October 2021

Review of Occupational Exclusions in Default Insurance offered through MySuper Products

ABOUT US

Super Consumers Australia (Super Consumers), formerly known as the Superannuation Consumers' Centre, is an independent, not-for-profit consumer organisation formed in 2013. Super Consumers was first funded in 2018. We work to advance and protect the interests of low and middle income people in the Australian superannuation system. During its start up phase Super Consumers has partnered with CHOICE to deliver support services. Set up by consumers for consumers, CHOICE is the leading consumer advocate that provides Australians with information and advice, free from commercial bias.

Financial Rights is a community legal centre that specialises in helping consumers 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 Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Finally we operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies.

Introduction

Super funds have a clear legal obligation to negotiate insurance policies that are appropriate for their members. Occupational exclusions unsuspectingly and unfairly expose members and their families to extreme financial risk. This can occur when people are ***starting*** or ***moving*** into jobs that are linked to these exclusions. Insurance policies with occupational exclusions are not aligned with these obligations and should be removed.

ASIC estimates that 86% of superannuation fund members with insurance are on the default settings.[1] From 1 November, individuals will be stapled to their superannuation fund when they change jobs. There is a real risk that without action stapling will cause people to be placed in and pay for inappropriate insurance.

Based on our sample and Treasury's preliminary analysis the majority of funds do not apply any occupational exclusions in their MySuper products. This shows that it is possible for funds to put an offer into market without unfairly placing members at risk.

The FSC will ensure their member funds provide cover to people when they move jobs. However, their standard will not prevent funds from excluding people from cover based on occupation when they join a fund. While a positive step, it has the consequence of defaulting people into super funds where, due to underwriting, they may be barred, or charged unaffordable rates for cover. This undermines the core value of group insurance as a safety net. Despite the FSC's claim, this will not result in a 'ban' on occupational exclusions.[2]

The industry has gone as far as it is willing to go, now the federal government has a responsibility to ensure the default safety net is fit for purpose. The most appropriate implementation mechanism would be amendment to section 68AA of the SIS Act to implement a ban on occupational exclusions (option 4).

[1] ASIC Report 675: Default insurance in superannuation: Member value for money
[2] FSC MR "FSC to ban occupational exclusions in default life group insurance in superannuation", 11 October

What is the prevalence of occupational exclusions on default life and TPD insurance offerings within MySuper products? How widespread are the issues affecting automatic acceptance and when a member changes occupation?

Preliminary Treasury analysis on 25 May 2021 found that nine of the top ten largest MySuper products by assets do not have occupational exclusions for default life and TPD insurance. These nine funds cover 60.7% of all MySuper members and 62.6% of total assets. In keeping with the legislation each of these funds has made an assessment about whether to include exclusions. Nine concluded it would not be in their member's best interests, one did not. The decision by this one fund leaves people and their families exposed in a time of tragedy.

In our sample of the market, we found seven funds have 'occupational exclusions or restrictions' which would render their default insurance extremely difficult to claim on for people working in a 'high risk' industry.[3] We wrote to these funds to ask them why they thought these terms are appropriate, particularly in the context of stapling.

Fund	MySuper members	Insurance term	Response to Super Consumers inquiries	Will the fund protect new members going forward and/or existing members?
AON Smart Monday	43,382	"Some occupations may not be eligible for any insurance cover in the fund because the trustee and the insurer considers them too hazardous".	"There are no occupational exclusions for current members." (Further clarification determined this applies to new members.)	Based on the responses existing members and new members should be covered.
MLC	497,306	"Occupations so hazardous that the insurer is unable to accept the risk."	"No ***new members*** after 13 August 2021 will be excluded on the basis of occupation" "Any previously	Existing members without cover will need to actively apply. New members will be covered.

[3] A sample of default insurance policies of 32 of the largest super funds by members in June 2020.

			uninsurable / excluded members will be able to apply for cover. They will be subject to underwriting”	
CFS	231,401	“MySuper cover does not apply to spouse members, members in high risk occupations or other allowable exceptions.”	“The ensuing product will ensure default insurance is accessible to members regardless of their occupation rating.” (Change of policy)	Response not entirely clear on timeliness of their product review. Going forward they indicate that existing and new members will be covered.
AMP	809,011	"You must be in an eligible employee occupation category for each insurance benefit you are nominated for."	“AMP plans to work with our insurance providers prior to the implementation of ‘Stapling’ to review any occupational exclusions and restrictions. We would also be working with the Super Directions for Business Employers to ensure the appropriate eligibility criteria is provided to employees prior to joining the plan.”	Existing members are likely to stay excluded. New members may be subject to occupational exclusions.
IOOF	99,904	“There are certain occupations considered by the Insurer to be hazardous or uninsurable.”	“”There are no occupational exclusions that apply to default cover.” “However, if you are in a Hazardous Occupation and	Existing members may be subject to a restriction. New members should be covered.

			your cover commenced or recommenced on or after 1 January 2014, you will have a modified definition for TPD cover." "	
ASGARD	73,607	"Employer plans with employees in Special Risk Occupations are subject to individual consideration by the Insurer and special terms may apply."	"BT is currently in the process of migrating its MySuper members to the BT Super MySuper product"	ASGARD members will be subject to the terms in BT's MySuper product. BT have made no commitment to cover existing and new members.
BT	546,432	"If you are an employee in a Special Risk Occupation different rules may apply if you make a claim."	"Salary Continuance Insurance does have different disablement definitions for members working in "special risk" occupations. We agree that the "Stapling" reforms will require the industry to review disability definitions."	Existing members may be subject to a restriction. New members may be subject to occupational exclusions.

These responses were received prior to the FSC announcement that they relate to the promises individual funds made. We understand all of these funds, apart from AON, are members of the FSC, so at a minimum would be adjusting their policies in line with the FSC commitment.
No two exclusions in our sample were the same. They contained differences based on terms such as 'hazardous' and 'special risk'. These were defined differently in occupational guides and then applied variably across death, TPD and income protection. This makes comparing and assessing policies difficult. With the large variety of terms, at best, people are covered by don't realise, at worst, they've been left with poor value insurance they will struggle to claim on. The

FSC's proposal (option 3) does not resolve this issue because each fund may choose to not offer insurance on a different basis.

For example, AMP applies an occupational exclusion for TPD cover and stated they will be "working with the Super Directions for Business Employers to ensure the appropriate eligibility criteria is provided to employees prior to joining the plan." This is effectively the FSC solution (option 3). It creates a gap for new default members in high risk occupations where they will be ineligible for TPD cover. These individuals are unlikely to be aware they are not covered. This type of half and inconsistent measure is not appropriate and will place members in financial risk.

Key finding:

● Many large MySuper funds have been able to put products on the market that do not require occupation exclusions to be viable. This raises the question - to what extent it is necessary for any fund to include an occupational exclusion.
● Funds which implement the FSC's standard (option 3) are not banning occupational exclusions and most have not made a commitment to move to option 4.

Include Income Protection insurance

Treasury's grounds for excluding income protection from consideration for reform are incorrect and will create unfairness. Income protection is offered at the discretion of the trustee, but from a member's perspective, they are either defaulted into it or they're not. For those that are defaulted into income protection the harm of being saddled with a product which they are excluded from claiming on due to their occupation is the same.[4]

We analysed 16 MySuper funds which cover 80% of MySuper members at 30 June 2020 and found that 3 offer income protection as part of their default offering. A further 5 have default income protection for some members. In our sample, BT is a fund that offers income protection insurance with occupational restrictions depending on the employer plan, it is a further cost placed onto unsuspecting members which they will never be able to claim on.

Recommendation

● Occupational exclusions should be removed from default income protection offerings

[4] The FSC will apply their standard to income protection

Do trustees have access to data to understand their members' occupations and tailor the cover accordingly? What should trustees and insurers do to better capture and assess the changing occupations of their members?

Unfortunately trustees have a poor track record for collecting quality data to help understand the needs of their membership. In its three year analysis of the efficiency and effectiveness of the superannuation system, the Productivity Commission (PC) found significant member data limitations at funds.[5] They stated "superannuation funds make insufficient use of their own (or imputed) data to develop and price products (including insurance)".[6] The inconsistent application of occupational exclusions across the industry is likely another symptom of this inconsistent data collection. Instead of developing products which meet the needs of all consumers, some funds have instead put the burden back onto consumers by subjecting them to underwriting and barring them from cover if they are in high risk occupations.

There are clear benefits to product design from funds making genuine attempts to collect better data. The PC went on to say "there is scope for the majority of funds to make further improvements to benefit design without the need for more (costly) data collection. It is apparent that some funds have successfully used broader research and data (such as census data) to cost-effectively impute the characteristics and preferences of the fund's membership."[7]

When the occupational make-up of memberships change due to stapling, it is imperative that funds do more with their data to better price their insurance cover. ASIC's review into occupational classifications of their default members found a significant variation in the sophistication of trustees' assumptions and in the factors they took into consideration when designing their default category.[8] It found that funds could improve by placing members into more appropriate risk occupational categories rather than placing the majority of members into broad, more expensive and non-representative default options. This will mean there is little gap between the actual risk and hedged risk because funds and their insurers have good data to price appropriately.

We understand the industry has made calls for greater access to data from the ATO to assist with product design. In the first instance the industry should be put to the test as to why they can't self-generate this type of data. It is unclear why at the product design level this is achievable. If genuine gaps exist that ATO data is best placed to fill, then this should be explored.

[5] Productivity Commission Inquiry Report: Superannuation: Assessing efficiency and competitiveness, p163
[6] Productivity Commission Inquiry Report: Superannuation: Assessing efficiency and competitiveness, p56
[7] Productivity Commission Inquiry Report: Superannuation: Assessing efficiency and competitiveness, p393
[8] 20-309MR Trustees to improve occupational classification practices in insurance in superannuation

Collecting and using claims data based on occupational claims will also help with this risk pricing. In ASIC's holes in the safety net report, they found the lack of data availability and accuracy for activities of daily living TPD claims raises concerns about the ability of insurers and superannuation trustees to:

1) appropriately assess claim outcomes for TPD consumers;
2) for trustees—understand their membership profiles; and
3) use relevant data to design products that are suitable for the groups of consumers to whom the cover is provided.

Key finding:

- Funds should better use available occupational data to better price their cover.

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? Would Option 2 adequately address the problem?

Strengthening standardised disclosure will have limited to no benefit in explaining the large variability in occupational exclusions to default super members.

As ASIC found, disclosure is a weak form of consumer protection because it cannot solve the complexity that is inherent in financial services markets.[9] In the context of default members, who by their nature have decreased levels of engagement, disclosure will have little to no impact on their understanding of occupational exclusions. Treasury should consider the findings of behavioural economics when assessing options. 'Bounded rationality' is one of the psychological foundations of behavioural economics which finds humans have limits to our thinking capacity, available information, and time.[10] This is very relevant when assessing the value of disclosure for complex and default products, like insurance in super.

Disclosure places a large burden on consumers. ASIC research found that disclosure becomes ineffective once a consumer is required to take into account more than two or three different factors.[11] Studies showed that people's ability to tell the difference between an objectively good or bad product failed once multiple product features were required to be compared. This held true even over relatively simple financial products like savings accounts. Insurance is one of the

[9] ASIC Report REP 632 Disclosure: Why it shouldn't be the default, p5
[10] Behavioural Economics Guide 2021, p168
[11] ASIC Report REP 632 Disclosure: Why it shouldn't be the default, p8

most complex products on the market with literally hundreds of terms, with some like occupational exclusions far from a consumer's mind when they are choosing a super provider, unrelated to any bundled insurance that may be included.

The Dutch created a simplified disclosure for their bond products called Key Information Documents. However, when assessing their effectiveness, 66% of participants who were given the Key Information Document still invested some or all of their available assets in suboptimal options.[12] Similar findings were found in an experiment conducted by Monash University and Financial Rights using a two-page key fact sheet for home insurance. Only 41% of participants provided with the key fact sheet selected the objectively best insurance product.[13]

Improving disclosure is also likely to be a costly and complex process. The policies in MySuper insurance products are extremely variable and each requires its own analysis. Distilling these large policies into understandable and consumer-facing documents would be a monumental effort. The administrative cost to improve disclosure to a level where default members understand their complex insurance offering is likely more expensive than just providing cover to those individuals. Rather than requiring millions of Australians to undergo education on complex products, companies should make these products less confusing and less harmful.

It is currently very difficult for a member to work out what definition applies to them. This task would involve a forensic examination of various documents and making a judgement about what occupation title best fits their current job. When we conducted our own sweep for these terms we often came across complex definitions which required multiple clarifications with funds to confirm. In some cases the responses appeared to directly conflict with what was written in the policy. For example, AON Smart Monday stated "There are no occupational exclusions for current members' despite their policy clearly stating "some occupations may not be eligible for any insurance cover." It took four clarifying emails over three weeks to ensure comfort in the application of the terms. Some funds, like MLC and BT, would not provide clarity on their cover through customer service channels because we were not members of their funds. Given the difficulty and multiple communications with the fund it took a team of experts who knew what they were looking for, it is hard to see how the average consumer is meant to engage with this information.

[12] ASIC Report REP 632 Disclosure: Why it shouldn't be the default, p15
[13] J Malbon & H Oppewal, (In)effective disclosure: An experimental study of consumers purchasing home contents insurance, research report of a study commissioned by the Financial Rights Legal Centre, Monash University: Australian Centre for Financial Studies, 2018 quoted at ASIC Report REP 632 Disclosure: Why it shouldn't be the default, p14-5

Key finding

- Disclosure isn't adequate to safeguard the interests of fund members and solutions based around increasing disclosure should be rejected.

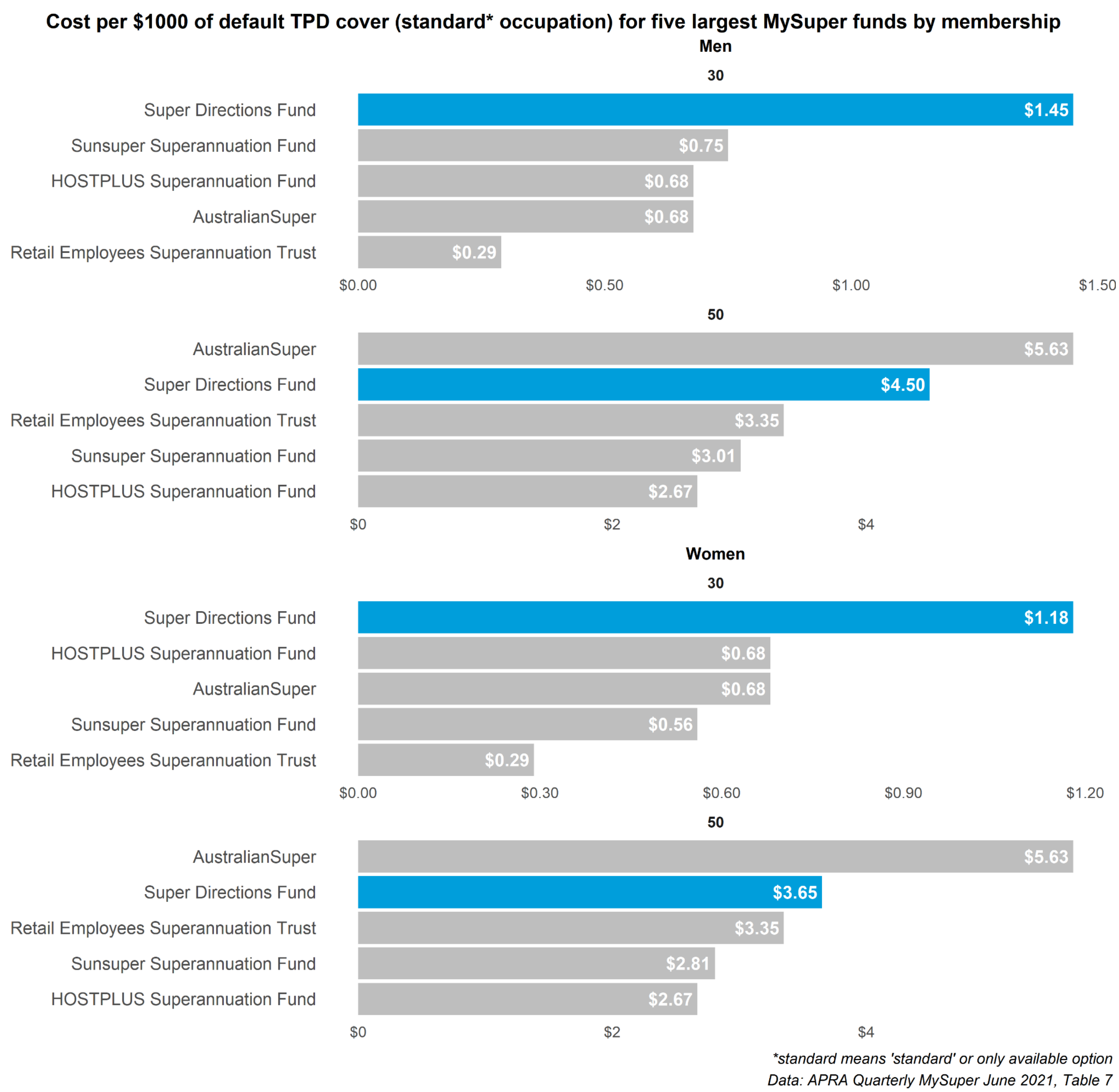
Are there benefits of occupational exclusions that would justify some funds maintaining them? What are the costs of occupational exclusions and should funds be required to remove them?

The only benefit is premium cost
We assume that funds that have occupational exclusions do so because it reduces cost to their membership. However, we are unaware of any justification that cost becomes prohibitive to a membership when occupational exclusions are removed. The large MySuper funds without occupational exclusions have managed to put an offer into market that they have deemed to not inappropriately erode balances. It shows that completely removing occupational exclusions can be commercially viable.

When a fund removes occupational exclusions, we expect premiums to rise. To determine the size of this rise we undertook analysis on a fund which has recently made the call to cover new entrants regardless of their occupation. MLC MasterKey Business Super (the fund with an occupational exclusion in the top 10 indicated by Treasury) removed their exclusion so no new members after 13 August 2021 will be excluded on the basis of occupation. Comparing their ‘light blue’ cover premiums before (APRA data dated June 30th) and after (PDS dated October 1st) this change shows that for a 30 and 50 year old male, the unit cost for $1000 cover went up by 7% (2.36 cents) and 3% (9.43 cents) respectively. For a 30 year old woman there is a decline of 7% (-1.45 cents) and for a 50 year old woman an increase of 5% (13.52 cents). If the benefit of $477,000 for a 30 year old male with light blue occupational loading as of June 30th had been maintained the policyholder would pay an additional $11 in annual premiums. However, the benefit level actually fell substantially (from $477k to $415k) so the annual premium paid also fell, although the cost per unit of cover rose.

These changes do not seem like an unreasonable burden to place on an entire membership so that everyone is able to receive cover when entering a fund. It also highlights that removing occupational exclusions doesn't necessarily mean a cost blowout to the premiums that are charged. On an equitable basis, paying a few cents more so an entire membership can be covered is a reasonable approach.

On the other end of the spectrum, AMP Super Directions is a fund which "if your occupation is classed as hazardous, you will only be provided with Death cover". Mapping their annual cost per $1,000 of TPD benefits against the five largest MySuper funds by membership, we find that having an exclusion doesn't necessarily make them mean a 'cheaper' policy. Noting that there are many factors which can play into the cost of an insurance premium, it is telling that AMP's their default MySuper offering is almost double the cost of that compared to super funds without any exclusions.



ASIC recently found there is a wide variation in the design and pricing of default insurance.[14] In their analysis, a 50 yer old man could be paying almost 5 times as much per $1000 per cover in the MySuper product with the highest unit price compared to the lowest. A 30 year old woman could be paying over 12 times as much. ASIC were concerned trustees may not be monitoring the risks that the default insurance they are providing could be inappropriate or low value for groups of their members. It may also mean they are unable to identify the drivers of outcomes for groups of their members, such as specific terms and conditions in the insurance policy. It shows there is considerable scope for improvement in insurance design and pricing. Solely relying on occupational exclusions to keep cover cheap is unlikely to be valid.

The evidence shows that it doesn't necessarily follow that excluding some occupations from cover will necessarily result in a cheaper product. Many large funds have been able to remove occupational exclusions and keep their premiums relative to others in the market. This provides a starting point to assume that occupational exclusions are unlikely to mean unaffordable cover. For a small cost across the membership, it is in the best interest of members to provide cover for 'high-risk' people so that they are not financially devastated.

The cost of occupational exclusions

Occupational exclusions in default insurance leave people and their families at risk during a time of tragedy. People in MySuper products are the least likely to give consideration to their insurance needs and are the most deserving of a safety net.

Occupational exclusions result in vastly different outcomes for people working in hazardous occupations. Some funds have elected to cover existing members if they move into a hazardous occupation, but not cover new fund entrants in the same occupation. This in effect is the solution the FSC has proposed to this issue. The double standard this creates is likely to confuse consumers and employers and lead to dramatically different outcomes for two people working in the same job.[15]

Members need to be aware that funds may have different definitions of 'high-risk', 'special risk' and hazardous. People who attempt an "apples to apples" comparison of insurance cover must contend with the many subtle variations in terms between different policies

Occupational exclusions reduce the ability for people to effectively switch between funds because they may be afraid of losing their cover. It may resign someone to staying in an underperformer for an unnecessary period of time and reduce the competitiveness of the superannuation system overall.

Some funds have also not had adequate processes in place and charge people premiums when they would be ineligible. In the case of one fund we identified as having an occupational

[14] ASIC REP 675 Default insurance in superannuation: Member value for money, P17
[15] https://fsc.org.au/policy/superannuation/occupational-exclusions

exclusion for TPD and IP insurance, the total paid in premiums for TPD and IP by an excluded male (from 20 to 40 with a light manual occupational loading) is $6,852 (in today's dollars). If those premiums were instead left invested in their super they would accrue a final balance of $13,818 (in today's dollars).[16] This is a fee-for-no service issue.

There is simplicity and fairness in working towards a solution that provides all default members a safetynet regardless of their occupation. On the limited evidence available the cost per member to the entire membership of a fund is likely to be minimal whereas the benefit to those in hazardous occupations is substantial.

Recommendation

- The government should step in to mandate that occupational exclusions which restrict people from receiving default cover based purely on their occupation be banned

What would be the implications on pricing, benefit design/default levels of cover and claims rates under Options 3 and 4? How would these implications be addressed? How do the costs and benefits compare between Options 3 and 4?

The tables below describe the potential implications of implementing option 3 and option 4. The first table covers the implications Treasury has directly requested. It is also important to consider the implications each option has on fairness, simplicity of coverage and mergers because they are core factors for members with default insurance in super.

Feature	Option 3	Option 4
Benefit design	Funds will be free to discriminate against people by not offering cover or charging significantly more to those working in certain occupations. Explicitly allowing this in the law could lead to more funds taking up this option in order to reduce insurance costs for other fund members. Australian Super is an example of a fund that supports the FSC's solution to have the option to	The handful of funds with occupational exclusions would have to remove them. Funds would still be free to allocate or stream their members based on more

[16] Premiums sourced from fund PDS. Future investment returns based on the fund's long run historical investment returns. Inflation sourced from forward estimates and long run RBA target.

	not offer cover for people working in certain occupations.[17]	accurate occupational categories.
Pricing	On the limited evidence available, funds may elect to reduce premiums by excluding certain occupations. However, the evidence also shows there is no guarantee this will lead to lower premiums for consumers, as funds and insurers may elect to keep additional margins in profit.	The handful of funds that currently have occupational exclusions will either have to absorb the cost of removing them or increase premiums (note: all funds that currently have these exclusions are for profit, so this is presumably an option available to all relevant funds/insurers).

Feature	**Option 3**	**Option 4**
Fairness	This will likely result in five vastly different outcomes for people working in hazardous occupations. People already subject to occupational exclusions will continue to pay for cover they cannot claim upon. People who change jobs into a hazardous occupation will be protected. People working in a hazardous job who are defaulted into a fund may be subject to underwriting. This could see them either offered cover on the same terms as other members, charged extra for the same cover, or not be offered cover at all. This option creates unfairness, in that people in the same situation may or may not be covered based on factors outside of their control.	This solution is much fairer in that anyone who is insured by default won't be barred cover based on their occupation.

[17] AustralianSuper submission to FSC's policy paper, p1

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Simplicity of coverage	Option three adds additional complication for employers looking for an appropriate default fund. An employee choosing between multiple default funds would face similar complications. It will require significant time and expertise that many employers and employees likely lack to find an appropriate fund. Due to the complexity of occupational exclusions and based on our experience finding and clarifying them, we estimate it could take an employer with expertise in group insurance four weeks to understand whether a fund had occupational exclusions which may impact employees. There is also nothing to ensure an employer is diligent in making this choice and they have little incentive to invest significant time in this task. As MLC stated in their submission to Universal Terms consultation "With group insurance providing cover based on an automatic basis, it is often a significant hurdle for a member to understand whether they are "eligible" for unrestricted cover.[18]	Option 4 is much simpler and would give employers and employees confidence that their super fund insurance will give them default cover regardless of their occupation. This would result in significant time saving and build confidence in the superannuation sector.
Merger / Successor fund transfers	Occupational exclusions can cause additional hurdles for successor fund transfers. For example, ASGARD's recent merger into its parent BT Super led to consumers having to maintain two superannuation accounts in order to maintain rights to comparable insurance post merger.[19] This is a likely outcome in a market where funds are allowed to maintain occupational exclusions. It both adds cost to members and may limit the ability of funds to successfully find merger partners.	Under option 4 successor fund transfers would be simplified. This would open the way for more underperforming funds to find suitable merger partners, while protecting the rights of members

Option 3 does not go far enough. It results in discrimination, unfairness and complexity. Employers and consumers will find it hard to navigate which fund is most appropriate. People in

[18] MLC Life insurance submission to Treasury Universal terms for insurance within MySuper, p6
[19] https://www.financialstandard.com.au/news/failing-asgard-super-option-to-close-179789887

hazardous jobs will be treated differently based on a variety of factors from fund to fund. While option 4 is likely to cost more (the current funds with occupational exclusions are for profit), it provides a safety net to all, which will be essential as the Your Future, Your Super reforms impact the market.

Recommendation

- That the Federal Government adopt option 4.

If Option 4 was adopted, what responses should be made available to trustees and insurers and why? What would be the appropriate implementation mechanism, necessary transition periods and consequences for non-compliance (if applicable)?

All effort should be taken to ensure no person is unfairly affected by occupational exclusions, particularly in the context of stapling, which begins on November 1. The industry should move as quickly as possible to update their offerings to ensure no member is discriminated against based on their employment.

If a transition period is necessary to make this change, funds should have a clear obligation to inform their members they may be at risk until the issue is resolved. They should also have an obligation to collect better data on their membership during the period to determine those who may be at risk when stapling commences.

Implementation mechanism and definition
The most appropriate implementation mechanism would be amendment to section 68AA of the SIS Act. This section details when there is a requirement to provide permanent incapacity benefit and death benefit to MySuper members.

The protection should apply to all members in MySuper insurance products in line with the definition of automatic cover in the Insurance in Superannuation Voluntary Code of Practice at 4.1.[20] This protects all MySuper members who haven't varied or voluntarily selected their level of cover.

[20] Insurance in Superannuation Voluntary Code of Practice, p4

Do occupational exclusions fit within the purpose of the default system?

We question if occupational exclusions are incongruent with the purpose of a group default insurance safety net. The starting point should be to provide affordable cover on the best terms available on the market to all members. Cross-subsidisation is an essential feature of group default.[21] With no evidence to the contrary, some funds are carving out certain occupations without justifications. This is putting profits before people.

Occupational exclusions must exist in a framework where funds are satisfied that it is fair and reasonable to that class of high-risk beneficiaries and justify that they cannot give effect to an insurance strategy that wouldn't inappropriately erode their retirement incomes. In essence, can funds justify that it is fair and reasonable for high-risk members to pay nothing and be excluded from cover because it would cost too much for the entire membership to absorb? The majority of funds have answered this in the negative.

Why occupational exclusions are unlikely to be fair
Funds have fairness obligations under the SIS Act and they haven't justified how occupational exclusions are consistent with these obligations. It is also not required under law for funds to produce 'medical or actuarial evidence' to establish how certain occupations presented an additional risk to other fund members and what cost this would be. The member outcome assessment of funds like AMP and MLC included no mention of occupational exclusions in their reports. Funds are rarely in a position to adequately assess whether policies are fair because they don't have a clear picture of who is impacted.

Default members in 'high risk' jobs mainly find themselves in insurance through their employer's choice of fund and not through personal choice. People are also not choosing their occupation to get injured and 'game' the group MySuper default insurance industry. As a general community expectation, it is reasonable to assume that while these people would be covered through this fund allocation process. The fact that these people, who need cover the most because they are doing arduous and hazardous work, don't is a failure to meet this expectation.

Why occupational exclusions are unlikely to be reasonable
There is also an argument that the exclusion of cover goes beyond the scope of the term 'reasonable condition' in s68AA of Sis Act. S68AA details a requirement to *provide a permanent incapacity benefit and death benefit to each MySuper member of the fund*. The Explanatory Memorandum for the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012 states the requirement to provide benefits is to "provide a safety net to members who are least likely to give consideration to their insurance needs."

[21] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 389

S68AA (4) allows trustees to determine 'reasonable conditions' to which the provision of insurance is subject. As the consultation paper points out Section 68AA(4) is being interpreted by some in the industry as any condition agreed in a group insurance contract is a reasonable condition. This argument should be rejected; funds may have been influenced by less than independent relationships with their insurer. Changes to APRA prudential standards should improve this, but that is yet to be seen.[22] Similarly a fund may not have turned its mind to the repercussions of not being forced to demonstrate how this decision is in the best interests of members. This could be remedied through tightening of the Member Outcomes regulations. Specifically, APRA could require funds to demonstrate actuarially and on best interests grounds why a condition is necessary. Public scrutiny of these decisions is likely to remedy any mismatch between what a fund and its membership assess as reasonable.

Key finding

- Occupational exclusions are not aligned with the purpose of a default safety net. Members have been excluded without justification.

A lack of holistic action post Productivity Commission and Royal Commission

This lack of holistic and broader action on insurance is the reason it continues to be a barrier to positive reform in superannuation. Most recently occupational exclusions were used by some industry commentators as a reason why stapling, an unequivocally good consumer reform, should not proceed. The Productivity Commission foresaw this and recommended an independent inquiry into superannuation by the end of 2022.[23]

The Hayne Royal Commission recommended that the government consult with industry on the practicability and likely pricing impacts of standardising key definitions, terms and exclusions for default MySuper group life policies. While this consultation took place in March 2019, the government has not responded to it or taken any action to resolve the many issues identified.

A holistic response would put an end to the ongoing piecemeal fixes that have to be made to insurance, including:

- Your Future, Your Super highlights fairness issues with occupational exclusions leading to a Treasury review

[22] https://www.apra.gov.au/consultation-on-prudential-standard-sps-250-insurance-superannuation
[23] Recommendation 18, Productivity Commission Inquiry Report: Superannuation: Assessing efficiency and competitiveness, p72

- FSC ban occupational exclusions but allow funds to restrict default cover to people in high-risk occupations

- Restrictive TPD definitions are highlighted as being extremely low value by ASIC and consumer groups.
- The industry's Insurance in Superannuation Voluntary Code of Practice consumed significant resources only to be dumped before it would become enforceable
- Putting Members Interests First legislation introduced to reduce account erosion due to inappropriate insurance.
- A carve out from insurance for under 25's in high-risk occupations is introduced but only enforced by some funds.
- Protecting Your Super Package legislation introduced - switching off insurance on inactive accounts
- ASIC have released the following guidance to help trustees understand their obligations:
    - 20-309MR Trustees to improve occupational classification practices
    - REP 675 - Default insurance in super: Member value for money
    - REP 673 - Consumer engagement in insurance in super
    - REP 646 Insurance in superannuation 2019–20: Industry implementation of the Voluntary Code of Practice
- APRA has consulted and amended insurance standards for funds.
- Super Consumers Australia research in 2021 finds that funds rarely take into account the insurance needs of different cohorts of members in their public member outcomes assessments.

Good policy in this area should be based on independent analysis. Too often it relies on taking the word of insurers who have a direct interest in maximising profitability rather than ensuring insurance policies are genuinely in the best interests of members. Improving policy terms does not necessarily come at the cost of premiums. Better data collection on fund memberships would help all parties to more appropriately cost risk, rather than defaulting to high risk estimates in the absence of evidence. The PC's recommendation is one of the few remaining that have not been actioned. As 2022 approaches, it is now timely to implement this recommendation.

Recommendation

- To resolve questions about insurance in superannuation there is a clear need to establish an independent inquiry into how to efficiently and equitably protect people (and their families) who can no longer work due to death or disability.