Super and default insurances

Can you rely on superannuation to provide death and disability cover for your employees?

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Superannuation and employee insurances – the real situation

Changes to legislation are further reducing the number of Australians who automatically get death and disability insurance cover as part of their employer's default superannuation arrangements. In short, the percentage of the Australian workforce without death and disability insurance cover is set to grow significantly^.

What insurances do my employees currently receive through super?

The 'Choice of Fund' legislation^^, introduced 1 July 2005, allowed many employees the option to nominate to have their superannuation guarantee contribution paid to a fund of their choice, instead of the superannuation fund their employer had chosen for their employees. If the employee did not elect a superannuation fund of their choice, then the employer was obligated to pay the employee's superannuation contributions into a 'MySuper' superannuation account within the employer's chosen superannuation fund (generally referred to in recent times as the 'default fund' as employees 'defaulted' into that fund if they did not make a choice). By law, MySuper superannuation accounts must provide both Death as well as Total and Permanent Disablement ('TPD') insurance on an 'opt out' basis. Superannuation trustees are free to choose the level of default cover they deem appropriate for their members (subject to prescribed guidelines). As such, there is a significant variance between funds in terms of the default cover they provide*. Superannuation trustees are not required to provide income protection insurance as part of their 'MySuper' default insurance arrangement (and indeed, a great many do not*). The fund an employee may have chosen to join did not need to be a MySuper fund and, as such, insurance of any kind is often not provided under such arrangements.

What are the changes to legislation?

The Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 ('PYS Bill') sought to cancel insurance cover in superannuation for members who met one or more of the criteria below:

1. any person under 25; or
2. any person with a superannuation account balance below $6,000; or
3. any person whose superannuation account had become 'inactive' as determined by a test of whether the account had received a contribution in the last 16 months.

Item '3' became law with the passage of the Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019 and came into effect from 1 July 2019. Insurance cover can be maintained if the member makes an election to the superannuation fund or makes regular contributions to their account.

Items '1' and '2' were postponed to later in 2019 and became law in October 2019 as part of the Treasury Laws Amendment (Putting Members' Interests First) Act 2019 ('PMIF Act), in what was effectively an extension of the PYS Bill. The requirements of items '1' and '2' took effect from 1 April 2020. Note: Default cover provided to these cohorts of members must be provided on an 'opt-in' basis only. That is, automatic cover is still available, but the member must actively make an election to the superannuation fund to provide cover. If the employer pays for the cost of their employee's insurance in superannuation (in addition to their legal superannuation guarantee contribution obligations), then the legislation does not apply.

The Government's 'Your Future, Your Super' reforms were announced in the October 2020 Federal Budget in response to the reports from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019) and Productivity Commission's review of the superannuation system. The reforms largely took effect from 1 July 2021.

The reforms contain 4 key components:

- 'Stapling' of superannuation – your super follows you when you change jobs
- YourSuper comparison tool
- Annual objective fund performance test
- Accountability and transparency measures

The 'stapling' component is particularly relevant from an insurance perspective. Presently, employees that join the employer's default fund (either through choice or by default) receive the default insurance coverage (subject to the PMIF Act). When stapling comes into effect 1 November 2021 (it was originally scheduled to take effect on 1 July 2021), it will materially change the rules for determining where an employee's superannuation guarantee contributions will be paid to. In short, from 1 November the rules are:

- If an employee has a stapled account (generally being a superannuation account they already have contributed to previously) and makes no election on joining an employer – SG contributions must be paid to the stapled account.
- If an employee does not have a stapled account and makes no election on joining an employer – SG contributions must be paid to the employer's default fund.

Can I rely on superannuation to protect my employees?

The short answer to this question is 'no' as these examples show:

John is a 21 year old who is about to finish his apprenticeship. He is playing rugby on the weekend when he is seriously injured in a tackle resulting in quadriplegia. He will need considerable on going medical care, major alterations to his place of living, and is unlikely to ever work again. Although John had joined his employer's default superannuation fund, under the changes which became effective on 1 April 2020 he would not have automatically been provided with insurance cover as he was under 25. John was not familiar with superannuation and the need for insurance. As such, he had not elected to take out cover with his super fund. John will most likely be reliant on the State and family for financial support for the remainder of his life.

Jane has recently been recruited by FakeNews Media and is achieving superb sales results for the organisation. Sadly, seven months into the role, Jane is diagnosed with breast cancer and will need a considerable period off work. Although she was in the company's default superannuation fund which has income protection, her superannuation account balance had not yet reached $6,000. She had not understood that automatic insurance cover did not commence until her account balance reached this amount. Her employer is now faced with the dilemma of continuing to pay her (while also looking for a replacement) or to cease paying her once her holiday and sick pay runs out.

Lucy, aged 29, has been with her company for seven years and has taken 24 months of maternity leave to care for her newborn. Lucy is a member of the company default superannuation fund. Tragically, 22 months into her maternity leave Lucy passes away from a brain aneurysm. Consistent with her company's maternity leave policy, Lucy has been paid for the first 3 months of maternity leave and thus superannuation contributions were paid for this period. Unfortunately, her account has been inactive for longer than 16 months at the time of her death and, while the superannuation fund had written to her, Lucy had not responded and so her death and TPD insurance was switched off. Lucy passed away with no death insurance cover, leaving her partner with a 22-month-old child to raise whilst trying to earn a living.

Simone, aged 31, will join a new employer in Dec 2021 after two years of being on maternity leave. Her new employer has always provided employees with income protection under a policy they, as the employer own and fund. Her new employer also has in place a 'default fund' with robust death and TPD insurance arrangements. Under the new stapling legislation, unless Simone makes an active election to join her employer's fund, Simone will have her contributions directed to her prior fund. The employer has no control over that fund's default insurance arrangements (or investment returns and fees) and thus cannot be confident with respect to the insurance cover Simone has. Simone had let her cover lapse in her last fund. As such, while Simone will be provided with income protection cover by her new employer, she will not have any form of death or TPD insurance cover.

What can I do to protect my employees?

1. Rely on the superannuation fund to educate superannuation fund members (your employees) on the importance of insurance

To be effective this requires the member to be sufficiently engaged with their superannuation (and related insurance needs) to take the necessary action to gain the insurance they need (or at least a basic safety net). Sadly Australians, particularly the younger cohorts, are generally disengaged with their superannuation and may be unlikely to take the action they need to.

2. Implement an employer funded arrangement via a 'group insurance' arrangement This allows you, as the employer, to take out a policy to provide coverage for all your employees (or a subset if you wish to reduce your costs and limit those to whom cover is provided). There are multiple ways to configure the cover – from a low cost, basic 'safety net' through to comprehensive death, permanent disability and temporary disability.

Please reach out to Aon to discuss your circumstances and how you can best protect your valued employees from these changes and ensure they have cover for death and disability insurance.

^ https://www.ricewarner.com/putting-members-interests-first-bill-will-it-work/

^^Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005 (Cth)

*KPMG Report: Review of default group insurance in superannuation

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CORP20210908