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Devils are in the detail in super life insurance

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Retired financial adviser Jeff Hudson has amassed 14 kilograms of letters and documents in the nine years he has spent fighting industry fund REST Industry Super.

At the centre of the fight is a life insurance payout for the shattered family of Garrath Donaldson, a former Franklins store packer who took his own life in 2007 at the age of just 22.

Garrath, like most other Australian super fund members, had been paying for life insurance through his super account.

When Hudson, a long-time family friend and a financial adviser of 43 years, took on the task of claiming on this insurance on behalf of Garrath's parents, it sparked a nightmare dispute over the fine print in the REST insurance policy, provided by Hong Kong-based AIA Insurance.

Hudson's is just one example of a super fund's trustees and insurer playing hard-ball over a "hidden nasty" in a life insurance contract provided through superannuation. It is the sort of stand-off that has embroiled hundreds, if not thousands, of Australians each year.

The $92,000 claim was rejected by REST and AIA on the basis that Garrath's account had fallen below $1200 and no contributions had been received for at least 62 days. This was despite him paying premiums and REST sending him statements until he died in November 2007, which stated he held insurance cover.

By law, millions of Australians are passively channelled into life insurance policies, paying $5.9 billion a year in premiums, which provide for income protection insurance and lump-sum payouts on death or total and permanent disability [TPD] – through "group" deals struck between insurers and super funds. They are structured on an "opt-out" basis, which means premiums are automatically deducted unless the member specifically opts out.

An investigation by Fairfax Media reveals that a slew of super fund trustees have recently been renegotiating life insurance contracts with insurers at a time when premiums are surging up to 200 per cent in some cases. Negotiations have become tense, forcing some super fund trustees to cop a massive hike or trade away some of their member's rights.

It can also reveal potential conflicts of interests as super funds get rebates from life insurers if they keep a lid on claims. In 2014, for example, REST received a $20 million rebate from AIA, though it told Fairfax Media that it remitted $14.5 million back to AIA the following year (it said the rebates were returned to members through stable premiums or services).

QSuper, which manages $60 billion of retirement savings, took the radical step of establishing its own life insurance company for members after it couldn't get a decent deal for members with an existing life insurance company.

But not all super funds are looking after their members.

The investigation suggests some, but not all, super fund trustees have given too much ground in these crucial negotiations, potentially rendering some policies junk insurance.

Lawyers warn that some clauses may be breaching the law.

These dud policies pose a problem for workers who might lose their ability to work in the future; threatening to erode this crucial financial safety net and worsen Australia's chronic under-insurance problem.

This ticking bomb comes as the spotlight is already on the $44 billion life insurance sector following revelations that CBA's CommInsure was denying some legitimate claims by using out-of-date medical definitions and claims managers were allegedly "leaning" on doctors to change their medical reports.

One financial adviser described the issue of TPD and income protection insurance in super as "one very smelly dung heap" and to handle with caution: "wear gloves, a face mask and carry a long-handled shovel".

Federal Minister for financial services Kelly O'Dwyer told Fairfax Media she has concerns about the lack of transparency in the financial arrangements between trustees and insurance providers. "[This] raises questions about whether some of these arrangements are in the best interests of members and whether members are receiving appropriate cover," she says.

Ms O'Dwyer says the government supports transparency in the financial system, "and especially in respect of the compulsory superannuation savings system".

Her comments come on the back of a draft report released this week by the Productivity Commission into the competitiveness and efficiency of the superannuation system. The report says it will look at the role of life insurance in super funds and whether trustees are offering the most "appropriate" insurance for their members, and whether the costs of insurance are minimised for the type and level of cover provided.

Time for a clean-up: Nationals senator John Williams.

Nationals senator John Williams, an influential critic of Australia's financial services companies, says the life insurance industry needs cleaning up. He is appalled by the Donaldson case.

As he puts it, if someone's home burns down and they have contents insurance, their claim doesn't depend on how much money they have in their bank account. "It is disgusting stuff," he says.

Williams, whose re-election to the upper house was this week confirmed, told Fairfax Media that he would relaunch the Senate inquiry into life insurance that was announced before the election – but would broaden it to look at life insurance deals in super and the role of trustees.

The Garrath Donaldson case has, in part, convinced him that the "opt-out" system of life insurance in super should be dumped in favour of an "opt in" system.

"I have big concerns that we have four or five million Australians with life insurance in their super and they don't even know they have it," Williams says.

"I think it should be an opt-in [situation], especially when, as I said, we're seeing stories about insurers failing to pay claims."

His comments will send a chill down the spine of those running Australia's super funds and the insurance industry.

Lost ground

Maurice Blackburn partner Josh Mennen, who specialises in superannuation and insurance, warns the new contracts mean that many more claims will be declined, leaving thousands of people who would have previously been entitled to lump-sum payments lining up for Centrelink benefits.

"[In this country] we have an under-insurance problem [and] huge levels of mortgage debt, and so we need a safety net with TPD insurance," he says. "We need to get it right, but the pendulum has swung too far the wrong way."

John Berrill, a life insurance lawyer with 25 years experience, points to a string of new conditions in group life insurance contracts that should pose "red flags" for members.

Berrill, a principal at Berrill & Watson Lawyers, says the differences in the policies may come down to a few subtle word changes or phrases. The importance may be lost on an ordinary person.

Features in some new contracts flagged as being of concern by legal experts include:

- "Sunset clauses": shorter time limits on how long after a "disablement" a person can easily claim TPD insurance, with at least one fund imposing a six-month limit.
- Activities of daily living tests, in which a person must prove, with medical evidence, that they are incapable of two or three tasks like showering, dressing, eating, toileting and moving in and out of a chair without the assistance of another person.
- Changes to what sort of work a person must be incapable of doing before they receive a payout, eg. instead of being unable to perform a suitable job given their background, qualifications and work history, they must be incapable of performing "any" other job for which they could be trained.
- Unusual exclusions; for example, disablement caused by accidental injuries or illness, which would, Berrill says, exclude injuries caused by assaults.
- New proposals to pay TPD claims in instalments, with the claimant needing to requalify every time to receive the next sum.
- Harder words about what constitutes TPD, for example, instead of the person being "unlikely" to be able to return to work, they must prove that they are "unable, ever" to return to work.

The fine print

Berrill points to the AIA Insurance contract offered through the BT Business Super and BT Lifetime Super Employer Plan, for example, which he says is difficult to qualify for anyone working in a long list of so-called "special risk occupations", including freelance journalists, property developers, radio announcers and musicians.

People on this list must not only prove they cannot work – they must also get medical certification that they are "continuously and totally unable" to perform at least two "daily living" activities unassisted, for example, showering and dressing.

"Very few people would be able to claim under this definition," Berrill says.

BT disagrees. In a statement it says members continue to be paid under the new definitions. A spokesman said the company sought to make insurance cover "more accessible" to members, including those working in special risk occupations "who otherwise may have been excluded".

AIA says it is "simply false" to imply that it was seeking to make it harder for members to make claims. "The opposite is true," says chief executive Damien Mu.

"We have actually invested to make the claims experience easier for claimants."

MTAA Super, which kicked off a new deal with MetLife Insurance in March 2015, says members must be "unable to ever" engage in work for which they could "become reasonably suited by education, training or experience".

Previously, members had to be considered "unlikely ever" to return to work. The current policy also excludes any incapacity not considered "accidental" – which Berrill said could exclude an assault or a repetitive strain injury.

MTAA said in a statement its current insurance offering provided "the most balanced, cost-efficient and appropriate insurance cover for all members". It said 87 per cent of claims had been paid out since March 2015 when the new TPD definition was introduced.

Sunsuper's life insurance deal with AIA involves delivering TPD payouts in annual instalments, a five-year limit on lodging claims, and a tough test of incapacity by changing the wording to "unable ever" to work from "unlikely ever" to work.

Sunsuper said in a statement its policy was aimed at providing "the right level of cover for members at the right time", as well as managing insurance costs. It pointed to research it had commissioned that found that 36 per cent of TPD claimants eventually returned to work or were seeking work. It said the changes to its insurance had resulted in a 30 per cent cut in premiums for members.

Super disputes involving disability cover are on the rise

YEAR ENDED 30 JUNE	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)
Administration	54.1	55.3	53.2	46.4	49.2
Death	33.2	32.4	30.5	32.5	28.7
Disability	12.7	12.3	16.3	21.1	22.1
Total (actual number)	1,496	1,589	1,457	1,364	1,586

Source: Superannuation Complaints Tribunal annual report 2014-15

A key issue is whether some of the new insurance contracts breach laws and regulations governing super, including those that define who should be considered "permanently incapacitated".

Berrill argues that some insurance contracts go too far in defining the level of incapacitation a person must be suffering to qualify for a payout. For example, Commonwealth regulations say a person must be "unlikely" to again work to be considered permanently incapacitated, but multiple super insurance contracts require a person to prove that they are "unable ever" to work again.

He believes the regulator, APRA, has been too focused on the liquidity and profitability of life insurers and dropped the ball on ensuring the new insurance contracts comply with the law.

APRA told Fairfax Media that it was aware of the recent "industry developments", and had advised the super and life insurance industries of the need to make sure arrangements complied with laws and prudential requirements.

The super funds and insurers contacted by Fairfax Media insisted their insurance policies complied with all relevant laws.

"The not-for-profit super industry recognises that insurance in superannuation needs to provide a meaningful benefit to superannuation fund members in a sustainable and affordable way," said Tom Garcia, chief executive of the Australian Institute of Super Trustees. "Trustees are very mindful of the need to address the current challenges in group insurance, such as rising claim rates and increasing premiums."

Back story

It used to be easy to make money selling group life insurance.

Millions of Australians paid for the products, but claims were low, partly because fund members didn't even know they could claim.

By the late 2000s, competition for superannuation life insurance business became cut-throat. Premiums were reduced, policies became more generous. Super fund trustees held all the bargaining power.

The crunch came in 2013, when life insurers were caught by surprise by a jump in claims for TPD payouts. Various reasons have been given for this spike – a rise in mental health claims related to redundancies and retrenchments, changes to workers compensation laws, greater awareness by members of their right to claim (often due to the advice of medical support groups and peak bodies) and the increased involvement of plaintiff law firms.

Because so few people had previously claimed, insurers didn't properly budget for what would happen if more people did. The industry's resulting plunge into the red was so dramatic that it alarmed APRA, which chided the industry for being too aggressive in chasing new business.

It is a matter of debate whether the industry is now being too aggressive in trying to recoup the massive losses posted earlier in the decade – or whether it is simply trying to find a "sustainable" pricing structure.

Jenni Baxter, head of consulting and research at Rice Warner Actuaries, says funds and insurers were trying to strike sustainable arrangements in the balance between contract terms and premiums, with the aim to keep premiums low enough that they don't "unreasonably erode" the growth of fund members' nest eggs.

"Where you see premiums starting to [go too high], it's in everyone's interest to try and bring them down," she says.

But Maurice Blackburn's Mennen says the knee-jerk premium increases and claims crackdowns by insurers have gone much too far the other way.

"The group life sector has blamed everyone but itself for the bad claims experience in previous years," he says. "It mis-sold its policies in a competitive market, what they are doing now is using that as an excuse to take draconian measures."

Berrill points to several super funds who have renegotiated insurance contracts without narrowing TPD definitions, including CBUS (which uses TAL insurance) and the Alcoa Retirement Plan negotiated with MLC this year.

Bad history

Australia's life insurance sector is already reeling after being hit by a scandal inside the Commonwealth Bank's insurance arm, CommInsure, following revelations by Fairfax Media and *Four Corners* that it denied or delayed some legitimate life insurance claims, many inside super funds including HESTA and Kinetic Super.

One included former star employee Matthew Attwater, who won a top award from the bank in 2010 for his performance at work, and was medically retired in 2013 following a vicious attack where he was beaten and his beloved dog decapitated. It took more than three years before a TPD claim was finally paid out.

Last year, APRA warned insurers that they couldn't simply "take a 'harder line" in considering claims in an effort to reduce claims costs.

And in May this year, it wrote to all Australian life insurers requesting information, including about their culture, claims philosophy, and how boards monitor whether claims are handled fairly.

Sally Loane, chief executive of the Financial Services Council (which represents life insurers), said life insurance was in the middle of the biggest reforms for decades, including the launch of a new Code of Practice, due in October, aimed at strengthening "community trust and confidence" in the sector.

Life insurance is an important product, but it needs to be right. Trustees have an obligation to act in their members' best interests and that means not being bullied into policies that are unfair.

The industry is scattered with examples of delays and denials. Look no further than FOS and the SCT. In the case of TPD payouts, it can be devastating for people adjusting to losing their livelihoods and work networks.

Mark Flannagan, from Kilsyth in Victoria, lodged a claim with MetLife through MTAA early last year. Flannagan had injured his lower back while working as a storeman in the early 1990s.

But eventually, the pain got too much, to the point that even odd jobs around the house, like vacuuming caused severe pain.

In 2013 doctors declared him unfit for the workforce – totally and permanently disabled – due to his chronic pain and the restrictions his back injury placed on his movements.

For someone who loved his job driving trucks, and took pride in being a hard worker, it was a "bitter pill".

Three insurers paid out after reviewing Flannagan's medical files, recognising the debilitating nature of his injury. But MetLife refused to pay for more than a year, with Flannagan's lawyers, Maurice Blackburn, accusing the insurer of "fishing" for information and engaging in semantics to deny his claim.

After he had battled for more than a year, MTAA says it has now decided to pay Flannagan's claim, a decision it says was made in "accordance with normal processes". The decision was made during the course of this investigation.

On the Garrath Donaldson matter, REST said it did not comment on individual matters, but that the rule removing insurance cover when balances fell below $1200 had been changed in July 2013, in part following "member feedback".

But nine years on, Jeff Hudson is still battling to get some closure for Garrath's family. "To leave this claim unpaid, would create a very dangerous precedent potentially allowing super fund trustees to downgrade administration standards to an absolute minimum and later rely on clauses in the trust deed to administer any claims which may be submitted." Unlike many, who might have given up, Hudson says it is a principle too important to ignore.

This story was found at: ***http://www.smh.com.au/business/devils-are-in-the-detail-in-super-life-insurance-20160805-gqlnlk.html***