

2016 ALUCA TurksLegal Scholarship – 2nd Runner-up

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Question

IS TPD A SMART BENEFIT TO HAVE IN AN ERA OF CHANGE?

One of the critical aspects of the standard TPD definition is the requirement that the member be disabled from work within their current “education training and experience” (“ETE”).

Do you think the role of ETE as part of the TPD benefit serves a useful purpose? In particular, do you think it still makes sense in light of the changing work environment of the 21st century, where a growing proportion of work is part-time, flexible and people are expected to retrain, maybe several times, during the course of their careers?

Additionally, what other changes to the traditional lump sum TPD product do you consider would be beneficial to insurers, customers and the community at large?

The time has come for lump sum TPD to be totally and permanently disabled.

Total and Permanent Disability (TPD) Insurance is the child of a long-gone era when Australians died in the town they were born, where many towns were dominated by a single employer – a mine, a factory, a car plant - and university education was rare. Australians went straight from school to work and remained in the same job till they retired. Families had a sole breadwinner – overwhelmingly male (government jobs were not opened to married women until 1966, for instance) (1) and the opportunities for career change were limited. Until very recently Australia had two supermarkets, two car manufacturers, two breweries, and no more than two Prime Ministers per decade. It was the era of the job for life, but in this context the loss of employment through illness or injury could be devastating and permanent.

As well as workers who sustained catastrophic injuries such as paralysis or limb-loss, even a relatively minor disability could leave someone unemployed and unemployable. Opportunities for adaptation or retraining were few, and the factory worker who couldn't stand, or the office worker who couldn't sit, found themselves on the scrapheap, often with a mortgage and a family to feed.

Lump sum insurance benefits to cover debt and provide for the future were not just advantageous but essential, and thus we have TPD, whereby a claimant is assessed on the likelihood of them returning to employment within the scope of their Education, Training, and Experience (ETE).

For the miner in a mining-town whose back injury means he'll never mine again, this is a simple assessment, but is this the world we live in anymore?

When Australians are more mobile and better educated than ever, and the average Australian leaving school today will have five separate careers and work for seventeen employers (2), is the ETE definition fit for purpose?

A brave new world

The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn and relearn – Alvin Toffler

Whilst our definition has remained static, our workforce has become dynamic. The modern Australian is educated and constantly updating their skills. Since 1989 the number of people of working age with a bachelor's degree or higher has tripled to just over 25% (3) and direct government funding for teaching, learning, and research has more than doubled in real terms (3). As of May 2015, 3 million Australians aged 15 – 64 were enrolled in formal study, and 59% of people aged 15 -74 had completed a non-school qualification. (4)

This has enabled Australians change jobs and careers more freely, with the latest statistics indicating 1 in 5 Australians have been in their current position for less than a year, and 60% have been at their current job for less than five years (5) Gone are the days of one job, one company for life.

Professor Johanna Wyn, Director of Melbourne University's Youth Research Centre stated "You pick up the skills you need as you decide you need them, (nowdays) there is a more open market around gaining educational skills as you need them" (6).

Above all, the Internet especially has transformed the workplace, and that workplace is no longer 9 -5 at a desk in an office Even the Federal government has made it a target for 12% of public servants to work from home by 2020 (7). Flexible working arrangements are increasingly accessible. From 1979 to 2009 the number of people working part-time increased from 16% to 29% (8). Task-based or project-based work has changed the work hour requirements and allows for self-pacing of work (9) for people with unpredictable work hours, or those requiring regular breaks. Employment contracts in the 21st century are increasingly 'transactional' (10).

The evolving nature of work can enable people to enter occupations that were previously inaccessible to them (9). Digitization has changed the way businesses operate creating new employment and

expansion of industries (9). With a large number of people being accessible from multiple locations, the issues related to access to employment can be reduced (9).

With technology and adaptations, many barriers to employment are being removed. Voice-activated software and video-conferencing may have been seen as futuristic in times past, but they are a reality, and easily accessible for reasonable costs to enable people to continue working, where in the past this may not have been possible. Vehicle adaptations can be made to enable even bilateral upper limb amputees to operate a car. With innovation today, people have much greater opportunities to remain in work that is inherently good for them.

It is not just our preparation for work and the way we work which has changed – it is the very work we do. Nearly a million Australians now work from home (7), and many of us in jobs which until recently didn't exist. Even ten years ago, who had heard of Social Media? Today, Facebook alone has 1.71 billion active users (11) and is valued at around US\$350 billion (12), making it the sixth most valuable company in America (12). Facebook didn't exist the last time Australia won an overseas Ashes series or the Bledisloe Cup. In such a fast-changing environment, how can we say someone will never work in a job which hasn't yet been thought of?

The labour market and technology is evolving to create opportunities that haven't existed in the past, and our failure to consider the changing nature of work and provide our customers with opportunities to participate in work is a sign we as an industry are living in the past.

In today's world, how can we argue that the ETE definition is fit for purpose?

Paved with good intentions

While Retail TPD Insurance – where individuals choose tailored policies through advisors to suit their specific needs, and pay a significantly higher premium - has been less of a concern, Group TPD policies - offered as default through superannuation funds and usually without underwriting – have become a major issue for the Life Insurance industry.

Profitability for group Death and TPD started to decline in June 2013 and continued for a year. Losses totaled \$500 million, which when put in perspective was more than the total profits for the three preceding years (\$400 million). (13). Following a period of poor claims experience, reinsurers ceased quoting for new TPD business, and renewal business was conditional of changes to contract terms (14). With increased risk to group insurers, premium increases became apparent for many group policies (14).

A combination of factors has brought Group TPD insurance to this low point. Poor underwriting controls and loose policy definitions left the industry vulnerable to a growing storm (14) – a storm we should have seen coming.

A greater public acknowledgement of common mental health conditions, and increased awareness of insurance held in super, both contributed to an increase in claims (14). Changes to workers compensation to reduce or eliminate lump sum payments and tighten requirements for ongoing payments, has driven both claimants and lawyers to TPD insurance (13). New freedoms for law firms to openly advertise to the public attracted a significant increase in their involvement (13), adding a new dynamic to Group TPD, and some of the claims they advocated – particularly long-tail claims - pushing in to territory not previously anticipated.

The net result has been a blow-out in claims numbers, claims costs, processing times, and an increasingly adversarial nature to TPD claims. Group TPD policies are no longer serving insurers, but more importantly are not serving the needs of the members.

When a member has exhausted workers compensation benefits or access to other schemes, often the only fall-back they have is TPD insurance, therefore otherwise temporarily disabled people are encouraged to claim TPD, with the financial incentive of proving their incapacity. With the lure of a large lump sum, members are encouraged not to participate in rehabilitation and return to work, and lawyers have increasingly been engaged to provide advice and navigate an unfamiliar claims process

and complex policy and definitions. The black and white nature of the current TPD benefit structure perpetuates issues of increased lawyer involvement (15), with legal fees eroding payouts, and an avoidance of appropriate treatment, and support services to increase wellbeing and return to work (15). Is a lump sum the most effective form of benefit? Or can we provide a better member experience?

Sunsuper interviewed 330 TPD claimants five years after their TPD claim had been paid, and found that 66% of people wanted assistance with finding a job and 69% wanted assistance with retraining. Of the people interviewed 22% had returned to work (19% to part time work and 3% to full time work) and a further 14% were looking for work (16). 660 other claimants were contacted during the work day and were not able to be reached. And it is worth noting that the age group contacted were 41 to 60yo, which would have a lower likelihood of return to work than younger claimants (16).

AustralianSuper introduced an optional advanced rehabilitation service for TPD claimants, which has seen an up-take of 55%. (16).

Members are crying out for assistance and we are leaving them with the money but not the resources.

MySuper was a part of the Stronger Super reforms, effective 1 January, 2014, whereby products were authorised as MySuper products and are required to offer standard, default TPD and life insurance, and have the choice to offer income protection insurance (13). MySuper legislation has gone a long way to bridge the underinsurance gap in Australia, being an important mechanism to distribute disability insurance products (13). However, the reality is that a 40-year-old member is 200 times more likely to need income protection than a TPD benefit and many funds choose not to offer default income protection insurance (17).

Clearly a lot of TPD claimants are really in need of IP cover and could benefit from access to rehabilitation assistance.

Hadler (1996) perhaps says it best – “If you have to prove you are ill, you can’t get well” (19). The Health Benefits of Work Position Statement provides evidence to encourage a paradigm shift to acknowledge that work is generally positive for health (18). The current design of TPD benefits works against this statement and does not allow its signatories to fulfill their requirements. Health professionals are encouraged to provide medical certification that their patient will never work again, which can have a significant psychological impact, and insurers have limited contact with members and are unable to provide rehabilitation assistance. Are we actually doing more damage than good?

Greenborough and Fraser’s (1989) study on the health impacts of compensable claims, found that people claiming lump sum benefits had much worse health outcomes than those on intermittent payments (19).

The claims process and litigation processes are often protracted, stressful, and may encourage preoccupation with incapacity associated with injury or illness (20). Suggestions of long-term incapacity may become apparent in this process, and people may be encouraged to repeatedly re-live an event (20). Psychological factors can have a significant impact on recovery and litigation can have a huge impact on this (20).

The Road Ahead

The industry has already suggested a product change involving a hybrid IP/TPD benefit (15). A small initial lump sum benefit has been considered, with the purpose of paying for treatment and lifestyle changes (15). Not only would a smaller lump sum limit legal interest (15), but it would provide more timely access to benefits which would reduce the financial burden and associated psychological distress that often accompanies unexpected injury or illness and that can significantly impact recovery.

It is suggested that following the initial smaller lump sum, staged regular IP-style payments be made to the member for a defined period, allowing an ongoing relationship, where their condition can be

managed and rehabilitation and return to work support can be initiated. There should be a focus on early intervention and rehabilitation (13) without a fear from the member that they will lose entitlements for displaying capacity or attempting to better their situation. The number of people that return to work after payment of a TPD benefit (21) suggests that insurer risk will be mitigated by providing this assistance, and the number of people requesting assistance to find employment or engage in retraining indicates that many people consider they do have work capacity even after being deemed unable to work again. This style of benefit enables insurers and health professionals to reinforce the health benefits of work, increasing the wellbeing of our customers. The reduction in claims costs would also make it a more sustainable product. With SunSuper's new TPD product - incorporating reduced waiting periods, introduction of rehabilitation, and staged benefit payments - a premium reduction of 15% has been passed on to members (21).

Incentivizing early notification to claim is also important and insurers may consider a monetary incentive for notification to claim within the first few weeks of absence from work, as there has been a great deal of evidence supporting better return to work and health outcomes with early notification and engagement with some work activities.

The road ahead may difficult to navigate but the direction is clear. Lump sum benefits are no longer sustainable or desirable and the sooner they are replaced with IP-style benefits the sooner group cover will serve the purpose it's intended for: serving the insurance needs of the members at an affordable price.

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