



FINANCIAL
SERVICES
COUNCIL

Review of Occupational Exclusions in Default Insurance offered through MySuper Products

FSC Submission

October 2021



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1. About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advice licensees and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2. Executive Summary

The Financial Services Council (FSC) welcomes the opportunity to provide feedback on Treasury's Review of Occupational Exclusions in Default Insurance offered through MySuper Products. The FSC believes that all Australians who are paying for default cover through their superannuation should be able to rely on it if they need to make a claim.

The *Treasury Laws Amendment (Your Future, Your Super) Act 2021* implemented the Royal Commission's recommendation to 'staple' a member to their existing superannuation product. We have strongly supported these measures as an important consumer protection to prevent the creation of duplicate superannuation accounts with unnecessary fees. Stapling will commence on 1 November 2021.

While stapling is, in and of itself, a positive outcome for members, a consequence of stapling will be the detrimental effect that occupational exclusions could have on the default group life insurance cover of some disengaged members. We share the concerns that have been raised in Treasury's review, that some members stapled to their default group life insurance may be prevented from making a successful claim because the policy contains exclusions related to occupation. In our view, this unintended consequence undermines the policy intent of the Your Future, Your Super reforms of protecting the financial interests of those Australians who are disengaged from their superannuation.

We believe industry action is the most appropriate way to address this issue. The FSC has announced an industry initiative to implement an enforceable Standard that prohibits exclusions and restrictive disability definitions based on a members' occupation in the design of default group insurance in superannuation arrangements for Life Insurance, Total and Permanent Disability (TPD) and Income Protection (IP) cover. The prohibition will apply to both FSC superannuation trustee members in the default group insurance arrangements they design for their members, and also to FSC life insurance members in the default group insurance arrangements they offer to superannuation trustees.

Our initiative aligns broadly to Option 4 of Treasury's consultation, but also goes further by extending the prohibition to all default group insurance in MySuper and Choice products and extending it to default IP cover. It also extends to any member who changes occupation, even if they remain with the same employer and not impacted by stapling. We believe this will ensure that all Australians who are paying for default cover through their superannuation can rely on it at claim time.

3. FSC response to the issue

3.1. Role of Exclusions

Exclusions are a common and important component of all types of insurance, including general insurance and private health insurance, as they enable the insurer and insured to agree what is and is not covered, and provide insurance which is affordable for consumers. Exclusions are often applied where the risk is not understood or unquantifiable by the parties, or the risk is too great to be satisfactorily priced. In some cases, exclusions are used to reduce moral hazard, for example intentional self-inflicted injuries or injuries sustained while committing a crime.

Superannuation trustees have used exclusions as 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 a member. By limiting risk, exclusions limit the claims that will be accepted. This in turn reduces premiums for the customer, in this case superannuation members.

There is a distinction between exclusions applying to default insurance cover and those that might be applied to voluntary insurance applications or upgrades where a member is tailoring the cover to their individual needs.

3.2. FSC consultation

On 12 August 2021 the FSC initiated a process to consult with superannuation and life insurance sectors, consumer advocates and other stakeholders with the aim of removing exclusions in group insurance based on occupational classification or duties.

The FSC consultation received seven submissions ranging from consumer groups, AIST, Superannuation Funds, and FSC members. All but one was generally supportive of the direction taken by the FSC.

Submissions to the FSC consultation process are publicly available at: <https://fsc.org.au/policy/superannuation/occupational-exclusions>

3.3. FSC Solution

On 11 October 2021 the FSC announced that it will be introducing an enforceable FSC Standard on the use of exclusions and restrictive disability definitions based on occupation within default group life insurance policies in superannuation amongst FSC members.

The Standard will prohibit the use of exclusions and restrictive disability definitions based on occupation by the FSC's superannuation members and prohibit the FSC's life insurance members from offering exclusions and restrictive disability definitions based on occupation to their clients.

The FSC will not, however, prevent trustees from declining to offer cover to a new member based on their occupation when the member joins the fund. In these circumstances a

member would not be charged insurance premiums. The Standard will also not apply to any cover not provided on a default basis.

The FSC Standard will apply to default IP in addition to Life Insurance and TPD. In addition, the FSC is expanding the prohibition to all default group cover in superannuation as the FSC recognises that issues rising from stapling will affect all members in default cover, not just MySuper members.

Evidence submitted to the FSC by consumer advocates and industry participants suggests that exclusions and restrictive disability definitions based on occupation are predominantly a feature of the part of the superannuation sector that the FSC represents. As a result, our initiative, which applies to FSC superannuation and life insurance members, is likely to be close to, if not completely, a comprehensive solution to the issue. This may result in there being little work for legislative reform.

The FSC is continuing to liaise with the sector to determine whether our proposed approach is a comprehensive solution and will provide more information to the Government and Treasury as it comes to hand. The FSC will also engage with other superannuation associations to discuss the option of them adopting similar guidance.

3.4. Enforceability of the FSC solution

The FSC enforceable Standard will ensure members will be able to claim on cover that they have been paying for and receive the level of cover that they have been paying for.

The Standard which will apply to all FSC trustee and life insurance members, will prohibit FSC trustees using exclusions and applying restrictive disability definitions based on occupation in their members' default group insurance policies. The standard will also prohibit FSC life insurance members from offering exclusions and restrictive disability definitions based on occupation to all trustees. In this way, the FSC Standard is expected to reduce the use of these practices across all sectors of the superannuation industry.

3.5. Transitional arrangements for the FSC solution

The FSC will finalise the Standard with the target date of requiring trustees to remove their exclusions and restrictive disability definitions based on occupation by 1 January 2023, subject to further consultation with regulators, including the ACCC. This twelve-month transition period is designed to enable trustees and life insurers to re-negotiate existing group life policies that are currently in place, and for trustees to engage with members.

3.6. Additional recommendations

Recommendation

1. The ATO YourSuper comparison tool to provide up to date information to consumers to choose an appropriate level of cover.

Stapling members to a single default account must also be supported by a robust online tool to empower members reviewing and engaging with their superannuation. The ATO YourSuper comparison tool will play a central role in assisting superannuation members to exercise choice, particularly within the MySuper market.

Now that members will be stapled to an account, the FSC considers it appropriate to have as much information available to the consumer on the level of cover they would be receiving when joining a superannuation account and for this information to be communicated on the ATO comparison tool website. This information can include whether they will automatically receive insurance with the fund they choose or whether there are any limitations on cover, for example a period where only new events are covered. The FSC considers this to be in line with Recommendation 2 of the Productivity Commission Inquiry Report into Superannuation.¹

Stapling can be successful in engaging members with their super, including reviewing the ongoing appropriateness of insurance benefits, but only if members are provided with the opportunity to review their superannuation arrangements regularly and at appropriate times, especially when they are changing jobs (for example through the ATO's Single Touch Payroll onboarding process). An online solution that has universal participation, as recommended by the Productivity Commission, is necessary.

Regular, appropriate nudges will also need to be provided to support decision-making and ensure good outcomes for individuals making use of the tool. These nudges should include specific reference to insurance cover, to ensure that Australians are aware of the cover they hold, are prompted to check whether it is appropriate for their circumstances and understand the costs of cover.

Recommendation

2. The FSC recommends that Government makes use of the existing SuperStream requirements to provide occupational data.

The FSC supports consumers having access to the most affordable and valuable insurance cover they can receive. For consumers to benefit from efficient cover, trustees and insurers must have up-to-date, reliable information about a member's occupation so that when someone joins a new scheme, they can be allocated into the most occupation appropriate category.

The current SuperStream data and payment standards already allows for occupational data to be provided. However, within the SuperStream system there are optional data points which are rarely provided by employers. Some of these optional data points would be

¹ Superannuation: Assessing Efficiency and Competitiveness, No 91, Productivity Commission, No 91 (2018), p 65.

valuable for trustees in designing their default insurance design. Because the impact of stapling will see the occupation mix of funds change over time as more members are stapled to a fund when they change employers, access to richer data will enable trustees to better meet the changing nature of their membership.

To facilitate this the FSC believes either:

- The ATO provide the occupational data it already collects from individual's tax returns to be sent to trustees via SuperStream (contribution messaging); or
- Make it a requirement for employers to keep their employees' occupational duties up-to-date in SuperStream.

This would assist Recommendation 1 of the Productivity Commission Inquiry Report into Superannuation.²

With the latter option, the FSC understands that obligations on employers to provide up to date and accurate occupational details will be increased with this recommendation. The Government would therefore need to strengthen the obligation to not misrepresent an employee's occupation to ensure a member receives the cover that they have been paying for.

² Ibid.
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4. Schedule A

- 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 on occupational exclusions

Discussion Question	Submission to Treasury
<p>1. What is the prevalence of occupational exclusions on default life and TPD insurance offerings within MySuper products?</p> <p>1.1. How widespread are occupational exclusions affecting automatic acceptance when a member first becomes a MySuper member?</p> <p>1.2. How widespread are occupational exclusions that affect existing default cover when a member changes occupation?</p>	<p>The FSC acknowledges that occupational exclusions still exist in funds. Introducing an enforceable standard will prohibit the use of exclusions and the use of restrictive disability definitions based on occupation in life, TPD and IP.</p> <p>In addition, the FSC commits to completing a forensic analysis of the use and prevalence of exclusions and use of restrictive disability definitions based on occupation in our group life insurance members to better understand which trustees are using them.</p> <p>Upon completion of this review, the FSC will share this with Treasury.</p>
<p>2. Do trustees have access to data to understand their members' occupations and tailor the cover accordingly?</p> <p>What should trustees and insurers do to better capture and assess the changing occupations of their members?</p>	<p>Generally, trustees do not have accurate and up to date data to tailor coverage accordingly.</p> <p>The FSC supports consumers having access to the most affordable and valuable insurance cover they can receive. Trustees must have up-to-date, reliable information about a member's occupation so that when someone joins a new scheme, they receive the most appropriate cover.</p> <p>To facilitate this the FSC advocates for a requirement for employers to keep their employees' occupational duties up-to-date in SuperStream.</p>

<p>3. Is there scope to strengthen standardised disclosures or improve communication to members to assist them to understand their insurance cover, particularly when occupation exclusions apply?</p> <p>Would Option 2 adequately address the problem?</p>	<p>The FSC considers it appropriate to have as much information available to the consumer on the level of cover they would be receiving when joining a superannuation account and for this information to be communicated on the ATO comparison tool website.</p>
<p>4. Are there benefits of occupational exclusions that would justify some funds maintaining them?</p> <p>What are the costs of occupational exclusions and should funds be required to remove them?</p>	<p>The FSC and its members recognise that Australians must be able to claim on the default cover that they have been paying for through their superannuation. That is why we have announced that we will be introducing an enforceable standard that prohibits the use of exclusions and restrictive disability definitions based on a member's occupation.</p> <p>However, the FSC recognises that there are circumstances where trustees will apply occupational exclusions. For example, life insurance cover that is underwritten in superannuation. In this circumstance the member is aware of the cover they are receiving as they have disclosed their occupation to the trustee.</p> <p>In addition, the FSC will maintain that an occupational exclusion will still apply to an individual who is employed in the armed forces as they are typically covered by government-funded benefits outside of life insurance.</p> <p>The FSC acknowledges that having a member pay for cover that they are not entitled to has a detrimental cost on that individual and their family when they go to claim. Removing occupational exclusions ensures that members receive the cover they have been paying for and removes that cost.</p>
<p>5. What would be the implications on pricing, benefit design/default levels of cover and claims rates under Options 3 and 4?</p>	<p>By removing exclusions and restrictive disability definitions based on occupation it will more than likely lead to pricing implications for members across the risk pool.</p>

<p>How would these implications be addressed? How do the costs and benefits compare between Options 3 and 4?</p>	<p>The FSC is concerned that if there isn't adequate data sharing through portals such as SuperStream, this could lead to pricing implications for members.</p> <p>Therefore, this FSC enforceable standard success will depend on the Government facilitating better data sharing between trustees, insurers, and Government agencies, particularly the ATO, to improve the quality of data on members' occupational classifications.</p>
<p>6. If Option 4 was adopted, what responses should be made available to trustees and insurers and why?</p> <p>What would be the appropriate implementation mechanism, necessary transition periods and consequences for non-compliance (if applicable)?</p>	<p>The FSC will be introducing an enforceable standard that binds FSC trustee members to prohibit the use of exclusions and restrictive disability definitions based on occupation, and FSC life insurance members offering exclusions and restrictive disability definitions based on occupation in all default group life insurance in superannuation.</p> <p>FSC's proposed standard will require FSC trustee members to remove their exclusions and restrictive disability definitions based on occupation by 1 January 2023, subject to further consultation with regulators including the ACCC. This twelve-month transition period is designed to enable trustees and life insurers to re-negotiate existing group life policies, implement any changes, and communicate to members these changes.</p> <p>By introducing this Standard, the FSC believes this will remove occupational exclusions for the majority of members accounts and thus negate the need for a legislative instrument to remove issues caused by 'stapling'.</p>