

Royal Commission into Misconduct in The Banking, Superannuation and Financial Services Industry

ROUND 6, INSURANCE

SUBMISSIONS BY TWU NOMINEES PTY LTD atf TWU SUPERANNUATION [TWUSUPER]

These Submissions in relation to the Round 6 Insurance Hearings are advanced to assist the Commissioner in relation to the specific questions raised by CA as to the insurance in superannuation policy issues that have been identified.

INSURANCE IN SUPERANNUATION

1. Counsel Assisting posed the following questions;

23. Should universal:

1. *23.1 minimum coverage requirements; and/or*
2. *23.2 key definitions; and/or*
3. *23.3 key exclusions,*

be prescribed for group life policies offered to MySuper members?

24. Should group life insurance policies offered to MySuper members be permitted to use a definition of “total and permanent incapacity” that derogates from the definition of “permanent incapacity” contained in regulation 1.03C of the Superannuation Industry (Supervision) Regulations 1994 (Cth)?

25. Should RSE Licensees be obliged to ensure that their members are defaulted to statistically appropriate rates for insurance required to be offered through the fund under section 68AA(1) of the Superannuation Industry (Supervision) Act 1993 (Cth)?

26. Should RSE Licensees be prohibited from engaging an associated entity as the fund’s group life insurer?

27. Alternatively, should RSE Licensees who engage an associated entity as the fund's group life insurer be subject to additional requirements to demonstrate that the engagement of the group life insurer is in the best interests of beneficiaries and otherwise satisfies legal and regulatory requirements, including the requirements set out in paragraphs 22 to 24 of Prudential Standard SPS 250, Insurance in Superannuation?

28. Are the terms set out in the Insurance in Superannuation Voluntary Code of Practice sufficient to protect the interests of fund members? If not, what additional protections are necessary?

2. A congeries of questions posed in CA's 23 – 27 raise issues about the place scope and duties relating to life insurance in superannuation and for RSE Licensees. Some are of direct relevance to TWUSUPER as to most superannuation funds. Others of the questions appear to be primarily directed to retail funds and so are only peripherally relevant to TWUSUPER.
3. In making submissions in relation to these matters, TWUSUPER wishes to make clear to the Commissioner that its interest is engaged by the need to ensure that the insurance providers to superannuation funds are compelled to act to further the duties imposed on RSE's by ss 52 and 62 SIS Act. Evidence before the commission has established that this duty has not always been complied with in insurance matters. The breaches extend beyond the definitions or exclusions in policies to issues dealing with rates and to the recently adopted voluntary Superannuation Code of Practice.

Q 23. Should universal:

- 1. 23.1 minimum coverage requirements; and/or*
- 2. 23.2 key definitions; and/or*
- 3. 23.3 key exclusions,*

be prescribed for group life policies offered to MySuper members?

4. TWUSUPER is a policy holder of group insurance for its members, rather than individually tailored insurance policies or packages. Key definitions are found in the in the group policy. These definitions are disclosed to members in the Product Disclosure Statement and associated documents.

In order to ensure both a level playing field and as well certainty for the RSE licensee and the members of Superannuation Funds, at least the key definitions of such issues as TPI, heart attack etc need to be consistent across insurers and across funds. The case studies revealed in evidence establish that allowing a commercial variable to exist in these areas is conducive to injustice and unfairness for members of funds whose cases are rejected by application of the variations. While not suggesting that the standard provisions to be found in the several Workers' Compensation Acts of the States are entirely apposite to superannuation policies, a similar approach by which key definitions are prescribed would provide certainty and consistency. While this would provide a general level of comfort, the minimum coverage definitions referred to will need to be industry specific. That is to say that the minimum coverage provisions will need to be referable to the industry/industries in which the superannuation fund operates, as there are wide variations in both the kind and extent of risk to which the insurer will be exposed. For TWUSUPER in particular, across the board minima may lead to cost prohibitive premiums in the case of group coverage because of the inherent risks in the transport industry and the wide variation in the demographic covered by the industry.

5. That there is no real difficulty in setting out minimum coverage requirements can be seen from the extant Workers Compensation and Industrial/ Motor Vehicle provisions found in several of the States. Some care is required in setting the limits of cover and of definitions of incapacity and the like, but this is a mere drafting exercise.
6. For RSE's the position is in one sense more serious. The RSE is responsible for not one member, but for an entire class of potential claimants and beneficiaries.
7. As the evidence in the case studies revealed however, one complicating factor for such a proposal lies in the steady advance of medical knowledge and advancement of preservative procedures [as opposed to radical surgery]. Thus, an updating or regular revision of definitions would need to be provided in order to secure currency of definitions. In the same way as exclusions for pre-existing conditions, the issue of exclusions is not without complexity.
8. At present in the case of TWUSUPER members automatically (subject to certain conditions) have life insurance cover at a default amount when they join by virtue of the group policy. Some pre-existing conditions ought not to be excluded, but others will materially affect the risk. In our submission no, single simple answer to this question is possible.

Q 24 *Should group life insurance policies offered to MySuper members be permitted to use a definition of “total and permanent incapacity” that derogates from the definition of “permanent incapacity” contained in regulation 1.03C of the Superannuation Industry (Supervision) Regulations 1994 (Cth)?*

9. This response inherently answers the question posed in 24. Reg 1.03C clearly expresses an appropriate definition of permanent incapacity by reference to the degree of incapacity as well as its permanence. This provision is supported by TWUSUPER as the appropriate test to be applied to all insurance provisions dealing with the loss of capacity to work. It must first be observed that the definition referred to by CA in the question is confined to the term ‘permanent incapacity’. That definition is as follows:

...if a trustee of the fund is reasonably satisfied that the member's ill-health (whether physical or mental) makes it unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience....

10. Although the expression ‘total and permanent incapacity’ used by insurers is not a hendiadys the component of total incapacity should **not** in our submission be seen to add an additional layer to the definition in Reg 1.03C. That provision is clearly intended to apply to situations where the member is not likely to return in the future to pre-injury occupation, or any other occupation for which the member is qualified. The expression is unlimited as to time or otherwise qualified. This carries with it the inference of totality in the sense that the person is no longer fitted for ‘gainful employment’. A simple statutory definition tying total and permanent to the definition set out for the time being in the Regulation would effect the necessary change and provide the desired protection for members of funds and for the RSE licensees. The provision of Regulation 1.03C should govern the position, and there should be no derogation from that position.

Q 25 *Should RSE Licensees be obliged to ensure that their members are defaulted to statistically appropriate rates for insurance required to be offered through the fund under section 68AA(1) of the Superannuation Industry (Supervision) Act 1993 (Cth)?*

11. The answer to this question is probably yes, subject to the following submission, viz; that the rates are statistically drawn from workers in the relevant industry. Different occupations require a differing set of structures and contain differing risk elements for insurers. The majority of TWUSUPER members are engaged at some level in the transport industry. As set out in our earlier submissions, that industry suffers the highest rates of industrial injury and suicide. A blanket set of rates unrelated to the industry may lead to problems of the kind identified in the answer to Q23.
12. The Superannuation Background Papers (Numbers 26, 27, 28 and 29) all make reference to superannuation being the primary vehicle by which insurance services for life, TPD and income protection are provided. There is therefore a close connection between TWUSUPER, TAL and CommInsure, which may affect the operations and or interests of TWUSUPER.
13. TWUSUPER's members are primarily those engaged in the transport industry. Over the past 10 years the transport industry has been the industry with the highest number of workplace related fatalities: <https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics> . Nearly 25% of all work-related fatalities occurred in the transport industry. Accordingly, the need for insurance products including life, TPD and income protection is very necessary. Should any changes be recommended to the current arrangements regarding such insurance products TWUSUPER seeks a right to make submissions on behalf of its members.
14. In addition to the above the transport industry bears the unfortunate label of being one of the industries with the highest prevalence of suicide: <http://dro.deakin.edu.au/eserv/DU:30079992/milner-suicideamongmale-2015.pdf> . A Deakin University study in 2015 demonstrates the unfortunately high proportion of suicides by long haul truck drivers. The life insurance policies offered by TWUSUPER do include cover in the event of suicide. TWUSUPER therefore may be in a position to assist the Commission in relation to submissions on the scope and type of appropriate cover. Also, given the high incidence of suicides TWUSUPER seeks the opportunity to make submissions should the interests of its members be affected by any possible recommendations the Commission seeks to make at the conclusion of this round of hearings.

15. It is not possible to apply a statistical norm across all industries and to all RSE Licensees in the manner we understand CA to propose. Indeed, Prudential Standard SPS 250 at pars 15/16 may be seen to be inconsistent with this proposal.

15. An RSE licensee must maintain records of sufficient detail for a prospective insurer to properly assess the insured benefits that are made available. These records must include, for at least the previous five years, the claims experience, membership, sum insured, and premiums paid in relation to beneficiaries.

16. An RSE licensee's risk management framework must reflect the risks associated with making insured benefits available to beneficiaries as a material risk area identified in *Prudential Standard SPS 220 Risk Management*.

Q 26 *Should RSE Licensees be prohibited from engaging an associated entity as the fund's group life insurer?*

16. No. We submit that this proposal is too broad and indiscriminating in its terms. Such a blanket prohibition might actually operate to the disadvantage of members of a given fund. There can be significant savings for an RSE licensee or its members in contracting with related parties. What is required is to ensure that the kind of inappropriate charging or rewarding employees of related entities that has been identified in the Round 5 and 6 case studies is prohibited. Any agreement for the provision of insurance by an associated entity must be required to satisfy an objective of commerciality.

Q 27 *Alternatively, should RSE Licensees who engage an associated entity as the fund's group life insurer be subject to additional requirements to demonstrate that the engagement of the group life insurer is in the best interests of beneficiaries and otherwise satisfies legal and regulatory requirements, including the requirements set out in paragraphs 22 to 24 of Prudential Standard SPS 250, Insurance in Superannuation?*

17. Yes. The risks identified by CA in posing Q26 highlight the need for the stringent application of the duties imposed on RSE licensees by s52 SIS

Act. SPS 250 is directed at ensuring that the duties are met in relation to the provision of insurance. TWUSUPER submits that the requirements set out in SPS 250, which extend beyond pars 22-24 should apply in whole to the engagement of group life insurers. Although Pars 22-24 may be difficult for associated entities to ensure compliance, it is important that the best interest test is not watered down to the detriment of members. Compliance is necessary, certainly in relation to the requirement of par 23, while the fact of the insurer being an associated entity will at the same time simplify compliance with the requirements of par 24.

23. *An RSE licensee must be able to satisfy itself, and demonstrate to APRA, that the engagement of an insurer is conducted at arm's length and is in the best interests of beneficiaries.*
24. *An RSE licensee must ensure it has sufficient and appropriate resources to manage and monitor its relationship with an insurer at all times. At a minimum, the monitoring must include:*
- (a) *maintaining regular contact with the insurer at an appropriate frequency and level of seniority; and*
 - (b) *a process for regular monitoring of performance under the insurance arrangement, including reporting to senior management against service levels.*

Q 28 *Are the terms set out in the Insurance in Superannuation Voluntary Code of Practice sufficient to protect the interests of fund members? If not, what additional protections are necessary?*

18. TWUSUPER declines to make submissions on this matter.