

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

ROUND 7 – POLICY QUESTIONS ARISING FROM THE FIRST SIX ROUNDS



# Superannuation

# Contents

<b>1 Introduction</b>	<b>1</b>
1.1 About our organisations	1
1.2 About this submission	1
<b>2 Response to questions posed</b>	<b>3</b>
2.1 Identification procedures	3
2.2 Asking people to identify as Aboriginal or Torres Strait Islander	7
2.3 Early release of superannuation on the grounds of severe financial hardship?	8
2.4 Life expectancy of Aboriginal and Torres Strait Islander People	9
2.5 Binding nominations	11
<b>3 Other issues in superannuation</b>	<b>12</b>
3.1 Difficulties with dealing with superannuation funds	12
3.2 Multiple accounts	13
3.3 Insurance in superannuation	14
3.4 Superannuation and death	18

# 1

## Introduction

### 1.1 About our organisations

This is a joint submission from Financial Counselling Australia and the First Nations Foundation. Our two organisations work closely on issues affecting Aboriginal and Torres Strait Islander people, particularly those living in regional and remote communities.

**Financial Counselling Australia (FCA)** is the peak body for financial counsellors in Australia. Our members are the seven State and Territory financial counselling associations. We provide support, training and resources to help financial counsellors in their jobs and a voice for the profession. We also advocate for the clients of financial counsellors for a fairer marketplace.

Financial counsellors provide advice and support to people experiencing problems with money and debt. Financial counsellors work in community organisations and their services are free, independent and confidential.

**First Nations Foundation** is an Indigenous-led charity aiming for economic freedom for First Australians. It operates on a national basis and has three core financial capability activities:

- Indigenous financial literacy training
- Indigenous superannuation outreach (urban, regional, remote)
- Research into Indigenous financial issues.

### 1.2 About this submission

The Royal Commission considered issues in relation to superannuation in round five. Both of our organisations are small and at the time were unable to respond to the policy questions relevant to our work. We are therefore addressing them here in the policy round of the hearings.

Our response focuses on the superannuation issues relevant to Aboriginal and Torres Strait Islander people, particularly those living in regional and remote Australia. These were summarised by counsel assisting in the closing address to round five as follows:

"a significant issue affecting Aboriginal and Torres Strait Islander people living in remote communities was their ability to engage with superannuation funds and access their superannuation. The Commission heard that many Aboriginal and Torres Strait Islander people living in such communities were unaware of their superannuation entitlements or experienced difficulty when accessing those entitlements, due to factors including geographical isolation, the ways in which superannuation funds have implemented identification requirements, and complexities associated with Aboriginal and Torres Strait Islander kinship structures."

Financial counsellors and capability workers working predominantly with Aboriginal and Torres Strait Islander people would confirm these issues. Some of these workers say they spend about 90% of their time on superannuation issues. There is a significant degree of frustration with the administrative processes of superannuation companies.

The theme in this submission is that superannuation companies can do so much more to assist their Aboriginal and Torres Strait Islander members. Much of this is already on the record, for example, through the Aboriginal and Torres Strait Islander Superannuation Working Group<sup>1</sup> and the Aboriginal and Torres Strait Islander Super Roundtable.<sup>2</sup> While there are some positive initiatives underway, what is needed is a concerted effort to stop talking about the problems and start fixing them.

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- 1 Made up of the Australian Institute of Superannuation Trustees, the Financial Services Council, the Association of Superannuation Funds of Australia, Industry Super Australia, Women in Super and a number of superannuation funds.
  - 2 Australian Institute of Superannuation Trustees, Indigenous Super Roundtable 2018, <http://www.aist.asn.au/media/1219597/indigenous-super-roundtable-aist-2018.pdf>

# 2

## Response to questions posed

Comments below from financial counsellors and financial capability workers are all from October 2018 and provided in response to various requests for feedback to assist in preparing this submission. Some have been changed slightly for grammar or clarity.

### 2.1 Identification procedures

Are the identification procedures used by superannuation funds appropriate for their Aboriginal and Torres Strait Islander members?

- If those procedures are appropriate, are those identification procedures sufficiently understood and implemented by staff on the ground?
- If those procedures are not appropriate, what should be changed?

Identification is an essential part of being able to deal with superannuation funds. The superannuation fund has to ensure they are dealing with the person who owns the account (or is a beneficiary). If the identification requirements cannot be satisfied then Aboriginal and Torres Strait Islander people lose access to, or any connection with, their superannuation. Endless requests to try and resolve identification issues can also wear Aboriginal and Torres Strait Islander people down. This is a public policy failure. It is essential that all people are able to monitor and lawfully access their superannuation which for many people is their life savings.

It also leads to a perverse situation where you can set up a superannuation account but cannot do anything further with that account. The end result is that some Aboriginal and Torres Strait Islander people feel completely disenfranchised from their own superannuation savings because of ongoing problems with identification. It also leads to a perverse situation where you can set up a superannuation account but cannot do anything further with that account. The end result is that some Aboriginal and Torres Strait Islander people feel completely disenfranchised from their own superannuation savings because of ongoing problems with identification.

Researchers have estimated that 43.1% of Aboriginal and Torres Strait Islander people are fully or severely financially excluded. We need to drive down this figure, not allow identification barriers to further perpetuate it.



In 2016, AUSTRAC released new guidance about the requirements for identification for Aboriginal and Torres Strait Islander people living in remote communities.<sup>3</sup> This new guidance allowed reporting entities, such as banks and superannuation companies, to adopt a more flexible approach in verifying identity, including by allowing identification to include a statement by a referee, such as a community elder. Statutory declarations are also used to verify identity.

The aim of the AUSTRAC guidance was to address some of the many problems that Aboriginal and Torres Strait Islander people have with their identity which may include:

- different spellings for their names on different (primary) documents;
- not having a birth certificate at all; and
- using a skin/clan name rather than the name on their birth certificate.

There are also challenges in rectifying identity issues including:

- being remote and visiting places to resolve identity document problems can be unaffordable and difficult to arrange;
- their identity documents may be held by a parent or grandparent who live in a different community; and
- the costs of obtaining birth certificates, registering a change of name, or obtaining a proof of age card can be unaffordable.

The introduction of the new guidance by AUSTRAC is very welcome. It is important to acknowledge that this was an initiative from the superannuation industry who partnered with the Aboriginal and Torres Strait Islander community through First Nations Foundation, identified the issue, advocated for the change, drafted the content and attempted to raise awareness through launches.

The guidance provides sufficient flexibility to enable identification of Aboriginal and Torres Strait Islander people. However, Aboriginal and Torres Strait Islander people are still having enormous problems resolving identification issues because implementation of this guidance across financial services remains patchy and inadequate. This is because there are still two large unresolved problems. These are:

- a) the use of the AUSTRAC Guidance is not compulsory. There is no requirement that superannuation funds implement that guidance and accept the alternative identification; and
- b) many Aboriginal and Torres Strait Islander people still need support in resolving identification issues. That support includes assistance in obtaining documents, making sure this process is cost free (where possible) and a genuine commitment from superannuation funds to work on resolving identification issues. Financial counsellors and financial capability workers spend a lot of time providing this support.

## CASE STUDY: REMOTE WA

As told by a financial counsellor:

One super company told me the client's name did not match what they had on record. They had written to her using her correct name but when I questioned this I was told that it is just a mailing name not the one on the client file as the primary name.

At this point they tried to deny my ability to speak on her behalf because the third-party authority they had previously recognised was now incorrect as the name was wrong. The mistake? The letter "h" in her name on their records was an "n". All of the client's nominated beneficiaries had a "h" where the "n" was but this was not evidence of a spelling mistake on their part when the account was created.

She had to provide certified ID and used her driver's licence. They already had details of her licence but insisted on a certified copy. It was at this point my client changed her request from a partial withdrawal to close the account completely. As she is over 70 she was able to do so without any effect on her age pension.

### AUSTRAC Guidance

In the experience of financial counsellors and financial capability workers the AUSTRAC Guidance has not been comprehensively adopted and implemented by superannuation funds. The AUSTRAC Guidance states:

"AUSTRAC recommends that, where appropriate, reporting entities consider adopting a flexible approach to the identification and verification of persons of Aboriginal and/or Torres Strait Islander heritage, while remaining mindful of social and cultural sensitivities. This may include using 'reliable and independent' means of alternative identification for customers of Aboriginal and/or Torres Strait Islander heritage."

It is clear that the AUSTRAC Guidance is only a recommendation and it is not compulsory. It appears that this has meant that many superannuation funds have not fully implemented the AUSTRAC Guidance.

There could be a number of reasons why this is so. It could be due to a decision that it is not appropriate, because of the time and resources needed and/or uncertainty about how AUSTRAC would deal with a dispute. We consider that all of these issues could be clarified and resolved if the AUSTRAC Guidance was compulsory. If the parties are not able to agree on identification issues then the dispute should be resolved by the Australian Financial Complaints Authority (AFCA). AFCA would seek guidance from AUSTRAC on how the dispute can be resolved. Aboriginal and Torres Strait

Islander people must have a way to definitively resolve identification issues. It is not acceptable for this problem to lead to a stalemate where a person cannot access their superannuation.

## Support

Identification issues can be difficult to resolve even with the AUSTRAC Guidance in place. There needs to be an acknowledgment that more interventions are required to resolve the identification issues for Aboriginal and Torres Strait Islander people. The support required is:

- a) recognising that financial counsellors, financial capability workers and other community workers spend a great deal of time and effort resolving identification issues for Aboriginal and Torres Strait Islander people. The funding of these workers is vital to ensure that Aboriginal and Torres Strait Islander people can access and monitor their superannuation;
- b) Aboriginal and Torres Strait Islander people in remote communities need easy and free access to order primary identification documents, such as birth certificates;
- c) superannuation funds need to be genuinely committed to resolving identification issues including:
  - i. implementing the AUSTRAC Guidance;
  - ii. training all staff on the AUSTRAC Guidance;
  - iii. generating options (in accordance with the AUSTRAC Guidance) to satisfy identity requirements;
  - iv. developing and staffing dedicated ATSI phone lines to streamline the resolution of identity issues (and other Aboriginal and Torres Strait Islander people issues)

## Community-led solutions

The needs of Aboriginal and Torres Strait Islander people for support with their super has driven community into developing its own solutions. First Nations Foundation has one-stop-shop initiatives like the Big Super Day Out, bringing under one roof the ATO, superannuation funds, DHS and financial counsellors in Aboriginal and Torres Strait Islander communities, saving months or even years of time.

Both the ATO and DHS are present and through access to their database, are able to use their records to confirm the identity of a person so they can then move to process their needs – lost super, consolidation, claims, insurances, beneficiaries. \$14.5M of Aboriginal and Torres Strait Islander superannuation has been found in 13 communities ranging from very remote to regional, indicating the size of the market the superannuation industry needs to start servicing.



## RECOMMENDATIONS:

- The AUSTRAC Guidance is made compulsory and is implemented by all superannuation funds in policies, procedures and training.
- All superannuation funds set up a dedicated Aboriginal and Torres Strait Islander phone access line with staff trained in identification issues.
- AUSTRAC provide further clarity in the Guidance if required by industry.
- Disputes about identification can be referred to AFCA for resolution to ensure that identification issues can be reviewed and determined by an independent dispute resolution body.

## 2.2 Asking people to identify as Aboriginal or Torres Strait Islander

Should superannuation funds be required to record whether their members identify as Aboriginal and Torres Strait Islander?

Yes, superannuation funds should be asking and recording if their members identify as Aboriginal and Torres Strait Islander people. This should be a requirement for all superannuation funds.

The first step in delivering improved services and access to Aboriginal and Torres Strait Islander people must be to identify those people. Aboriginal and Torres Strait Islander people always have the choice of whether to identify or not. However, not asking at all, or failing to seek information means that no improvements can be made.

Identification would assist with the following:

- collecting data and information about superannuation held by Aboriginal and Torres Strait Islander people;
- identifying Aboriginal and Torres Strait Islander people who may need to use the AUSTRAC Guidance;
- referring Aboriginal and Torres Strait Islander people to a dedicated hotline (when set up);
- tracking problems encountered by Aboriginal and Torres Strait Islander people when dealing with superannuation funds. When problems are identified then the superannuation fund can work to resolve those problems;
- tracking and identifying multiple accounts and combining those accounts as a priority for Aboriginal and Torres Strait Islander people;

- recognising the challenges and implementing procedures to ensure Aboriginal and Torres Strait Islander people who live in remote communities have opportunities to contact the fund; and
- considering how to facilitate access by arranging face to face contact in remote communities if there are a number of Aboriginal and Torres Strait Islander people in the same fund.

However a potential risk to Aboriginal and Torres Strait Islander identification is if this information was shared by the superannuation fund with group insurers resulting in higher premiums for Aboriginal and Torres Strait Islander people based on less favourable health status. Such action would be discriminatory (direct if attributed to identity, indirect if attributed to health status) and unlawful. This needs to be considered.

### RECOMMENDATION:

- Superannuation funds should be required to record if their members identify as Aboriginal and Torres Strait Islander. This must include asking at inception and at other relevant times. For new members this is most easily done with an amendment to the ATO employment form, allowing for identification as Aboriginal and Torres Strait Islander.

## 2.3 Early release of superannuation on the grounds of severe financial hardship?

Should those superannuation funds who do not currently permit the early release of superannuation on the basis of severe financial hardship do so?

All superannuation funds need to permit the early release of superannuation on the basis of severe financial hardship. There are two large funds that do not permit the early release of superannuation on the basis of severe financial hardship: REST and SunSuper.<sup>4</sup>

The ability to access superannuation on the grounds of severe financial hardship was included in legislation so that people could access super when they cannot meet reasonable and immediate living expenses. A claimant is also required to be continuously on Centrelink for at least 26 weeks. Not being able to access superannuation to meet immediate living expenses can mean that severe financial hardship continues and can get worse. It can mean homelessness, being unable to escape domestic and family violence, continuing stress and/or family breakdown.

4

As at June 2017, Sunsuper is the 11th largest superannuation in Australia with assets of \$47,856M and REST is the 12th largest superannuation fund in Australia with assets of \$47,832M Source: <https://www.superguide.com.au/boost-your-superannuation/top-20-largest-super-funds#1>

The failure to allow access also leads members of superannuation funds to rollover to another fund that does allow access. This means that people (including Aboriginal and Torres Strait Islander people) move funds in desperation (and possibly incur exit fees and lose insurance protections, particularly around pre-existing injuries) even when moving funds may not assist with their long-term financial objectives. For example, the new fund may have less comprehensive insurance coverage or a pre-existing illness could mean that insurance coverage is non-existent or limited.

### RECOMMENDATION:

- All superannuation funds must permit the early release of superannuation on the basis of severe financial hardship.

## 2.4 Life expectancy of Aboriginal and Torres Strait Islander People

Should the lower life expectancy of Aboriginal and Torres Strait Islander people be taken into account in the decision-making processes of superannuation funds when considering how to administer or release the funds of Aboriginal and Torres Strait Islander people. If so, how?

Yes, the lower life expectancy of Aboriginal and Torres Strait Islander people should be taken into account in relation to the release of superannuation funds. The preservation dates for access to superannuation have been calculated on whole of population data and a life expectancy of 82.

The life expectancy for Aboriginal and Torres Strait Islander people is 10 years less. This is a significant difference. Superannuation retirement milestones are simply not aligned with Aboriginal and Torres Strait Islander aging, for example, 11.8% of the Aboriginal and Torres Strait Islander population are aged 55+ years (2016 Census).

Aboriginal and Torres Strait Islander people also have a higher than normal mortality rate between 45 and 64. This means there are a significant number of Aboriginal and Torres Strait Islander people who will die before they ever get to access their superannuation by reaching the preservation age.

It is not just the life expectancy that is relevant but also the burden of disease. Aboriginal and Torres Strait Islander people have 2.3 times the rate of disease burden compared to non-indigenous Australians. This means that Aboriginal and Torres Strait Islander people are more likely to be suffering chronic illness where access to superannuation may make a significant difference to improving quality of life. Poorer health contributes to premature death and accounts for 81% of the mortality gap between Indigenous Australians and non-Indigenous Australians.

An important motivational factor regarding Aboriginal and Torres Strait Islander people and superannuation is often overlooked here. While the general population is complacent in superannuation engagement, many Aboriginal and Torres Strait Islander Australians believe they will never live long enough to see retirement age, so choose not to prioritise superannuation, or treat it as an annual cash withdrawal for financial hardship.

We recognise that this issue is complex and requires balancing the interests of retirement savings, with the issues faced by Aboriginal and Torres Strait Islander people having both a lower life expectancy and a higher rate of chronic illness. On balance there needs to be a process in place so Aboriginal and Torres Strait Islander people can access their super earlier when they are dealing with chronic illness and the expectation of an early death. This concept is consistent with the release of super on the basis of a terminal illness. We suggest, however, that for Aboriginal and Torres Strait Islander people the early release should be more flexible with the ability to release superannuation up to 10 years before the preservation age. The release would be considered based on the following factors:

- the lower life expectancy of Aboriginal and Torres Strait Islander people;
- chronic illness(es) are confirmed by a doctor;
- the effect on the chronic illness(es) on projected life expectancy;
- whether the Aboriginal and Torres Strait Islander person is unlikely to live till preservation age.

### **RECOMMENDATION:**

- The lower life expectancy and higher disease burden of Aboriginal and Torres Strait Islander people should be taken into account to facilitate earlier release of superannuation in specified circumstances.

The above is a suggestion only. It will be necessary to consult further on how this type of release would work. Doing nothing and leaving the system as is, would mean that the superannuation system fails to serve Aboriginal and Torres Strait Islander people who are unlikely to ever use their superannuation retirement savings.

## 2.5 Binding nominations

Should the categories of person permitted by legislation to be the subject of a binding nomination be changed to reflect Aboriginal and Torres Strait Islander kinship structures? If so, how should the categories be broadened?

The binding nomination legislation should be changed to reflect Aboriginal and Torres Strait Islander kinship structures. Kinship structures determine the relationships between Aboriginal and Torres Strait Islander people. Two unrelated people, in European culture, can be in a strong and important kinship relationship in Aboriginal and Torres Strait Islander culture. Aboriginal and Torres Strait Islander people cultural obligation requires taking on other children from their extended family and those children are now their children. An issue for Aboriginal and Torres Strait Islander people is making sure money goes to a trusted person who will share it fairly among kin.

The Supervision Industry (Supervision) Act defines dependents in a western construct. Currently, binding nominations are limited to spouses and dependants. The concept of a dependant can be very difficult to apply for adult children, and children that are not related, or distantly related.

It is also noted that many Aboriginal and Torres Strait Islander people die intestate. This makes binding nominations an important way to take control of at least the payment of one asset (being superannuation).

### CASE STUDY

At a First Nations Foundation Big Super Day Out held in Redfern 2014, an Aboriginal mother came to the event specifically seeking assistance with nominating her children as beneficiaries for her superannuation. She was in a distressed family violence situation and concerned her perpetrator partner would take her life savings instead of these reaching her children for her education. She had tried three times by herself, unsuccessfully, with her fund to complete the paperwork for a binding nomination. When she was able to get the outreach help and support for this, she said she would have three years of sleep knowing her children would be cared for.

Considering the above circumstances, it is desirable to change binding nominations so an Aboriginal or Torres Strait Islander person can nominate a beneficiary(ies) and make that nomination binding.

### RECOMMENDATION:

- The binding nomination legislation should be changed to enable Aboriginal and Torres Strait Islander people to nominate a chosen member(s) of their kin as a beneficiary and make that nomination binding.

# 3

## Other issues in superannuation

Based on feedback from financial counsellors and financial capability workers there are a number of other reforms that are also needed in the superannuation system to ensure that Aboriginal and Torres Strait Islander people are treated fairly.

### 3.1 Difficulties with dealing with superannuation funds

First Nations Foundation, financial counsellors and capability workers regularly report that their Aboriginal and Torres Strait Islander clients have problems dealing with superannuation funds. There are multiple problems including:

- finding staff appropriately trained to understand cultural issues;
- finding and using plain language forms;
- improving and testing disclosure with Aboriginal and Torres Strait Islander people to ensure it is effective;
- getting help through phone lines;
- finding plain language information on different topics.

We recommend that each superannuation fund set up a dedicated phone line for Aboriginal and Torres Strait Islander people and their representatives.

To achieve a more culturally competent and responsive financial service, First Nations Foundation has been advocating with the superannuation industry to take up the option of developing Reconciliation Action Plans. These are corporate plans which embed at the highest strategic level, Aboriginal and Torres Strait Islander member needs and a reconciliation ethos. In 2016, there was only one super fund with such a plan. Today there are still less than 10 funds. It is a tried and tested corporate model with progressive stages which has benefited hundreds of corporations and government agencies.

We also recommend the superannuation industry invest and grow the capacity of the successful one-stop shop superannuation outreach events, called Big Super Day Out run by First Nations Foundation as a strategic investment. First Nations Foundation knows from previous experience



in setting up an Aboriginal and Torres Strait Islander credit union that to improve Aboriginal and Torres Strait Islander financial inclusion, the best return on investment is take the service to Aboriginal and Torres Strait Islander communities, as opposed to passive measures such as only investing in cultural awareness training or telephone lines. In effect, the non-profits or other community organisations are performing the work of the superannuation industry which receives \$31B in fees annually. Diverting that income to proven models such as outreach will achieve results like the \$14.5M Aboriginal and Torres Strait Islander superannuation the Foundation has located in 13 days, gives the super employees a volunteer opportunity to engage directly with Aboriginal and Torres Strait Islander communities, understand the challenges faced to engage in super, develop cultural competence and build the internal capability of the fund.

### 3.2 Multiple accounts

According to the ATO, 39% of the population have two or more superannuation accounts. The Productivity Commission (2018) estimates this erodes member balances by \$2.6 billion a year in unnecessary fees and insurance. Multiple accounts are a major problem because the fees and insurance premiums can negatively effect compounding and returns. This can lead to significantly less super on retirement. Based on a body of evidence from the Census indicating Aboriginal and Torres Strait Islander people have less secure employment and the experience of financial counsellors and capability workers, we believe that Aboriginal and Torres Strait Islander people are more likely to have multiple superannuation accounts. It is likely that this is due to a combination of factors including: difficulties with identity, such as different spellings of a name, casual work, losing track of superannuation details and/or simply leaving it up to the employer to choose the default fund.

#### CASE STUDY

At the 2017 Big Super Day Out in Brisbane, First Nations Foundation met an Elder who was no longer in the workforce and who did not believe he had any superannuation but had worked for many years doing odd jobs and labouring. When his Tax File Number was processed by the ATO at the event, we discovered he had \$37,000 across 7 accounts. Three further accounts worth just under \$15,000 had been eroded with fees. The Elder was completely surprised to learn he had this money available (he was above preservation age) and needed to have explained how this happened. Similar examples, some with less happy outcomes including a complete erosion of balances and some community members likening this to the “stolen wages” experiences of the past two centuries are common at the Big Super Day Out events.

It is acknowledged that the Government is working on issues relating to multiple accounts and lost superannuation. It is also acknowledged that superannuation funds do encourage people to find lost super and merge multiple accounts. These efforts are not sufficient or effective however, in resolving these issues for Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people in remote communities have limited access to technology to merge accounts or find lost super.

First Nations Foundation supports the recommendations of the Productivity Commission on entry and portability of superannuation funds so they travel with the worker, and the recommendation to limited to one default option only at commencement of the first superannuation relationship.

Superannuation funds need to be proactively doing this work including:

- data matching and merging accounts;
- visiting remote communities to facilitate account matching and finding lost super, preferably via a cultural model such as the Big Super Day Out;
- minimising fees and cancelling insurance on duplicate accounts;
- supporting community workers to reduce multiple accounts and assist their clients with resolving these issues.

### RECOMMENDATION:

- Superannuation funds must be required to proactively merge duplicate accounts and support Aboriginal and Torres Strait Islander people to do this.

## 3.3 Insurance in superannuation

Aboriginal and Torres Strait Islander people report a great deal of difficulty claiming on insurance in superannuation. Insurance in superannuation is offered as a benefit to members of that superannuation fund. It is supposed to provide coverage for those members when they are out of work (income protection), become disabled (Total and Permanent Disability) or die (Death benefit). The premiums for this insurance are significant, particularly relative to small balances, so it is essential that the insurance provide adequate coverage when needed.

### Lack of awareness – low financial literacy

Many Aboriginal and Torres Strait Islander people are unaware that they even have insurance coverage in their superannuation. Aboriginal and Torres Strait Islander people are signed up for superannuation as part of working, but disclosure is completely ineffective in letting them know they may have insurance coverage. When an event happens that could give rise to a claim

the person is not told about this right. In effect, the premiums paid are essentially a waste of money and worse, the premiums have significantly reduced a person's final retirement savings. It is not acting in good faith to take premiums for many years and then not make sure members know about their rights to claim.

### CASE STUDY: BROOME

A man came in to see the financial counsellor to enquire about getting a NILS (No Interest Loans Scheme) loan as his children were hogging his own telly and he needed another one. He lives on a Disability Support Pension and is around 60 years old. He has no assets and rents in public housing. The financial counsellor discovered the client had a TPD claim after he finished work due to a back injury. He was totally unaware of the entitlement. His super fund never contacted him about the entitlement. He was able to claim on TPD and get \$60,000 which meant he could buy a reliable car so he can take his family shopping in Broome. He is a changed man.

### CASE STUDY: PERTH

An Aboriginal man working on a mining site suffered a stroke resulting in a permanent acquired brain injury which affected speech and movement. His wife and carer was legally blind and they were caring for three children on government benefits. They were in dire financial straits until a director at First Nations Foundation heard of the story and asked if he had any insurance, after working previously as an educator for the State Government and on mining sites. He did have nearly \$600,000 in cover but then the challenge to activate this and prepare a claim had to be surmounted. It was only due to the offer of a pro bono lawyer and a pro bono accountant that the challenge of navigating the complexity of group insurance claims was successful and the family was able to make modifications to the home to care for the injured man, obtain respite support and afford to live.

Aboriginal and Torres Strait Islander people in remote communities need financial education to:

- understand the existence of group insurance cover in superannuation;
- understand the right and process to claim; and
- support to make a claim.

To make sure that insurance in superannuation is accessible for Aboriginal and Torres Strait Islander people the following changes are needed:

- at the start of every superannuation relationship, advice should be given to all employees that in their superannuation there is insurance cover available, explaining the three types and in plain language;
- human-centred design should be the basis for all information such as disclosure documents and a simple test for a member to complete which demonstrates effective disclosure incorporated;
- a process where employers have a positive duty and are required to notify the relevant superannuation fund if an employee is injured or disabled and stops work as a result;
- a process where an employer notifies the superannuation fund of the death of an employee;
- a process where the superannuation fund contacts the member when payments from work stop to provide information about making a claim if they have stopped work due to disability; and
- an effective process to contact the Aboriginal and Torres Strait Islander member (or their family members in the event of death) about making a claim.

Any process needs to recognise the issues relating to receiving letters in a remote community. Letters are generally an ineffective means of communication as they can be unclaimed, difficult to read and difficult to understand. The process needs to use a range of approaches including phone, letter, and contacting support people.

### RECOMMENDATION:

- Superannuation funds must improve disclosure and notify Aboriginal and Torres Strait Islander people about circumstances when they may be able to make a claim.

### Making a claim

ASIC Report 498 Life Insurance Claims: An industry review<sup>5</sup> raised concerns about declined claim rates and claims handling procedures for particular types of policies (notably Total and Permanent Disability). For Aboriginal and Torres Strait Islander people the issues with claims handling can be exacerbated even further by the following:

- difficulty accessing support including financial counselling and legal advice and representation to assist with making a claim;

<sup>5</sup> Life Insurance Claims: An Industry review October 2016 available at <https://download.asic.gov.au/media/4042220/rep498-published-12-october-2016a.pdf>



- hardship (both financial and physical) in accessing doctors and getting doctor's and other medical reports to satisfy requirements of the insurer;
- excessive requests by the insurer for documentary evidence that can be very difficult to collect when living in a remote community;
- being worn down by endless requests that cause further stress; and
- being given no indication on likely time lines which causes further stress.

The process for making a claim needs to be streamlined with set time frames so the claims process does not frustrate the claimant. The claims process also needs to be customised for Aboriginal and Torres Strait Islander people.

### RECOMMENDATION:

- Insurers must continue work in improving the fairness of the claims process for everyone. For Aboriginal and Torres Strait Islander people in remote communities (in particular) the claims procedure needs to specifically recognise the challenges they face.

### Insurance coverage

A final concern is the standard of insurance coverage offered for insurance policies sold through superannuation funds. There are no set minimum standards for insurance cover in the *Insurance Contracts Act*. Aboriginal and Torres Strait Islander people are unlikely to read a Product Disclosure Statement or make enquiries about the standard of the cover offered. Instead, like all Australians, they rely on the coverage being at least at a minimum standard to justify the payment of a premium.

ASIC Report 498 found that some insurers had claim denial rates of up to 37% for TPD claims.<sup>6</sup> This indicates either very poor claims handling, or the insurance simply does not cover what the members believe it should cover. In either scenario, there are real concerns that some insurance may not meet minimum standards and could be "junk insurance".

Group insurers also use a strategy of placing as many members at the higher end of risk on the employment profile, assuming they are a blue collar smoker, and using higher premiums as a default. (for example an office worker in a low-risk job could be paying considerably higher premiums than necessary). This should be disclosed and the employment profile regularly prompted for workers, rather than relying on this obscure knowledge which can cost a member hundreds of thousands of dollars in unnecessary and unrecoverable insurance premiums over a work lifespan.

<sup>6</sup> See 29 (a) Life Insurance Claims: An Industry review October 2016 available at <https://download.asic.gov.au/media/4042220/rep498-published-12-october-2016a.pdf>

## RECOMMENDATION:

- Members of superannuation funds should be entitled to expect that the insurance offered meets minimum standards. The *Insurance Contracts Act* should be amended to ensure that insurance offered in superannuation meets set minimum standards for coverage. In particular, Aboriginal and Torres Strait Islander people rely on the insurance to cover their higher rates of disability (compared to the national averages).

### 3.4 Superannuation and death

Aboriginal and Torres Strait Islander people in remote communities face a lot of challenges when seeking to access superannuation as a beneficiary. The issues with kinship have already been discussed in relation to binding nominations above. Binding nominations would only solve some of the many of the problems that financial counsellors and financial capability workers are seeing.

The problems are:

- many Aboriginals and Torres Strait Islanders die intestate. They do not have a will;
- even for the Aboriginals and Torres Strait Islanders that die with a will, the will is not binding on the superannuation trustee;
- the costs of obtaining Letters of Administration or Probate are prohibitive. In any event, if no real property is owned it should be possible to deal with the estate without the need for Letters of Administration or Probate;
- being unaware of how the process works for claiming superannuation as a beneficiary; and
- difficulty getting support to go through the process.

First Nations Foundation is in a partnership with the ATO through the Big Super Day Out and has been advocating since 2016 for basic changes to the accessibility of information for deceased claims, some of which are underway. The Foundation has also undertaken research with the superannuation industry which confirms it is an almost impossible task for any Aboriginal and Torres Strait Islander person to make a beneficiary claim unassisted. There is heavy reliance on financial counsellors, capability workers and pro bono professional legal and accounting services, on an unsustainable basis.

We submit that arrangements needs to be formally put in place to streamline this process and make it accessible for Aboriginal and Torres Strait Islander people to use. The process needs to be binding on superannuation funds.



We recommend that the process cover the following:

- the definition of dependant be widened to cover kinship;
- recognition that the costs of Probate and/or Letters of Administration can be prohibitive and should not be required unless necessary at law not just for the comfort of a superannuation fund;
- for low balances the evidence requirements be as simple as possible;
- notification of beneficiaries in the event of the death of the member needs to be more proactive and include letters as well as phone contact;
- for higher balances a process where a solicitor (usually a community lawyer) can provide evidence to the trustee on the matter; and
- financial support for Aboriginal and Torres Strait Islander people who are legally required to obtain Probate and/or Letters of Administration and struggle to afford the costs.