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By email to: policy@fsc.org.au

All correspondence
and payments to:

L28 Casselden
Crescent Street
Melbourne VIC 3000

www.cbussuper.com.au

P 1300 361 784
F 03 9489 739

Cbus' response to FSC Policy Paper for Consultation: Stapling and Group Life Insurance Policies in Superannuation

Cbus does not support the FSC's proposal because it will not address the problem

The FSC's proposal represents only a partial fix to a serious problem that stapling will create for up to 2.7 million hazardous occupation workers Australia-wide, in a matter of months.

Ensuring *all* workers in the most hazardous jobs – including building and construction - have default insurance that will pay out in the tragic event of total and permanent disability or death is a job for the Federal Government. It is also the clearly expressed will of the Parliament, confirmed twice during this term alone.

Cbus welcomed the announcement of a Treasury Review of Occupational Exclusions in Default Insurance in MySuper Products by the Minister for Superannuation, Financial Services and the Digital Economy in June of this year.

While the Review's name hinted that the scope would be far too narrow to genuinely address the host of time-critical problems created for building and construction workers in the Government's pursuit of 'stapling', Cbus has engaged proactively to put these matters on the Minister's and Treasury's radar.

During the Your Future, Your Super (YFYS) debate, Cbus advocated – with a strong evidence base - for an exception to the stapling rule for the 2.7 million workers in hazardous occupations, including building and construction workers. This would have mitigated the risk of these workers paying premiums for no cover at funds that have exclusionary clauses in their insurance policies which would leave workers and their families out in the cold. It would also have meant that, in line with the Parliament's clear intention as enunciated during the Putting Members' Interests First debate¹, hazardous occupation workers under the age of 25 who have a special need for default cover would have been far more likely to get it through the preservation of the industrial default model for that cohort.

Evidence was adduced during hearings of the Senate Economics Legislation Committee in their review of the YFYS Bill of specific cases where members believed they were covered, only to discover upon making a claim that they weren't due to their hazardous occupation.

For hazardous occupation workers – whether they're up on scaffolding, down a mine, driving heavy vehicles on treacherous routes or working on the frontline of a pandemic – death and TPD insurance is a safety net. It shouldn't rely on a worker having the financial literacy required to read a PDS, or the awareness to ask their fund "am I actually covered?".

We welcome the FSC's acknowledgment that workers paying premiums for no cover is indeed a serious problem which will be significantly compounded by the introduction of stapling, due to commence on 1 November.

The FSC proposes to introduce a prohibition on the use of any terms in MySuper group life policies that would

¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6331

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.

To address this problem in a very narrow way, in a few years' time, via industry code or non-binding 'guidance', is woefully inadequate. This critical issue must be dealt with by the parliament.

We set out below a number of critically important considerations which we urged the Government to consider in their development of the Terms of Reference for Treasury's review. We have also considered how the FSC's proposal stacks up for workers in building and construction and allied industries, who Cbus has been proud to serve since 1984.

Impact of FSC proposal on premiums

As the FSC has noted, *"Exclusions are common & important and are often applied where the risk is not understood or unquantifiable by the parties, or the risk is too great to be satisfactorily priced. They are a mechanism to ensure pricing is fair for all members in an insurance pool as they are explicitly connected to the cost of a premium paid by the member."*

Cbus represents one of the largest insurance pools in the world. The creation of a large default pool of coverage reduces the risk of self-selection and enables Cbus to provide generous coverage of our members notwithstanding the higher risk of our insured pool of members. If funds with only a small number of stapled workers in hazardous occupations, who would previously have been nudged towards funds with more appropriate default cover upon entering those industries, are required to provide unqualified cover to all, there will be a premium impact on all members.

A targeted exception to stapling would have been the more sensible approach, protecting hazardous occupation workers' cover by preserving the industrial default model, and saving other members significant expense in premiums – serving all members' best financial interests.

Coverage and enforceability

The FSC's proposal will not adequately protect members because it would only apply to FSC members. Even in its strongest iteration, where removal of such clauses was mandated by the Code, an insurer could avoid the proposed requirements by ceasing its FSC membership. For this reason, among others, Cbus has consistently argued that the Government has a responsibility to protect members, ensuring that they have appropriate insurance cover and are not paying for insurance that does not cover them. Certainty of cover is key, and any gaps risk undermining confidence.

Default and voluntary cover - under 25s

It is important that the scope of Treasury's review include exclusions in both default (i.e. automatic, opt-out) insurance offered by MySuper products, and voluntary cover. For workers in hazardous occupations like building and construction – the members who are the focus of this review - this scope is critical if the review is to identify the most common obstacles to securing cover.

The FSC notes that *"There is a distinction between exclusions applying to default insurance cover in MySuper products and those that might be applied to voluntary insurance applications or upgrades where a member is tailoring the cover to their individual needs."*

If limited to default offerings only, the fate of the under 25 cohort will be ignored entirely by both the FSC's consultation and Treasury's review.

Following the passage of Treasury Laws Amendment (Putting Members' Interests First) Bill 2019, insurance is no longer offered on an opt-out (or 'default') basis to under 25s at all but seven funds nation-wide. Young workers who move into a hazardous sector at a time of life when they are at higher risk due to inexperience – and not yet engaged with their superannuation and retirement planning – only benefit from the Dangerous Occupation Exception to this rule if they are in one of those handful of funds, of which Cbus is one.

Cbus member Andrew was 23 years old when he was injured at work, crushed by two glass palettes, weighing in at an excess of 1.6 tonnes. He sustained serious spinal and pelvic injuries which he was fortunate to survive. Andrew was hospitalised for over a month during which time he watched his wife give birth to their first child while he was in a wheelchair.

Today, Andrew is recovering well but experiences ongoing health issues. His Cbus insurance has made an enormous difference to his health and quality of life outcomes. He says he cannot imagine where he and his family would be without the default cover that he was able to rely upon in his time of need.

The construction industry is a male-dominated industry. Young men are the most likely to suffer from a work-related injury or illness. The incident rate of experiencing a work-related injury or illness is highest for men aged 20-24. Young workers aged under 25 also accounted for 15% of fatalities in the construction industry, compared with 9% of fatalities across all industries.² Workers in their first month on the job are four to six times more likely to experience a work-related injury or illness than those who have been on the job more than a year.³

Young Cbus members feature strongly in our claims. In the five years from 2014-2019 (inclusive), Cbus paid out 491 life and TPD claims to members aged under 25, equating to \$61,188,500 in claims paid – making a significant difference to the lives of Cbus members and their loved ones. This is particularly pertinent given that blue-collar building and construction workers are more than twice as likely than the general population of the same age to have dependents.

A hazardous occupation worker aged under 25 who is stapled to a fund that does not offer them default insurance under the Dangerous Occupation Exception would need to actively opt into insurance – effectively applying for coverage.

Treasury's review should examine the underwriting process demanded by funds where under 25s who move into hazardous occupations attempt to opt in to cover. A number of funds apply occupational exclusions to members who apply for voluntary cover. The review must consider the premium impacts for this cohort of members.

The Dangerous Occupation Exception has preserved vital insurance cover for more than 146,000 building and construction workers at Cbus since April 2020. More than \$15.3 million has already been paid to over 120 Cbus members or their beneficiaries – their partners and kids - in that short time.

Opaque insurance terms and conditions, including 'insurer's discretion' clauses

Some policies give the insurer discretion when it comes to exclusion of hazardous occupations where members seek to increase or adjust their coverage. Treasury's review should examine the coverage acceptance rate for hazardous occupation workers under such policies, and whether these clauses in fact

² <https://www.safeworkaustralia.gov.au/sites/default/files/2020-11/Work-related%20traumatic%20injury%20fatalities%20Australia%202019.pdf>

³ <https://www.worksafe.vic.gov.au/young-workers-safety-basics>

operate as de facto specific occupational exclusions. Young workers in these occupations must have access to cover should they opt for it, as all are now required to do unless their stapled fund is one of the seven which uses the Dangerous Occupation Exception.

"I work in the elevator industry in construction on major building sites where there are a lot of dangers, lots of hazards for example electricity or falls. The idea that you might be without insurance on site is scary. Most of us have families and we need to look after what's at home." **Cbus member**

Workplace environment

Some funds' insurance policies exclude members from cover based not on their occupation, but on their working environment, for example working with heavy machinery, or in a role which exposes them to health hazards including handling chemicals. The FSC's consultation and Treasury's review should both examine the potential impact of these clauses on stapled workers, and whether they in fact operate as broad occupational exclusions.

A male Cbus member, 49 years old and a sheet metal worker fell from height in the course of work while installing air conditioning ducting. The member received a TPD benefit after suffering a traumatic brain injury.

Most funds do not provide TPD cover for workers in higher risk heavy blue-collar occupations. In building and construction, this can include Boilermakers, Bricklayers, Carpenters, Concreters, Dogmen, Fitter and Turners, Labourers, Painters, Plasterers, Plumbers, Electricians, Riggers, Scaffolders and Welders. For example, some funds don't provide cover for people working above 15 metres and with heavy machinery.

TPD terms and definitions

In October 2019, ASIC singled out the positive aspects of the Cbus TPD policy in an otherwise scathing report into TPD insurance market (REP 633, Holes in the Safety Net)⁴. Generosity in the eligibility criteria and high levels of engagement with its members throughout the claims process are identified as the superior features of Cbus insurance product.

Many funds exclude or modify cover for Total and Permanent Disablement, for example, by assessing some workers against an 'Activities of Daily Living' test – a practice ASIC concluded amounted to 'junk insurance'. This would pay out only in the most catastrophic circumstances.

In August 2021, ASIC reviewed those same funds' progress towards rectifying the identified product design flaws, and unfortunately the title of the review says it all - *Progress made but gaps remain* (REP 696 TPD insurance: Progress made by gaps remain). The review notes that "Generally, trustees will consider such options when renewing their group policies (generally every three years)"⁵. Workplace accidents leading to total and permanent disability will tragically continue to happen in the meantime.

Treasury's review should consider ASIC's findings, and the particularly negative impact that being stapled to a fund with these restrictive TPD terms and definitions will have on workers in hazardous occupations. The FSC's proposal does nothing to address this problem.

Employment condition exclusions

⁴ <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-633-holes-in-the-safety-net-a-review-of-tpd-insurance-claims/>

⁵ <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-696-tpd-insurance-progress-made-but-gaps-remain/>

Related to the ADL test are also exclusions or onerous conditions relating to employment conditions, including those which apply to casual or non-permanent workers, those working limited hours or in broken work patterns (which is incredibly common in building and construction), still employed by a number of funds with the effect of limiting TPD claim payouts. This risks leaving large cohorts of members without critical cover, all the while paying premiums – likely to have an especially significant impact on the building and construction workforce, for whom precarious employment is common. The FSC’s policy paper fails to consider these scenarios. This is a problem which the Government is acutely aware of (noting that it has arisen in both aforementioned ASIC reviews), and one which the Government should address with urgency.

Unaffordable cover provisions

The FSC notes that *“Some funds don’t offer default life insurance to certain members due to their occupation. While these members have no default cover, they are also not paying premiums. Not offering default cover to the highest risk occupations avoids those members having disproportionately high premiums that may cause superannuation balance erosion. Noting the Government’s progressive implementation of reforms to prevent balance erosion the FSC does not intend to extend these changes to members that are ineligible for cover to avoid undermining the effectiveness of these reforms.”*

In scope, however, is the removal of terms for MySuper products that would decline a claim on the basis of a change in an occupational classification. In practical terms this is inconsistent.

For example, where a member who joins a fund with an ‘Unaffordable cover’ qualifying provision that excludes certain occupations from default cover is in an allowable occupation, cover is provided. If they are stapled to this fund and later change jobs to one that is excluded, and have a claimable event, will they be covered or not?

Waiting period for suicide cover

Treasury’s review should examine the common practice of applying up to 12 month waiting periods for suicide cover (whether in default or voluntary offerings). Sadly, suicide is a common cause of death in the building and construction industries. It’s why Cbus offers this cover automatically with no waiting period. We know that every year, some of our members’ families, tragically, will have to rely on it. Given these waiting periods disproportionately impact workers in hazardous occupations, any exclusions or waiting periods should be reviewed alongside occupational exclusions. The FSC’s proposal does nothing to address this gap.

A male Cbus member was 22 years old at date of death from suicide and employed in a manual occupation. The member was single but was survived by a toddler who was living with their Legal Guardian.

The insurance cover was 4 Units of Death & TPD cover with a sum insured of \$208,000. The benefit was paid to the Legal Guardian as trustee for the child.

Timing, process and findings

Treasury’s review should be completed before stapling commences. Sequencing the stapling of these workers before the potentially dire consequences are examined will result in an increase in desperate and grieving families being forced into acute financial hardship.

It should be robust and informed by a full consultation process and by evidence including statistics on the number of claims denied due to hazardous occupation exclusions.

Impacted members should be defaulted into or empowered and strongly encouraged to switch to a fund that does not apply occupational exclusions as soon as possible. This applies to both default and voluntary cover offerings.

"We've all got families that rely on us and it's crazy to work in this industry if you're not protected." **Cbus member**

The Productivity Commission recommended a mechanism to prevent adverse outcomes from stapling, including being stuck with unsuitable insurance – this needs to be addressed, not in industry codes, but in legislation. Workers in hazardous occupations and their families cannot afford to wait, and should not be expected to pay a fee for no service in the meantime.

As the leading Industry Super Fund for the building, construction and allied industries, Cbus looks forward to engaging closely with Treasury throughout the review.

We thank the FSC for the opportunity to provide feedback on this topic.

Yours sincerely,



Justin Arter
Chief Executive Officer