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Director  
Superannuation, Insurance and Governance Unit  
Retirement, Advice and Investment Division  
Treasury  
Langton Cres  
PARKES ACT 2600

Via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam

## **Review of occupational exclusions in default insurance offered through MySuper products**

CPA Australia and Chartered Accountants Australia & New Zealand (Chartered Accountants ANZ) represent over 200,000 professional accountants in Australia and New Zealand. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

The provision of death and disability benefits within superannuation, including benefits augmented through the use of life insurance products, has been a clear constant design feature of the superannuation system since the funding of retirement benefits first emerged in the early years of British settlement. This feature is contained within the sole purpose test, at section 62 of the *Superannuation Industry (Supervision) Act 1993*. We are strong advocates for the maintenance of the status quo with respect to this feature.

MySuper products were initially envisaged to be a safety net for Australians who are unwilling or unable to choose their own superannuation arrangements. Overall, we believe they have been a good policy initiative, and we are strong advocates for the provision of quality default insurance offerings within MySuper products.

More recent policy initiatives, such as the reduction in the incidence of multiple member accounts and the streamlining of superannuation arrangements when Australians commence a new job, are laudable measures when considered on their own. However, when implemented collectively, they have created unintended consequences, especially for Australians in high-risk occupations.

We are concerned about the arbitrary nature of proposed occupational exclusions. Our preferred solution is to ban occupational exclusions. The presence of occupational exclusions in default insurance offered as part of the MySuper safety net has the potential to exclude

Australians from what we believe may be minimum community expectations of basic insurance coverage.

In the Attachment we have also provided details of policy alternatives and additions which have not been proposed, but which we believe merit consideration.

Finally, we have recommended that the Review also consider the problem of changes to policy terms and conditions which trustees may negotiate with insurers, either as the result of a change in insurer or a change in policy terms.

For further information in relation to our submission, please contact Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at [richard.webb@cpaaustralia.com.au](mailto:richard.webb@cpaaustralia.com.au) or Tony Negline, Superannuation Leader at Chartered Accountants ANZ at [Tony.Negline@charteredaccountantsanz.com](mailto:Tony.Negline@charteredaccountantsanz.com).

Yours sincerely

**Tony Negline CA**  
Superannuation Leader,  
Advocacy and Professional Standing,  
Chartered Accountants Australia  
and New Zealand

**Richard Webb**  
Policy Advisor Financial Planning and  
Superannuation  
Policy and Advocacy  
CPA Australia

## Attachment

### Response to Consultation Paper

#### Introduction

CPA Australia and Chartered Accountants ANZ welcome this consultation. We believe that this is an opportunity to affirm the importance of insurance in superannuation and the value of coverage for many in dangerous occupations who are unlikely to be to access individually underwritten policies. We have chosen not to answer the Consultation Paper questions directly. However, we have included discussion that covers a number of these questions.

The existing framework for mandating MySuper and its default insurance coverage was introduced in response to recommendations made by the *Super System Review*, also known as the Cooper Review. The Cooper Review also commented on life (death) cover, total and permanent disability (TPD) cover and income protection (IP) cover.

The basis for MySuper is best described in the final report of the Super System Review (Cooper et al 2010:11), where it was initially introduced:

*The MySuper component of the choice architecture model aims to provide a simple, cost effective product with a single, diversified portfolio of investments for the vast majority of Australian workers (roughly 80 per cent of members) who are in the default option in their current fund.*

*MySuper is designed with two large groups of members in mind: those who take no real interest in their super (at least not initially) and those who choose to be in a large, low-cost and well-managed product where the investment strategy is designed and implemented by the trustee.*

*MySuper would have a number of features designed solely with the member in mind: specific trustee duties designed to deliver lower cost outcomes for members; increased transparency leading to better comparability, especially of costs and long-term net performance; provision of intra-fund advice; simpler communications; and an embedded retirement product. It has been designed to sit within the existing superannuation structures and is based on existing widely offered and well understood default investment options.*

The choice architecture model, including MySuper, was proposed to be introduced in Recommendation 1.1, while Recommendations 1.2 and 1.3 (all recommendations at Cooper et al 2010:24) proposed that only MySuper products would be eligible to be default funds in workplaces.

Essentially MySuper was to become a minimum standard for employees who had not made a choice in relation to their superannuation fund for the purposes of mandatory Superannuation Guarantee (SG) contributions. A number of enhanced criteria were recommended for trustees

who operated MySuper products, with Recommendation 1.7(n) proposing that objective criteria regarding insurance be included in MySuper products (Cooper et al 2010:25).

This was expanded on in Recommendation 5.1 (Cooper et al 2010:39), which proposed that:

*Life insurance cover and TPD cover (where available, depending on occupational and demographic factors) must be offered on an opt-out basis in MySuper products.*

Additionally, Recommendation 5.9 (Cooper et al 2010:41) proposed that:

*Income protection may be offered on an opt-out or opt-in basis, or not at all by trustees of MySuper or choice funds.*

The Government adopted Recommendations 1.1-1.3 (Shorten 2010:15), Recommendation 5.1, and supported Recommendation 5.9 in principle (Shorten 2010:37-38), noting later that the decision on how to offer income protection to members of funds in MySuper products would be left to trustee discretion (Australian Government 2011:7).

Later legislative change (the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2018* ('PYSP') and *Treasury Laws Amendment (Putting Members' Interests First) Act 2019* ('PMIF')) would see the requirements for trustees changed whereby, unless the member of the fund is in a dangerous occupation, members would need to be aged 25 or older and hold a balance of \$6,000 or more, prior to obtaining default insurance cover from the fund. Cover would also cease for members for whom a contribution had not been received for 16 months. These were recommended by the Productivity Commission in 2018 (at Recommendation 15) to counter account balance erosion.

Although well-intentioned, the recent case of *Steer v AMP Life Limited & AMP Superannuation Ltd* [2021] SADC 109 shows that the implementation of the PYSP and PMIF changes were not themselves without incident. In that case, a trustee terminated coverage in error, and was found to be liable for the death benefit payable to the member.

The requirement that members be in a dangerous occupation clarified the policy intention that insurance is considered a vital benefit offered through superannuation, even though the intentions of the legislation amending this were to reduce universality of benefits from younger and lower balance members of funds. The changes were made within a climate where the cost of insurance is regrettably seen by many commentators (including the Productivity Commission (2018) as well as Callaghan et al (2020)) to present either:

- a threat to the retirement savings balances of members,
- a 'luxury' in terms of benefits payable to a family on the death of a member, or
- an inconsistency with the sole purpose test.

More recent changes have brought insurance into greater focus, with the 'stapled fund' measure for people who change employers coming into effect from 1 November 2021, and potentially being subject to unexpected or even unknown occupational exclusions in their new job.

The four proposed options consulted on as part of this review are:

- Option 1: No change
- Option 2: Strengthen disclosure of occupational exclusions
- Option 3: Members retain their insurance coverage when they change occupations
- Option 4: Ban occupational exclusions.

### Industry practices

The Consultation Paper comments on two issues which reflect industry practice in relation to insurance offered through superannuation:

1. Occupational exclusions that affect automatic acceptance of default cover – which can impede new MySuper members from getting default cover; and
2. Occupational exclusions that are applied when individuals change jobs – which can lead to the loss of default cover.

There is a third issue which has not been considered as part of this: occupational exclusions that can be applied under a new policy, when superannuation funds change insurers and/or insured benefits. This can adversely affect a third group of members; they are existing members with insurance, who are not changing jobs but who become subject to a risk that their insurance benefits may change, leaving their occupation excluded from their default cover.

CPA Australia and Chartered Accountants ANZ strongly recommend that this third industry practice be included as part of the review.

### The safe harbour for trustees

Section 68AA of the *Superannuation Industry Supervision Act 1993* (the 'SIS Act') covers the requirement by trustees to provide their members with insurance, specifically:

- The requirements at subsection 68AA(3) to determine 'reasonable conditions' for the provision of insurance, and
- The 'safe harbour' for trustees in subsection 68AA(4) in so determining that a condition is reasonable if it is contained in an insurance policy.

Combined, this means that trustees can negotiate policies which may not meet community expectations for default insurance coverage.

Whilst we agree that this safe harbour provides a somewhat circular basis for reasonability, an option not considered in the paper is to put standards in place for policies between insurers and trustees regarding the policy terms referred to in 68AA(4). In this regard, the Hayne Royal Commission (2019), at recommendation 4.13, suggested that:

*Treasury, in consultation with industry, should determine the practicability, and likely pricing effects, of legislating universal key definitions, terms and exclusions for default MySuper group life policies.*

Treasury consulted on this matter in 2019 (Treasury 2019), and although they found that the superannuation sector overwhelmingly values the ability to design insurance benefits for their members, such a finding does not preclude the idea of standardisation of policy terms which would fall within the scope of this Hayne Royal Commission recommendation.

### **Standing in the shoes of a MySuper member**

CPA Australia and Chartered Accountants ANZ have approached this submission from the perspective of a member who, rightly or wrongly, believes that in exchange for each premium amount paid, they are eligible to make a claim if they were to die or become totally and permanently disabled.

While we understand that it is reasonable for insurers to limit their risk, we question whether this is in the public interest in the case of MySuper members, who are subject to enhanced minimum levels of diligence from trustees in matters related to investment. As noted above, MySuper is a safety net, and this approach needs to be applied consistently for investments and for insurance.

An example we will consider throughout the remainder of this submission is a musician who performs in pubs and restaurants. Whilst the musician considers him/herself to be working in the hospitality industry, the default fund they joined many years ago has an occupational exclusion in place for musicians. Consequently, if they were to become totally and permanently disabled their claim would be denied.

### **Potential options**

The four proposed options consulted on as part of this review are:

- Option 1: No change.
- Option 2: Strengthen disclosure of occupational exclusions.
- Option 3: Members retain their insurance coverage when they change occupations.
- Option 4: Ban occupational exclusions.

#### **Option 1: No change**

We note that the presence of occupational exclusions allows superannuation funds to offer better priced insurance to their members, due to the ability to weed out risk which the trustee and insurer deem to be unacceptable. However, this may not necessarily be compatible with the policy aims of MySuper which, as noted above, was implemented as a 'safety net' for the majority of employees who do not choose their superannuation arrangements.

However, in the case of the musician in our example above, the safety net has failed to provide that individual with insurance.

## Option 2: Strengthen disclosure of occupational exclusions

This option would have the benefit of making it clearer to members whether their occupation is excluded when considering the level of coverage they have in their superannuation fund. A disadvantage of this option is that a fund may have a very large number of exclusions, making it very difficult to find if one's occupation is on the list. Another disadvantage is that each new mandated disclosure document adds to a list of documents which may reduce its effectiveness. Further, it is also the case that policy definitions can be opaque and complex leaving many individuals inexperienced in reading such documents at a considerable disadvantage.

In the case of an existing member of the fund, such as the musician in our example above, if this is an occupation which is already excluded and the excluded occupation list has never changed, there is the possibility that the fund may never need to notify the member that they are excluded.

For a new employee requiring a default fund, this does not offer much in the way of protection if their employer uses a default fund which does not cover the new employee's occupation. We note that it has never been an employer's legal obligation to use a default fund that offers insurance across all of the occupations that an employer needs to run their enterprise.

## Option 3: Members retain their insurance coverage when they change occupations

This would apply in instances where a fund changes the eligibility of a member if they were to change jobs. Scenario 2 of the Consultation Paper outlines two possible situations where this might occur, with one arising from existing occupational exclusions built into the policy, and another occurring where the claim requirements change if a member were to change occupation. It would be possible for this option to be implemented in combination with Option 2

A third addition to Scenario 2 may occur where a member leaves a job and spends a period of time unemployed. For some funds, this may have the effect of changing the TPD definition under which one can make a claim, rendering it very difficult to make a claim. An example of such a change may be from the usual definition (where it is unlikely that a person will ever again be gainfully employed in "any occupation for which one is reasonably qualified because of education, experience or training") to an "any occupation" TPD definition. Under the terms of the policy, it is possible that a change back to the usual definition after finding a new job may require a waiting period, but in some funds this may never change back. This option does not consider the definition of TPD as part of this consultation.

It is worth noting that, should a superannuation fund change insurance arrangements it would still be possible for an employee to be left uncovered by a change in occupational coverage under this option.

We note that such an option would continue to leave a member of a fund such as our musician in the example above uncovered, with no opportunity to obtain coverage as part of their *existing* membership.

A likely disadvantage of this option is that premiums increase in order to cover the additional risk that the insurer will incur for ensuring that members changing jobs remain covered. We

would not anticipate that the premium increase would be as large as the one likely to occur with the implementation of Option 4.

#### **Option 4: Ban occupational exclusions**

The final option would see occupational exclusions removed in default insurance arrangements. In keeping with MySuper's role as a safety net for superannuation contributions.

This is the preferred position of CPA Australia and Chartered Accountants ANZ.

We note that the Financial Services Council (FSC) (2021) announced in a media release on Monday 11 October 2021 that it would be enforcing a ban on occupational exclusions in default group life insurance in superannuation amongst FSC members by 1 January 2023.

The advantage of this option is that the vast majority of Australians who do not choose their superannuation fund would benefit from a basic level of coverage which would be paid out in all circumstances. This would include the musician in our example above, who would be able to benefit from insurance coverage as a member of their existing and any new fund.

A disadvantage of this option is that an increase in premia to cover the additional risk incurred would likely be greater than the increase under Option 3. The impact of this could potentially be localised to riskier occupations depending on how it was to be implemented. We have noted that an additional possible vector for occupational information presently exists in the SuperStream contribution fields and have discussed this as our third suggestion in the section, *Alternatives and additions to the options proposed in this paper*, below.

#### **Transition periods**

The implementation of Options 3 or 4 would require a suitable timeframe to ensure that there is appropriate adjustment of premia, together with appropriate communication of changes.

Anecdotal evidence suggests that a minimum three years of claims experience is needed to ensure that risk is appropriately priced, implying that there may be benefit from providing a longer transition period than normal. However, we would support a transition period which coincides with the FSC's recently announced ban on occupational exclusions in default group life insurance cover in superannuation. In the instance of Options 3 and/or 4, the issue of pricing would likely affect all fund members.

#### **Alternatives and additions to the options proposed in this paper**

The implementation of stapling in November 2021 is likely to mean that issues regarding employees who suddenly find themselves uncovered by their fund's insurance will continue, at least in the short term.

CPA Australia and Chartered Accountants ANZ have compiled a number of alternatives which would assist with ensuring that Australians remained covered (see below).



### Exceptions to award superannuation and other default fund agreements

Awards and industrial agreements have the potential downside that the default fund required to be offered by an employer to their employees may fail to cover particular employees in particular jobs. While the default fund may be suitable for most employees, there may be a number for whom occupational exclusions exist.

Where exclusions exist, employers need to be permitted to override their award or industrial agreement and offer a different default fund to affected new employees.

A different approach may be to impose a duty on employers to ensure that their employees are offered a default fund which has insurance coverage. However, we note that changes to policy conditions by trustees may result in employers being inadvertently exposed through no fault of their own.

### Exceptions to stapled insurance arrangements

Stapling of employees to the fund to which their previous employer contributed provides no prompt for re-engagement with their superannuation at the point of commencing with a new employer. This is a feature of stapling that is designed to ensure a seamless transition and minimise the likelihood that unnecessary new accounts are opened.

Unfortunately, this means that there is the potential for a stapled fund to reduce or remove coverage due to the commencement of an excluded occupational category.

The process to be implemented requires employers to contact the ATO – either through manual processes such as an email or phone call, or via a software solution – to ascertain the details of the stapled fund for a new employee. We believe that it would not be onerous for the ATO stapling infrastructure to provide a warning to employers about any lack of insurance coverage in the new occupation, at the point of inquiry at the start of a new employee's tenure. This could be achieved by adding the occupation to the query sent by the employer to the ATO, and result in a warning being flagged if the ATO's records show that the employee's stapled fund's insurance offering would exclude their new job description.

This would require the ATO's data to hold information regarding occupational exclusions on stapled superannuation funds. A side benefit of this would be further potential future enhancements to superannuation details available for taxpayers, where insured benefits could be shown with details of superannuation balances, allowing Australians who look up their superannuation details in myGov to be provided with a warning, if their existing fund changed their insurance terms to exclude their current occupation.

To allow this to work effectively, a lengthened period of time could be allowed for new employees to choose new superannuation arrangements.

If we return to our musician in the example, there is the possibility that, upon changing employers, a warning would be able to be communicated to the employee to let them know that they were ineligible for coverage with their fund. This may provide them with a prompt to investigate other funds, or to actively choose the new employer's default fund.

### **Add occupation information to contribution return data required in SuperStream**

To ensure appropriate pricing of risk, many funds offer group insurance to their members under choice arrangements at differing premium rates. Such rates may be broken up by specific occupations, whereas others might use class headings such as “white collar” and “blue collar”.

An optional information field presently exists in SuperStream, which is designed for use with defined benefit and corporate superannuation funds, and which collects occupational information as part of the contribution data. This field, if made mandatory, could be used to better determine eligibility for insurance from funds, and add accuracy to premium pricing and claims experience.

Implementing such a process may also allow funds offering default insurance coverage the ability to provide differential premium rates to their members, based on the level of risk.

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