPD, around 11,000 individuals have been missing out on \$1.5 billion a year in payments.
- Insurance through super now covers around 9.3 million individuals for death benefits and 8.2 million for TPD benefits. It is good value insurance, with payouts a high proportion of premiums paid and claim admittance rates in the mid to high 90 per cent range. It objectively is not “junk insurance”.
- Survey evidence indicates that individuals value the insurance cover and that it gives them financial security.
- Much has changed since the changes to default arrangements were made. The number of multiple and inactive accounts has decreased substantially. Small inactive accounts have been removed from the sector. Compulsory superannuation contributions and average account balances have increased. There are over 1 million persons aged 15 to 24 who are employed full-time. The time has come for the 2019 changes to be reviewed and refined or reversed.
- It is suggested that opt-out insurance cover apply to all employees aged over 21 years, or as an alternative for all employees aged under 25 who are employed full-time.
- For inactive accounts, account holders should be sent correspondence indicating the costs and benefits of insurance cover and providing them with an easy way of opting out from cover. Cover should not automatically cease for such accounts after 16 months.
- Insurance cover on an opt-out basis should be provided for all new full-time employees rather than waiting until the account balance reaches \$6,000.

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*Several changes should be made to the tax treatment of insurance benefits associated with superannuation accounts in order to bring about more equitable treatment of benefits.*

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## Brief history of insurance and superannuation

Protection against the financial consequences of becoming disabled while employed and also the provision of death benefits to dependants have been part of the benefit structure of Australia's superannuation system for the last hundred years or so. In the early years of superannuation this protection was part of the design of defined benefit schemes.

From the 1920s to the 1950s the main type of insurance plan in place in private superannuation funds was the endowment assurance policy<sup>1</sup>. In return for a nominated premium, death cover was provided to employees. Each year the benefits would be increased by addition of bonuses. At the time of retirement the sum assured and the bonuses would be paid to the trustee who would then pay the retirement benefit to the fund member. By the 1950s disability benefits were added.

In the 1950s the introduction of electronic processing equipment changed the nature of the administration of superannuation. Each major aspect of an endowment policy could be broken down into death cover, disability, and retirement benefits. Tailoring cover to individuals became easier.

During the 1960s death and disability insurance cover through superannuation became common and consideration started to be given to salary continuance insurance.

During the 2010s there was increasing government attention to policy settings relating to group arrangements for superannuation, particularly default settings for employees new to an employer.

The Super System Final Report (Cooper Report) was released in July 2010. That report specifically addressed the role of insurance cover provided through superannuation.

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<sup>1</sup> The Development of the Life Office Funds, *Superfunds Magazine*, June 1965.

The Panel proposed measures, including:

- each trustee to develop an insurance management strategy specifying the types of insurance to be offered and the default minimum and permissible maximum levels of cover to be offered.
- death and TPD insurance to be offered on an opt-out basis in MySuper products.
- only death, TPD and income protection insurance could be offered through superannuation funds.

These recommendations were adopted by the then Government.

The 2010s experienced no shortage of other reviews of insurance provided through superannuation, with a focus on costs and appropriate categories of members to be covered. This formed part of more general measures aimed at reducing the number of unnecessary multiple accounts in the system and in reducing the fees and other costs paid by members with relatively low account balances.

The 2014 *Financial System Inquiry* (FSI) investigated insurance within superannuation, focusing on balancing default coverage with member retirement savings. Key recommendations aimed to improve consumer outcomes, such as enhancing opt-out mechanisms for automatic life/disability insurance, reducing insurance premiums' erosion of balances, and ensuring insurance relevance, while also addressing underinsurance.

As part of the Government response to the FSI final report, in 2016 the Productivity Commission was directed to undertake a comprehensive inquiry into superannuation.

Overlaying this there were some commentators who placed emphasis on not increasing compulsory superannuation contributions, instead arguing either or both that the then level of contributions was sufficient and that better outcomes could be achieved by moving members to lower cost and better performing superannuation funds and also reducing insurance cover, particularly default cover arrangements. The Productivity Commission's report *Superannuation: Improving Efficiency and Competitiveness* released in January 2019 appeared to be influenced by such arguments.

It would be fair to say that in a number of cases the authors of the various reports had little sympathy for the objectives of compulsory superannuation or the provision of insurance cover. The reports were a product of the time and of those who commissioned them and conducted them.

Flowing from these various reviews and considerations, from 2019 onwards there were legislative changes being put in place to deal with multiple accounts and the costs and fees, including insurance premiums, incurred by certain categories of members.

Multiple changes were made, some of them overlapping and/or with the same supposed rationale. For instance, assertions were made that inactive accounts often are low balance. While specific measures addressed the issue of low balance accounts, there also were measures put in place that impacted on inactive accounts more generally, including accounts with relatively high balances. Some of these measures seemed to assume failure in another measure, such as no real reduction in unnecessary multiple accounts would occur.

The observation that many individuals aged under 25 are only working part-time and/or did not have financial dependants (without actually specifying the numbers involved) led to changes in regard to how insurance cover through superannuation is provided to such individuals. This was despite evidence available that a significant number of persons aged under 25 did work full-time and would suffer severe financial

consequences if they became totally and permanently disabled due to injury or disease. Marrying later and working only part-time while studying at university was arguably a very middle class view of the Australian population and workplace.

ASFA advocated at the time in regard to a number of these legislative proposals, including that funds should be able to offer insurance on an opt-out basis for those aged 21 and over, but the advocacy was only partially successful. Some changes were made to proposals in regard to the processes leading to cessation of insurance cover. As well, ASFA advocacy in regard to permitting funds to offer insurance cover on a default basis to members working in dangerous occupations was accepted by the then Government.

In this context, the Protecting Your Super Package (PYS) came into effect on 1 July 2019.

Under this law, super funds must cancel insurance on inactive super accounts that haven't received contributions for at least 16 months.

Some of the initial proposals in the initial Package were dealt with at a slightly later stage as a result of Senate processes and sector advocacy.

The Treasury Laws Amendment (Putting Members' Interests First) Act 2019 (the PMIF) requires all RSE licensees to cease the provision of insurance to members on an opt-out basis where:

- a) the member has an account balance below \$6,000 (active low balance accounts), or
- b) the member is a new member who is under the age of 25.

Both the PYS and PMIF changes are intended to protect members' account balances from erosion from insurance premiums for cover that members may not want or need. However, members and/or their dependants may subsequently discover that cover was actually needed after experiencing an adverse life event.

As noted above, the PMIF provisions permit RSE licensees to make an election to maintain or take out insurance on an opt-out basis for members employed in a 'dangerous occupation'. The election is required to be made in writing, starts on the day it is submitted to APRA, and must be published on the RSE licensee's website. Only a few funds have made such an election. Where such an election is in place the recent APRA data indicate that there are substantially higher percentages of members with insurance cover.

These various legislative changes have had a substantial impact on the market for insurance associated with superannuation fund membership. Data published by APRA allows for analysis to be undertaken of the impact of the changes on the level of insurance cover through superannuation.

APRA and ABS data also allow an assessment to be made of the reduction in the number of multiple accounts that has occurred and also to estimate the number of individuals aged under 25 who are in full-time employment who would benefit from TPD insurance at the very least.

# Recent data on insurance cover through super

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## The types of insurance cover provided through superannuation

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Most if not all superannuation funds offer life, total and permanent disability (TPD) and income protection insurance for their members. Typically, one or more of these types of insurance is provided on an opt-out basis for members during the accumulation phase up to a specified age. TPD insurance cover in superannuation usually ends at age 65. Life cover usually ends at no later than age 70.

The types of insurance that can be provided through superannuation are limited to insurance types with benefits that are consistent with superannuation conditions of release. There are a very limited number of policies that were in place before July 2014 that pay benefits not necessarily consistent with conditions of release to which transitional arrangements apply. Other forms of insurance provided by life companies such as Funeral, Accident and Trauma are not permitted to be offered by superannuation funds.

Funds generally allow members to dial up the level of their insurance cover either to an age based automatic acceptance level or subject to individual underwriting. Members can also dial down or turn off insurance cover. In some cases financial advice in regard to insurance cover is provided by the fund or an external financial adviser. Funds also make available educational material and online calculators to assist members make decisions about appropriate levels of insurance cover. Default levels of insurance dominate the market.

Insurance cover is also available on an individual basis both outside of superannuation or paid out of an superannuation account. That cover can be obtained directly from life insurers outside of superannuation. In many instances the taking out of insurance follows the receipt of personal financial advice from a financial planner. An old adage is that “insurance is sold not bought”. There are differences in tax treatment of both benefits and contributions between cover through superannuation and cover outside superannuation.

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### *Insurance cover through superannuation has stabilised following a large drop in 2019*

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There was a substantial reduction in the number of lives insured through superannuation for death benefits following the legislative changes. However, in recent years there has been a modest increase in the number of superannuation fund members with insurance, particularly death cover. Both labour force growth and opting to take up insurance are likely to have played roles in this increase.

**Table 1: Death benefit insurance**

June 2025	Lives insured	9,256,000
	Annual premium	\$2.2 billion
	Average sum insured	\$228,000
	Average premium per life	\$240
June 2018	Lives insured	13,353,936
	Annual premium	\$2.5 billion
	Average sum insured	\$198,600
	Average premium per life	\$188

Source: [Life insurance claims and disputes statistics | APRA](#)

The reduction in the number of lives insured has been remarkably in line with ASFA's expectation at the time the PYS and PMIF changes were introduced, which was a reduction of around 5 million individuals after taking into account modest levels of opting in by affected individuals and some funds electing to provide insurance on an opt-out basis for individuals employed in a dangerous occupation<sup>2</sup>.

While at June 2025 there were around 9.3 million lives covered by group superannuation arrangements, there were around 12 million Australians were receiving the benefit of employer superannuation contributions. There also were many inactive accounts with substantial balances which could support the payment of modest amounts of insurance premiums. This suggests that there are some millions of Australians who could benefit from either opting in for insurance cover or from an expansion to opt-out provision of insurance cover.

#### *Developments in TPD insurance cover*

As indicated by Table 2, there was a similar decrease in the number of lives insured by TPD insurance between 2018 and 2025, albeit off a slightly lower base. Some funds offer only Death cover on a default basis, and generally TPD insurance ceases at age 65 rather than age 70 which generally is the case for Death cover.

Despite a fall in the number insured, aggregate premiums increased, leading to an increase in the average premium charged. However, there also has been an even larger increase in aggregate claim payments, placing pressure on the profitability and sustainability of group TPD insurance cover through superannuation. Claims related to mental illness have been a substantial contributor to the increase in claims. Given the design of TPD arrangements, which are heavily influenced by legislative requirements, it can be challenging for insurers to provide support for return to work. Those claiming TPD benefits have an incentive to demonstrate that they will never return to paid work. However, the best possible outcome for claimants is to be assisted to get well without the need for the maximum available benefit available to be paid.

Both death and TPD insurance when provided through group superannuation have very high payout ratios in terms of benefits paid relative to premiums received.

<sup>2</sup> [1910-Implementing the PYS changes and Putting Members Interests First.pdf \(superannuation.asn.au\)](#)

**Table 2: Total and Permanent Disability insurance**

2025	Lives insured	8,215,000
	Annual premium	\$2.5 billion
	Average sum insured	\$190,000
	Average premium per life	\$305
2018	Lives insured	12,170,717
	Annual premium	\$2.2 billion
	Average sum insured	\$171,450
	Average premium per life	\$184

*Developments in Disability Income Insurance*

As indicated in Table 3 there also was a reduction between 2018 and 2025 in the number of individuals covered by Disability Income Insurance. However, substantially fewer individuals are covered by DII insurance compared to Death and TPD. There has been a modest increase in average premium paid since 2018, along with an increase in the average sum insured.

**Table 3: Disability Income Insurance**

2025	Lives insured	4,390,000
	Annual premium	\$1.8 billion
	Average sum insured (per month)	\$3,730
	Average premium per life	\$410
2018	Lives insured	4,993,946
	Annual premium	\$1.8 billion
	Average sum insured (per month)	\$3,464
	Average premium per life	\$358

As indicated by Table 4, around 70 per cent of fund members have their insurance cover at the default level. Around 7 per cent dialled down their cover, while 11 per cent chose a higher level cover of insurance without a need for underwriting, while a further 11 per cent had higher cover with underwriting. Underwriting is where an insurer requires medical and other information from the insured person in order to determine whether to offer insurance and on what terms.

The table suggests that a total of around 30 per cent of those with insurance cover through superannuation actively engaged in a process of considering the amount of cover needed.

**Table 4: Insurance cover for death benefits relative to the default cover level, June 2025**

	Less than default cover	Members with default cover	More than default – no underwriting	More than default – with underwriting
Number	649,260	6,362,370	1,016,210	979,460
Percentage	7.2%	70.6%	11.3%	10.9%

Source: [Annual fund-level superannuation statistics | APRA](#)

The various forms of insurance related to superannuation provide considerable consumer value and on very good terms for the members with such cover. They are not and should not be categorised as “junk insurance”.

Insurance cover provided through group arrangements in superannuation is cost effective, particularly compared to individual advised cover, which has higher distribution and administration costs. Directly distributed non-advised cover tends to have the lowest payout ratios given the distribution costs (advertising, etc) involved.

For TPD and DII through Group Super the claims paid ratio is over 100 per cent, reflecting the good value to consumers of such insurance, along with the low profitability to insurers from such cover. The claims paid ratio is also high for death cover.

**Table 5: Claims Paid Ratio, June 2025 (a)**

	Death	TPD	DII
Individual Advised	42%	71%	58%
Individual Non-Advised	36%	44%	108%
Group Super	78%	105%	111%
Group Ordinary	61%	57%	84%

Source: [Life insurance claims and disputes statistics | APRA](#)<sup>3</sup>

<sup>3</sup> Claims paid ratio refers to the dollar amount of claims paid out in the reporting period as a percentage of the annual premiums receivable in the same period. Claims paid ratio for DII is estimated using a 24 month payment period.

As shown by Table 6, claims admitted rates are high for insurance associated with group superannuation. They also are higher than for the other distribution channels.

**Table 6: Claims admitted rates, June 2025**

Cover type	Individual Advised	Individual Non-Advised	Group Super	Group Ordinary
	% admitted	% admitted	% admitted	% admitted
Death	97%	93%	98%	98%
TPD	83%	70%	92%	85%
DII	94%	86%	96%	97%

In the case of death benefit claims, pre-existing conditions are not relevant to default cover but can lead to claims being denied when there is underwriting, depending of course on the terms of the underwriting and disclosure obligations. In the case of default cover, there are only very narrow exclusions (such as suicide within a 12 month period from cover commencing) or disputes over whether cover had lapsed due to premiums no longer being deducted.

Average admittance rates tend to be lower for TPD as the claimant needs to establish that they satisfy the definition of TPD but they are still high.

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### *The problem of unwanted multiple accounts has been largely addressed since 2019*

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One of the reasons that the PYS and PMIF changes were introduced is that the existence of multiple accounts led to individuals having multiple insurance policies in force. Further, in the case of Disability Income Insurance generally it is only possible to receive benefits from one policy.

However, the issue of unwanted multiple accounts has been substantially addressed in recent years. There was a sharp fall in the number of accounts held by superannuation funds between June 2019 and June 2020 from 27.4 million to 24.8 million despite growth in the labour force over the period and more retirees having superannuation accounts.

The most substantial reduction in multiple accounts occurred between June 2019 and June 2020, but there has been continuing reduction in multiple accounts since then. It is particularly pleasing to see ATO data indicating that the percentage of individuals with four or more accounts has dropped from 4 per cent of individuals in 2019 to 1 per cent. The transfer of small inactive accounts to the ATO has been particularly effective in reducing the incidence of such accounts.

The introduction in late 2021 of “stapling” of an existing superannuation account to employees who commence work with a new employer also has assisted in keeping the total number of accounts in the system relatively unchanged and also constraining growth in the number of multiple accounts with potentially unwanted insurance cover.

A large majority of Australians now have only one superannuation account, with the percentage with only one account reaching a record high at 78 per cent in 2024.

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## *The changes to superannuation default arrangements have led to thousands of individuals missing out on insurance benefit payments*

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Between 2018 and 2023 there was a sharp decline in the number of death benefit claims associated with insurance through superannuation, from 15,367 in the year to June 2018 to 10,178 finalised admitted claims in 2023 rising to 12,106 in 2025. This suggests that at least around 5,000 individuals died without life insurance cover due to the PYS and PMIF changes. This decline is in line with the decline in the number of lives covered. This is not just a statistic – the impact on the Australian community was that there were 5,000 sets of beneficiaries who missed out on payments of \$665 million in aggregate.

While some of those beneficiaries would have been parents and siblings of the deceased, there also would be cases of widows, widowers and orphans, particularly in regard to those aged over 25 with a low balance account or an inactive account.

The situation with TPD is more complicated. In the year to June 2018 there were 15,969 finalised TPD claims and in the year to June 2023 there 18,410 finalised claims. In the year to June 2025 there were 21,282 finalised claims.

While death age specific death rates were relatively stable over the period there was a marked increase in TPD claims, particularly claims associated with mental health issues. This has led to pressures on the provision of such cover and marked increases in premiums over the period.

However, if it is assumed that the incidence of claims would have been the same for the individuals who lost cover, then without the PYS and PMIF changes there would have been an additional 11,000 individuals receiving around \$1.5 billion in TPD benefits. The reduction in the number of death benefit insurance claims following PYS and PMIF suggests that those excluded from default cover were receiving real cover from insurance. Those under 25 and/or with balances below \$6,000 or are not immune from motor vehicle accidents, workplace injuries and mental illness. Similarly, those with an inactive account, including the self-employed, face potential risks.

Insurance cover provided through group arrangements in superannuation is cost effective, particularly compared to individual advised cover, which has higher distribution and administration costs.

### *A rise in complaints lodged with the Australian Financial Complaints Authority (AFCA)*

Many Australians are not aware that they have had their insurance cover cease because their superannuation account is inactive. Funds are required to write to members numerous times indicating that insurance cover will cease in the absence of relevant activity in the account or the member opting to take up insurance cover.

For ongoing insurance inactivity notices, a trustee can rely on notice requirements under the fund's trust deed and/or as set out in the trustee's disclosure material. It can also rely on law about electronic notices, if applicable. For example, the fund's trust deed may say that all notices, or certain types of notices, must be issued by mail. However, trustees generally have power to issue notices in different ways.

However, funds do not necessarily have a current mailing address or email address for a fund member and members do not necessarily open or read correspondence sent by a superannuation fund.

It is also a universally known fact that any important correspondence sent to a fund member to the correct address will be lost in transit, especially if something adverse later happens to the fund member.

AFCA have a special section on their website explaining the circumstances in which insurance cover is cancelled in line with legislative requirements. [Superannuation complaints about PYS and insurance cover | Australian Financial Complaints Authority \(AFCA\)](#). However, individuals continue to make complaints about insurance cover being cancelled inline with legislative requirements.

## Conclusions and policy suggestions

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*It is now appropriate to facilitate opting-out mechanisms rather than prohibiting default cover for certain groups*

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It is now some seven years since the PYS and PMIF changes were introduced.

Much has changed since then:

- The number of unwanted multiple accounts has substantially decreased.
- Small inactive accounts have been closed in their millions and have been transferred to an active superannuation account or to the ATO.
- The number of full-time workers aged 15 to 24 has increased to 1.013 million.
- A substantial proportion of inactive accounts have significant balances and annual investment earnings.
- The rate of compulsory superannuation contributions has increased from 9.5 per cent to 12 per cent making payment of insurance premiums more affordable.
- “Stapling” of superannuation accounts when a member starts a new job has reduced the number of multiple accounts and the incidence of multiple insurance coverage.
- Funds have enhanced online access to accounts with members able to easily dial up or dial down their insurance cover.
- There has been a proliferation of cases where individuals have lost insurance cover and they subsequently have an event which would have qualified them for a substantial insurance amount. If the fund has complied with the legislative requirements in regard to notifying the members concerned then there is no valid grounds for making a complaint to the fund or to the Australian Financial Complaints Authority.

There also is survey evidence that Australians value insurance provided through superannuation rather than viewing it as an impost on their final retirement savings.

A nationally representative survey of Australian residents was undertaken for ASFA in March 2025. Amongst other things the survey sought views on superannuation and insurance.

The survey results indicate that Australians not only trust their superannuation funds, they trust them more than other major institutions. When asked to rank how much they trusted different institutions superannuation funds as the institution they rated highest (ranked first by 35 per cent of voters, in the top three by 67 per cent).

When asked “Does knowing you’re covered for life insurance and total and permanent disability (TPD) insurance through your super provide you with confidence for your financial future?” 76 per cent of respondents answered either yes-definitely or yes-probably, a 60 percentage point difference from those indicating “no”.

These responses indicate both a high level of consumer understanding of the product and also support for insurance being linked to superannuation. In this context a number of changed policy settings in regard to superannuation might be in order.

### *Suggestions for discussion*

First, replace the requirement for funds to write to individuals with inactive accounts indicating that cover will cease if the account continues to be inactive and the account holder does not opt-in. A better alternative would be to continue with the scheduled correspondence but with that correspondence pointing out the costs and benefits of continued insurance cover and giving the member easy access to ways of dialing down or turning off their insurance cover.

Using this approach, cover would only cease when a member makes an active and informed decision. Such an approach would also make it clear that cover only ceases after the member actually having received and read the correspondence from the fund.

Enhanced opting-out provisions would be consistent with the recommendations of the Financial System Inquiry. An alternative approach would be to restrict the cessation of insurance cover to inactive accounts with a balance of, say, less than \$40,000.

Second, funds should be able to offer insurance on an opt-out basis to fund members aged 21 years or older, rather than age 25 and older. This would recognise the risks that many young people face in the workplace or the wider world.

For instance, riders of e-bikes generally have no insurance cover. An alternative would be for funds to be able to offer insurance on an opt-out basis for individuals when the member has indicated that they have a spouse and/or when there is evidence from Payday Super contributions that the member is employed full-time.

Third, funds should be able to offer insurance on an opt-out basis for all new full-time employees rather than having to wait until the account balance reaches \$6,000.

Fourth, legislative constraints on insurance companies funding medical and like assistance for TPD claimants suffering from mental illness should be removed.

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## *The tax treatment of insurance benefits needs adjustment*

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There currently are range of complexities and inequities regarding the tax treatment of superannuation insurance payments. These include:

- Application of tax-free uplift. Whilst the taxable component of insurance in super payout is taxed at 22 per cent, the tax-free uplift significantly increases the tax-free portion of a benefit, thereby reducing the effective tax rate of the payment. The application of the tax-free uplift is substantial for younger members and recognises the future service a member would have provided had they been able to work until preservation age.

However, currently the tax-free uplift is only applied when a member either withdraws a lump sum or makes a rollover to another super fund of a disability superannuation benefit (ie, where because of ill-health, it is unlikely the member can ever be gainfully employed in a capacity for which they are reasonably qualified).

- If a member chooses to retain their superannuation amount within their existing fund and commences an account-based pension the tax-free uplift is not applied. This can result in reducing the after-tax amount available for their beneficiaries. In contrast, the member can however rollover to another super fund and commence an account-based pension with their new fund and the tax-free uplift is applied upon rollover. A member should not be penalised for commencing an account-based pension with their existing fund.

More generally for those aged under 60 some tax is often payable on insurance benefits that are taken from a superannuation account. Individuals who have been classified as being total and permanently disabled deserve tax treatment equivalent to that given to superannuation benefit payments made to individuals aged 60 and over.

ASFA in its Pre-Budget submission has recommended that there should be a review of the tax rates for superannuation payments made to members aged less than 60 with the aim of reducing or eliminating tax on payments made to those experiencing significant financial hardship. This would include recipients of lump sum TPD benefits.

#### *Treatment of insurance payments in the context of the new Division 296 tax*

Legislation to introduce additional taxation on investment earnings associated with superannuation balances over \$3 million has been introduced in Parliament. In determining the relevant balance for the purposes of the tax it is proposed that most payments into an account are included but some are excluded.

An individual might receive into their superannuation interest amounts in relation to a significant injury, permanent disability or terminal medical condition they have suffered. The way these amounts are proposed to be treated for Division 296 tax purposes will differ: in some cases, the individual will be fully exempt from Division 296 tax liability, in other cases the amounts still have the potential to cause an individual to trigger, or contribute to, a tax liability under Division 296.

Given all these amounts involve individuals whose past and/or future ability to earn income and accrue superannuation has been substantially impacted by serious disability, injury or illness, there is little or no policy justification for treating some less concessionally than others.

The Bill provides concessional treatment under Division 296 for ‘structured settlement contributions’ – amounts paid into an individual’s superannuation interest, arising from a settlement or order for compensation for personal injury they have suffered, that meet conditions prescribed in the income tax law.

A structured settlement contribution is excluded from the calculation of an individual’s TSB currently, and the Bill further proposes that an individual is not liable to Division 296 tax for an income year if a structured settlement contribution is made in respect of them “in that year or in any earlier income year”.

As a matter of policy, ASFA agrees that it is appropriate to exclude the recipient of a structured settlement from Division 296 tax. These are typically large payments intended to fund ongoing medical and care expenses resulting from serious injury and income loss.

The Bill provides no comparable exception in relation to an individual who has received into their superannuation interest payment of an insured (or self-insured) Total and Permanent Disability (TPD) or Terminal Medical Condition (TMC) benefit. They are part of the individual’s TSB and may cause them to exceed the Division 296 threshold either in that year or in any future year while the amounts remain in the individual’s superannuation interest at year end.

TPD can be withdrawn within a relatively short period and TMC benefits are often immediately withdrawn by the individual, but this is not a requirement – some individuals may choose to partially draw down the amount in an income year or, in the case of a TPD benefit, to commence withdrawal in the form of an income stream, particularly if the individual is comparatively young.

Given TPD and TMC benefits arise in circumstances where the individual's ability to earn income or accrue superannuation in future is impacted by their health – as is the case for structured settlement contributions and pensions paid to disabled child recipients – it is unclear why they are treated less concessionally for Division 296 purposes.

ASFA has recommended that provision relating to structured settlements be expanded to include an exception from Division 296 tax liability where an insured (or self-insured) TPD benefit or TMC benefit has been paid into a fund in respect of an individual and where that benefit is responsible for the threshold for Division 296 taxation being breached.

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