

**Submission by the
Financial Rights Legal Centre**

Insurance in Superannuation Working Group

**Account balance erosion due to insurance
premiums, March 2017**

April 2017

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2015/2016 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
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Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on account balance erosion in superannuation by insurance premiums. The Financial Rights Legal Centre has provided comment or answers to questions where it feels it is able to provide input.

In order to elucidate the basic problem of account balance erosion we provide the following typical case study:

Case study – Jenny's story

Jenny has an Australian Superannuation Account where premiums for life insurance were debited. Jenny moved overseas. All her mail was forwarded to her overseas address, however, there was sometimes a delay.

Her superannuation account balance reduced over the years as there was no contributions for 5 years and there was less than \$4,000 per the government legislation. Her premiums were \$125 per month, for death and TPD benefits of \$408,500.

Jenny was keen to retain the cover, as she was 50 and would be unable to secure cover outside of her superannuation at the same price.

She received notification of the intended closure of her superannuation account and member exit statement at the same time, even though they were dated on 2 different dates. She received them after the expiry of the time given to make a contribution to keep the account active. The notification of closure was dated 17 February and the date of closure was 30 April. She received it on 6 May.

Her remaining superannuation balance was transferred to the Australian Tax Office (ATO).

She raised a dispute and the fund refused or was unable to reinstate her superannuation account or insurance.

Establish design principles to be adhered to when determining automatic cover and affordable premium levels.

1. Do you support the development of guidance on the determination of appropriate cover levels? If not, why not?

Financial Rights believes that the development of guidance on the determination of appropriate cover level is proper given the current variation across the industry.

The establishment of guidelines would promote certainty for consumers that trustees have a set industry expectation, which could evolve over time with the changing regulatory environment, claims experiences, and workforce.

The creation of this guidance needs to take into account changes occurring in other areas of life insurance.

For example, in considering the needs of young consumers the Australian Securities and Investment Commission (**ASIC**) have recommended that in the add-on consumer credit insurance (**CCI**) space insurers should take into account the fact that a consumer may already have adequate insurance in their superannuation when selling add-on insurance or offering a CCI product. This work should be done consistently, so as not to result in a perverse outcome of underinsurance and work should be across the life insurance industries.

3. What would be the consequences of just applying to new members as opposed to existing members?

From Financial Rights' perspective there are a number of potential negative consequences that may arise from applying the guidance to new members as opposed to existing members.

Existing members will not receive the benefits that arise from implemented design principles. There will also be increased confusion about what existing members have as opposed to new members have as well as significant difficulty and confusion understanding why one group of members is treated differently. Superannuation trustees will have difficulty in justifying this difference too.

The above necessarily needs to be balanced with competing negatives of potential premium increases that may further erode their balances which would be a perverse result.

4. What would be the impact in terms of cost for funds/insurers in using principle-based guidance?

Financial Rights has no comment other than that changes will no doubt have an upfront and maybe ongoing financial impact on superannuation funds but these costs are necessary to ensure improved consumer outcomes and should be committed to by superannuation funds as a cost of doing business.

5. If there was a focus on individual cohorts – are young and the older Australians the appropriate grouping?

Whether age is the appropriate 'cohort' may need further exploration to ensure it is the relevant focus.

Financial Rights is increasingly speaking to older Australians who are wanting to retain insurance and are continuing to be in the workforce and are unhappy with the automatic cessation of their insurance at age 65. For many of these consumers, insurance outside of their superannuation is not affordable.

Whilst the younger 'cohort' may on average have less dependents and need, there will, of course be exceptions where they do have financial dependents, or will benefit from having cover start early in their career before they start to accrue conditions or medical histories that may mean they will not have access to insurance outside of their insurance.

Establish overarching prescribed maximum premium levels for automatic insurance coverage.

11. Should maximum thresholds be prescribed?

Financial Rights sees the risk with prescribing maximum threshold is that increasing cost pressures may result in a reduction of benefits and a tightening of definitions to reduce claims rather than any adjustment of premiums,

The necessary corollary of setting a maximum, will be a consumers desire to understand their own premium and how it is calculated against the maximum. Insurers should be transparent with the premium pricing.

13. Should there be one set of maximums or should they differ between different occupational/age groups?

Whilst Financial Rights is not in a position to comment, if premiums vary due to these factors, then thresholds should also vary.

The information about what factors affect premiums and setting the maximums should be provided and generally made available to consumers.

Establish an industry standard for cessation of automatic cover due to low contributions, contributions inactivity or low account balances.

14. Should a Code prescribe cover cessation thresholds?

A Code should prescribe cover cessation thresholds in order to provide the following for consumers:

- greater certainty as to the approach for all funds;

- confidence that the consumer will not be treated materially differently between funds, which may lead to poor or unfair outcomes as it is not a factor a consumer would choose between funds (if they have made a conscious choice at all);
- access to the Code for the purposes of informing themselves about the approach in a simple, easily obtainable and digestible form;
- access to redress through external dispute resolution in the event of breach or non-compliance with the prescribed amount, or method of cessation (including notice provisions).

17. What maximum period of inactivity is most suitable to commence communicating with inactive members – 3 months, 6 months or 12 months, other?

Financial Rights does not have a set view with respect to the maximum period of inactivity, but believe any final position or view should be informed by:

- claims data;
- statistical information in relation to average time to regain employment or period of unemployment across the range of occupations, age, etc

Using this data will assist making the business case as to the appropriateness of the limit, with a view to striking the correct balance between not leaving consumers uninsured and at the same time not eroding the superannuation balances unnecessarily by allowing for premiums to be debited.

Communication should perhaps begin at 3 months, with a follow up before the final cessation. The communication should not be annual.

As can be seen by “case study 1” below communication and time in relation to communication is important. There should be a “grace period” to allow for reinstatement.

18. Unless members have elected to retain their cover, should all policies include a mandatory cessation clause if there is an extended period of contribution inactivity? Why?

Yes.

If the purpose is to prevent erosion of account balances as the consumer has forgotten to switch funds to prevent loss of the accrued superannuation savings, the fund should at some point cease taking out premiums that may be for inappropriate cover.

The alternative would be to enable a consumer to seek a refund of all premiums taken in the circumstances that they later identified later that they had had a fund where premiums

continued to be deducted but were no longer eligible to claim. However, this approach would still require a consumer to be engaged enough to raise the issue with the Superannuation Fund at a later time to refund the premium. A consumer who was already so disengaged that the premiums were debited in the first instance is unlikely to benefit. Premium refunds are therefore not in itself a complete solution but may assist some consumers.

19. What maximum period of inactivity is most suitable to stop cover if they do not respond to earlier communication – 6 months, 12 months, 18 months or 2 years, other?

Similar to our answer to Question 17, Financial Rights does not have a set view with respect to the maximum period of inactivity, but believe any final position or view should be informed by:

- claims data;
- statistical information in relation to average time to regain employment or period of unemployment across the range of occupations, age, etc.

Using this data will assist making the business case as to the appropriateness of the limit, with a view to striking the correct balance between not leaving consumers uninsured and at the same time not eroding the superannuation balances unnecessarily by allowing for premiums to be debited.

20. Should a mandatory cessation clause only apply to income protection cover, to mitigate against the impact of income offsets?

Premiums can be deducted for TPD and Life Insurance when it may no longer be necessary.

There is a tension between the occasions when a consumer dies or can no longer work, and can enjoy the potential benefits of multiple death and TPD benefits. However, this needs to be balanced in circumstances where for the most part multiple policies across multiple superannuation benefits may simply be a drain on the consumer superannuation savings.

21. What flexibility is needed to cater for different demographics e.g. members who have casual employment patterns?

Financial Rights believes that flexibility must be built into the design because the Australian workforce is not homogenous and is changing but we have no views at this stage exactly how this flexibility should be implemented.

Formalise protocols between insurers for the treatment of claims against multiple income protection policies

26. How will this improve a members experience when making a claim?

Callers to the Insurance Law Service are often not cognisant of the existence or effect of offsetting clauses in insurance policies. Many consumers have 2 income protection policies via their insurance in superannuation, employer group policies, standalone direct policies, workers compensation or Centrelink benefits received whilst waiting for claims to be paid.

From our experience, consumers are faced with the following common problems:

- Being caught between insurers which dispute who is on claim and required to pay ;
- Confusion as to the requirement for providing information;
- Disputes about whether offsetting has been applied correctly and the benefits calculated correctly;

The processes in place are obscure and opaque with claims taking years.

Case study - Leila's story - C134746, S163675

Leila contacted the ILS in mid-May 2016. For the previous two years she had been receiving income protection (IP) benefits from her Insurer, the Insurance provider through her Super Fund. Leila contacted the ILS because she had received a letter from the Insurer, stating that:

- she had been overpaid throughout the period, and needed to repay over \$4000, and
- her income protection payments would stop until the overpayment was repaid.

The basis of the claimed overpayment was that the Insurer had incorrectly failed to apply an offset (i.e. reduction) applicable to Leila because she also received the DSP.

Financial Rights assisted Leila through the Insurer's IDR, who agreed to reinstate the payments while the dispute was resolved.

The process took nearly two months, and multiple emails and referrals back and forth between the Insurer and the Super Fund, to obtain copies of the PDS and other policy documents.

On closer inspection of the PDS, we took the view that, far from having been overpaid, Leila had in fact been underpaid. The Insurer was relying on a provision of the PDS that permitted IP benefits to be offset where the insured received "income benefits ... paid under ... Social Security or similar legislation in relation to the injury or sickness of the Insured Member". However, Leila's DSP:

- related to a condition that significantly predated the injury for which she was receiving the Insurer IP payments;
- had in fact reduced in quantum during most of the period for which she was in receipt of the IP payments, and
- to the extent it had increased during that period, had only done so by CPI (i.e. not on account of the injury for which she was receiving the IP payments).

These matters were raised with the Insurer in September 2016. A response was received in January 2017, which in essence simply referred back to the reasons for the original claim for overpayment, and did not engage with the alleged underpayment. From then until April 2017, we communicated with a number of different people at the Insurer, and received three different accounts of how the payments were calculated, some of which indicated overpayment, some underpayment, and none of which clearly referenced the relevant section of the policy.

At the end of the day, the Insurer accepted that Leila had been underpaid, and paid her over \$2,500 in back payments. The precise reasons for the Insurer's change of position remain unclear.

The process was slow and opaque. It would have been impossible for a consumer without legal or financial training to conduct without extensive assistance.

Any action to streamline offsetting processes needs to be broadened out to take into account the multitude of interactions faced by consumers that offset a claim – not just two insurance policies.

As a priority the Code should provide consumers with:

- better access to information,
- access to dispute resolution and
- timely decision making when there are multiple policies or offsetting.

27. What else should the protocols consider?

As above, any action to streamline offsetting processes needs to be broadened out to take into account the multitude of interactions faced by consumers that offset a claim – not just two insurance policies.

Industry standards for refunding premiums if benefits are reduced for claims made against multiple income protection policies

28. Should refunds only extend to income protection cover acquired automatically in superannuation or also include income protection cover acquired through member directed action e.g. through an adviser or direct from the insurer, or through industrial agreements? Why?

Yes, all affected consumers should be refunded. If consumers are not getting benefit for the consideration paid, insurers should not profit.

Currently in general insurance where a consumer is double insured they may seek a 50 per cent refund from the insurers that covered the same risk. There is no reason this principal should not be extended to income protection insurance, where the insurer is on the same risk in respect of income.

29. How would insurers of these other policies be covered by industry standards?

The Superannuation industry needs to work with the FSC and the Life Insurance Industry to ensure that similar provisions are included in the Life Insurance Code of Practice to cover the whole of the industry.

30. Should there be a maximum refund period, e.g. last 2 years of premiums only? If so, should this period be aligned with any proposed contribution inactivity period before stopping cover?

The refund period should be identified on the basis of the time in which there was a failure of consideration with excessive premiums paid for the potential benefit. In general insurance consumers seek six years of premiums. It is not clear why superannuation insurance consumers should be restricted to two years only.

32. How would this be applied to existing automatic IP policies, noting that these may extend back from many years?

Consumers who have had their superannuation balances eroded in circumstances where they would have otherwise derived no commensurate benefit should be refunded.

Consideration should be made to allow consumers to benefit from this proposal as soon as the Code is implemented, and insurers should be prepared to refund the premiums in circumstances where double insurance is identified.

33. Is a transition period needed, and if so, how long?

No, no transition is warranted or needed.

Encourage and help members to make informed decisions about their insurance cover

34. What could industry do to better promote and encourage members to consider their insurance?

Super Funds and Insurers need to provide clearer information to their members in multiple forms (written, email etc.) that is easily accessible to the members including via the web. Currently this is not the case and consumers struggle to understand what insurance they may have.

37. What communication protocols should superannuation funds adopt once they have identified members with multiple instances of insurance cover?

Financial Rights believes that any communications protocols that are introduced should take into account the need for varied and multiple forms of communication to deal with the multiple and varied ways real people wish to be and are able to be communicated with. While emailing consumers information will be the easiest form, it should not be assumed that electronic communication is the most appropriate means of communication.

People on lower incomes, those with disabilities, older clients, culturally and linguistically diverse customers and others should be able to receive communications in a format they can access without penalty.

Regulatory guidance on the provision of general advice by superannuation funds that help members make informed decisions

47. To what extent does the current regulatory environment support superannuation fund's efforts to help members make informed decisions about consolidating?

It is Financial Rights understanding that the reason a no advice model has been adopted has been because the compliance of advice provisions under the Corporations Act 2001 on a large scale is costly and time consuming. However this bottom-line focussed approach is producing poor consumer outcomes industry-wide.

There is also the issues of poor advice and a lack of strategic advice from financial advisors arising from the commission based remuneration models.

Superannuation funds need to be more proactive in providing information and advice to their members and if they are unwilling to do so a shift in government policy towards mandating suitability requirements may be inevitable.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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