

2017 ALUCA TurksLegal Scholarship 2nd Runner-Up Paper

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Bringing the Benefits of the Return to Work Philosophy to Superannuation?

Total permanent disablement benefits (“TPD”) were originally intended to compensate members for the superannuation contributions they could no longer make because they had become unable to remain part of the workforce. The traditional benefit design reflected this.

Changes in both product design and the way education, training and experience are being looked at in the context of TPD are moving in a direction that will enable insurers and trustees to help members return to work, sometimes through newly acquired skills and in new roles.

Discuss the role of new TPD benefit designs that provide for members to undergo rehabilitation and how they are different from traditional notions of TPD. How are the new aspects of TPD being implemented in the claims assessment process within claims departments?

What are the benefits of these new designs and what are the problems and pitfalls for both claimants and claims managers? What are the respective roles of rehabilitation and claims professionals working on a claim? What is the ideal dynamic for companies to achieve between them as they work together?

So far there has been little in the way of public debate about how the notion of returning people to work fits, if at all, with the objectives of the superannuation system as a whole. Conclude your answer with some comments about whether this change helps these objectives.

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1. Introduction and Thesis

Generally, in order to satisfy the TPD definition, a person must be permanently disabled and unlikely/unable to work ever again within their occupation, or any other occupation that is deemed reasonably suitable within their education, training and experience (ETE). To date, this has usually required a one off claims assessment, and if the member meets the definition, a one off lump sum paid. After the claim has been assessed, the relationship with the insurer ends. With the member also being able to access and withdraw their superannuation balance, sometimes this is the end of the relationship between the member and their superannuation fund as well.

There has been much discussion over the last few years about the sustainability of the TPD product for both funds and insurers, and most importantly, if the product is still meeting the needs of the member. Primarily the discussion has been around removing this one off lump sum payment, and moving the focus to assisting members to return to work. If a member has been assessed as being “TPD within their ETE” this means that an intervention needs to take place if this person is ever going to work again. A change needs to be made, by either changing their capacity, or changing their ETE.

What happens after the claim is paid? What happens to a member with a mortgage, family to provide for, and a disability now meaning they can never again work in any occupation that they are reasonably suited? That lump sum payment is not going to go far. In retail policies the sum insured is often much higher because the person has obtained advice and planned financially for a situation like this, but this isn't usually the case with Group TPD cover. While a lump sum payment may help ease financial stress initially, what happens for the next 10 - 20 years of that person's “working life”?

Discussion is starting to emerge about how assisting members back to work fits within the superannuation system. There is a massive opportunity for funds and insurers to do just that and it does compliment exactly what the superannuation system is designed to do. Superannuation in Australia is designed to be a compulsory means to save for retirement. The Financial System Inquiry of 2014 recommended the following primary objective of superannuation: *To provide income in retirement to substitute or supplement the age pension.* When the Superannuation Guarantee was first introduced in Australia in 1992, Treasurer Dawkins said in introducing the legislation:.

*The increased self-provision for retirement will permit a **higher standard of living** in retirement than if we continued to **rely on the Age Pension alone**. It would also enable future governments to improve the retirement conditions for those Australians unable to fund their own retirement adequately. Lastly, self-provision will increase the flexibility in the Commonwealth's Budget in future years, especially as our population ages, and will increase our **national savings overall**, thus reducing our reliance on the savings of foreigners to fund our development (O'Dwyer, 2016).*

How does assisting members to return to work fit within the superannuation objectives?



It is clear the concept of return to work absolutely fits within the objectives of superannuation.

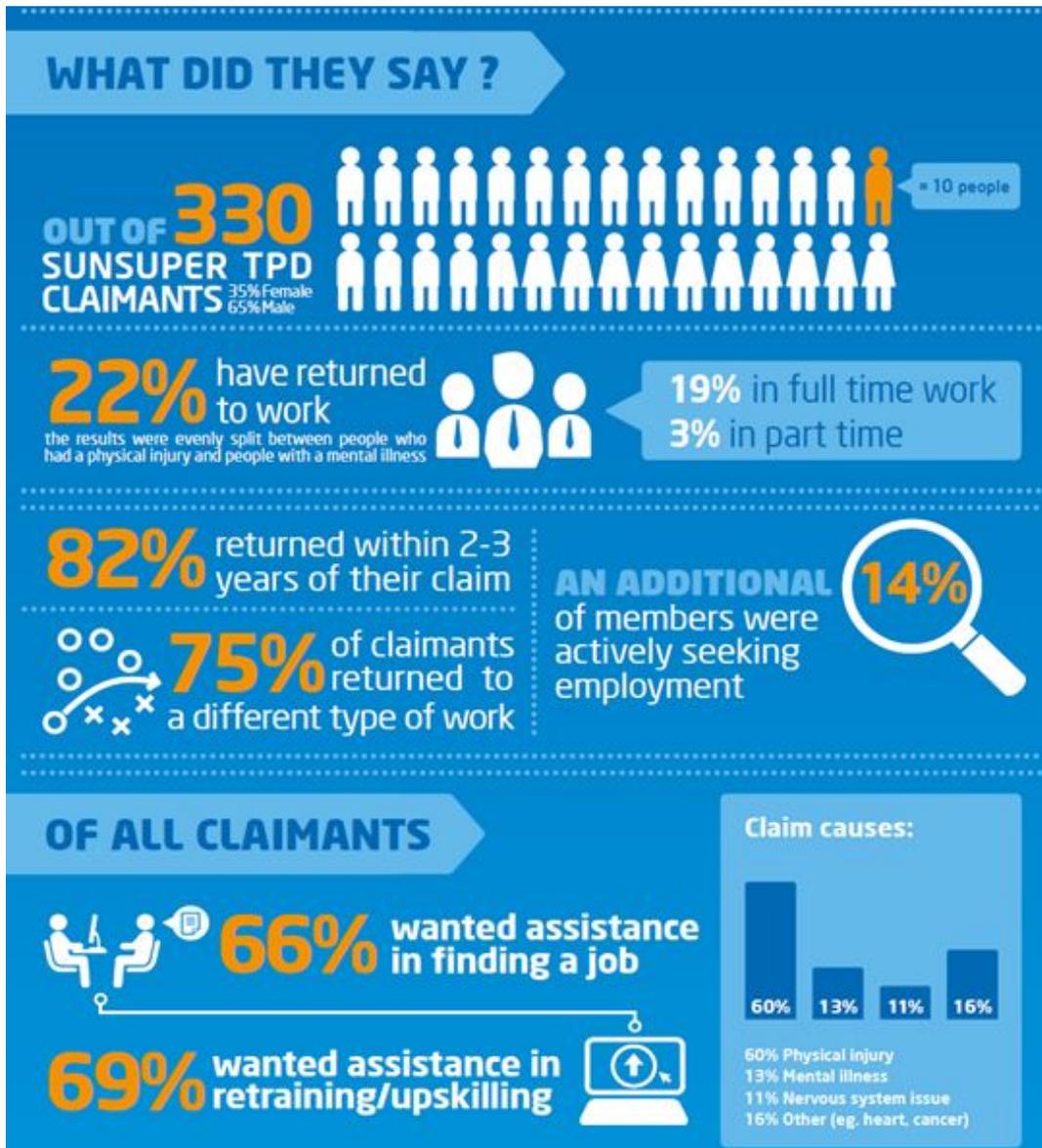
2. The role of new TPD benefit designs that provide for members to undergo rehabilitation and how they are different from traditional notions of TPD

As mentioned above, traditional notions of TPD would entail a one off claims assessment and a one off payment. Sunsuper's TPD Assist innovative product design assesses TPD but also focuses on ability. It focuses on assisting the member to return to the workforce by either obtaining new skills or experience and/or by building work capacity; hence the name change from TPD to TPD ASSIST. The product provides for an initial payment if the definition is met, 1/6th of the sum insured, and then an annual assessment over 5 years and subsequent 1/6th payments if the definition continues to be met. Occupational rehabilitation is provided to suitable members, to assist with developing work capacity in line with the definition, and to return to work.

An example candidate for occupational rehabilitation may be a member who has always worked in manual labour intensive roles, but can no longer do so due to a physical medical condition. The member is assessed as meeting the TPD definition and has capacity to work in a light-sedentary role only, but they are not employable as they do not have the necessary ETE for such roles.

In order for the member to be able to return to suitable work in this case, occupational rehabilitation via up-skilling/re-training would be required. This occupational rehabilitation will be provided by the insurer. The aim is to enable the member to be able to return to the workforce in a sustainable capacity, therefore there would be no need for the member to further claim TPD in the subsequent years.

Where did this design come from? Sunsuper and AIA conducted research with TPD claimants to find out what they had been doing 5 years post claim acceptance. They attempted to survey 1000 members aged 41-60, 330 were able to be contacted. Sunsuper and AIA's findings are below.



Research conducted jointly by Sunsuper and AIA in June 2015.
Source: Innovation in TPD Product Design A Case Study, 2016.

It is worth noting that there were a further 670 claimants Sunsuper had phoned multiple times at home during the working day and had been unable to be contacted (Rowley, 2015).

Sunsuper's research is compelling; members want to return to work. 22 percent had already returned to work, 14 percent were actively trying, and 66 percent wanted help to find a job. Returning to work after a significant injury or permanent disability however is not an easy feat. A successful return to work following disability requires proactive and collaborative support from a range of parties; the member, treating medical professionals, rehabilitation providers, employers, family, friends, and work colleagues (Awang et al., 2016). This is not simple, and often assistance is required. There is little, if any at all, Australian research available on permanent disability insurance recipients and occupational rehabilitation services. There is however extensive research that concludes occupational rehabilitation works.

An American study by O'Neill et al. (2015) examined the relationship between services provided by state occupational rehabilitation providers and return to work outcomes of Social Security Disability Insurance beneficiaries. It examined those who enrolled in occupational rehabilitation services and compared and matched those participants to those who did not enrol in these services. They matched and compared the recipients based on demographic variables such as state of residence, impairment codes, age and benefit payments. They examined the progression to substantial employment over a 10 year period. The study confirmed that those enrolled in occupational rehabilitation did substantially better than those who did not take up occupational rehabilitation. The study confirmed the timing of the positive employment outcomes is strongly associated with the timing of occupational rehabilitation. The study found that occupational rehabilitation can reduce the cost of disability support programs, by enabling participants to return to work sooner, compared to those who do not access occupational rehabilitation (O'Neill et al., 2015).

A further study by Weathers and Bailey (2014), again looking at American Social Security Disability Insurance, concluded that adding occupational rehabilitation services to the disability management of participants, lead to a 50 per cent increase in employment. They concluded that health insurance alone is not responsible for increasing employability, it was occupational rehabilitation and vocational counselling services that led to the increase in labour market activity and earnings of participants.

3. How are the new aspects of TPD being implemented in the claims assessment process within claims departments? What are the respective roles of rehabilitation and claims professionals working on a claim? What is the ideal dynamic for companies to achieve between them as they work together?

The claims assessment process will need to be modified. While the initial assessment of a TPD claim will continue to review capacity in respect to the definition, further consideration will need take place to determine if the member is suitable for occupational rehabilitation, as well as further assess if the member continues to meet the TPD definition at each assessment date (in a model such as previously outlined, where there is an annual assessment up to 5 years). As mentioned above, occupational rehabilitation is complex and a successful outcome depends on a lot of variables. Occupational rehabilitation needs to be a partnership approach, between the member, their treating medical professionals, rehabilitation professionals and the insurer. Several studies have highlighted the importance of these relationships. It is suggested that these relationships can heavily facilitate or obstruct the claimant's recovery and return to work (Kilgour et al. 2015).

It is important to seek medical advice around the suitability of occupational rehabilitation. Having the treating GP on board can be a vital part of the process. Claims and Rehabilitation professionals need to screen and triage cases to determine potential suitable candidates, followed by initial rehabilitation assessments to confirm suitability. Rehabilitation professionals are important in determining this because they are the experts in this field. Occupational rehabilitation is complex, multifaceted, and is not suitable for everyone. The timing and appropriateness of rehabilitation services must always be considered.

The ideal dynamic is a partnership approach. While the claims assessor is likely to be very involved initially in the claims assessment process, once the TPD determination has been met, the main involvement and interaction with the member may then move to the rehabilitation professionals to develop the rehabilitation plan with the member.

Training and up-skilling of claims assessors is also extremely important to enable the claims assessor to better understand occupational rehabilitation. While rehabilitation in TPD is a brand new initiative, insurers, claims professionals and rehabilitation professionals can take learning from other insurance schemes where occupational rehabilitation is already provided.

Kilgour et al. (2015) identified and synthesised published qualitative research into the interactions between injured workers, health care professionals and their insurers, which found supportive client-centred approaches between all parties are essential to successful outcomes. They described the strongest theme to emerge within the qualitative data, was specific actions by insurers which functioned as counterproductive. These included injured workers reporting behaviours or attitudes of insurers which indicated pervasive distrust that served to undermine positive relationships. Injured workers were concerned that insurers did not listen to them or did not fully understand the impact of their injury on their lives. These findings are extremely important to learn from and reiterate that a partnership approach is critical to the success of the program. Positive influences mentioned in the study were when the insurer adopted a supportive problem-solving approach, injured workers responded well to this. They then viewed claims managers as an ally. It is clear that all parties need to be working towards the same goal of helping the member to return to work, but ensure it is at the right time and in the right way.

AIA Australia released its Principles of Best Practice in Occupational Rehabilitation (2014), where the principles were developed as part of an independent research project which drew upon data collected from studies all around the world, including return to work data, rehabilitation practitioner and employer research, as well as qualitative insights from claimants who have participated in the rehabilitation and return to work process.

The six principles identified include:

1. Work is good for health and business.
2. Screening: part of a strategic claims management process.
3. Claimants are supported and empowered.
4. Support the right intervention at the right time.
5. Communicate, collaborate and educate effectively.
6. Focus on outcomes.

These best practice principles need to be considered and implemented within the claims management philosophy.

4. What are the benefits of these new designs and what are the problems and pitfalls for both claimants and claims managers?

Benefits of this new design:

1. Provides rehabilitation and return to work support to members where previous TPD designs have not allowed for this.
2. Encourages the member to return to suitable and sustainable work, providing for a better lifestyle, and essentially a more comfortable retirement due to being able to independently generate income again.
3. Return to good work has many benefits to a person, not just financial, this can include; increased mental wellbeing, increased physical health, positive relationships and increased social interaction and supports (RACP Consensus Statement on the Health Benefits of Good Work, 2017).
4. The superannuation fund retains the member and super contributions from paid employment recommence.
5. The reduction of claims costs due to members returning to work can result in reduction of premiums, which helps to ensure Group TPD insurance can stay affordable for insurers, funds and most importantly members.

Problems/Pitfalls	To Who	How to overcome and other considerations
The claimant expecting a “lump sum payment” however will only receive a portion of the sum insured initially.	Claimant	The policy terms need to be explained clearly upfront as soon as possible so the member has an understanding and clear expectations of the claim process.
Some claimants will never be suitable for occupational rehabilitation due to the severity of their condition.	Claimant	Insurers need to consider those claimants where occupational rehabilitation will never be suitable and have provisions where a lump sum can be paid instead.
This is no longer a one off assessment, therefore there will be an increased claims portfolio.	Claims Managers	Adequate staff resourcing needs to be considered and implemented to ensure caseloads are manageable. Claims systems will need to have the technology to assist with claims tracking to ensure efficient assessments.
Some claims managers do not have experience with occupational rehabilitation.	Claims Managers	Sufficient training and support needs to be provided to claims managers around occupational rehabilitation. Internal Rehabilitation Consultants will be important in providing this ongoing training and support.

5. So far there has been little in the way of public debate about how the notion of returning people to work fits, if at all, with the objectives of the superannuation system as a whole. How does this change help these objectives?

As discussed above, returning people to work absolutely fits within the objectives of the superannuation system as a whole. With superannuation’s primary objective being; *To provide income in retirement to substitute or supplement the age pension* (Financial System Inquiry, 2014), returning people to work after injury or disability will only compliment this objective.

While TPD benefits were originally intended to compensate members for the superannuation contributions they could no longer make because they had become unable to remain part of the workforce, it is clear members want more than this. It is clear that people want to return to work after disability, and it is achievable. Superannuation funds and their insurers have a unique opportunity to help members do this.

The benefits of returning to work are paramount, not only to the person who has returned to work by increasing their retirement savings, physical and mental health outcomes and their quality of life, but extending to wider society as well through the economic benefits of decreased government health and social security spending. By bringing the benefits of the return to work philosophy to superannuation, funds, insurers, members and the broader community win.

Assisting with return to work fits perfectly within the objectives of the superannuation system and the research indicates that altering the TPD framework to include timely, well directed occupational rehabilitation to members can result in health and economic benefits for society as a whole.

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