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Crisis Point for Insurance in Superannuation?

Legal issues for trustees in group insurance arrangements

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Introduction

- Stronger Super reforms
 - Insured benefit must be ‘consistent with’ condition of release
 - Fund must provide ‘permanent incapacity benefit’ for MySuper members
- Highlighted uncertainties of interpretation in SIS Regulations
- Paper focuses on uncertainties as impediments to reform of product design

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Can a member receive an income protection benefit if they are permanently incapacitated?

‘temporary incapacity’

- in relation to a member who has ceased to be gainfully employed means:
 - ill-health that caused the member to cease to be gainfully employed;
 - but *does not constitute permanent incapacity*.

‘permanent incapacity’

- if trustee is reasonably satisfied that:
 - member’s ill-health makes it unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience

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Cashing restrictions

‘temporary incapacity’

- non-commutable income stream
- for purpose of continuing (whole or part) gain or reward member was receiving before the temporary incapacity
- for period not exceeding period of incapacity from employment of the kind engaged in immediately before the temporary incapacity

‘permanent incapacity’

- one or more lump sums
- one or more pensions / annuities

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If member's condition is 'permanent incapacity', can benefit be income stream based on pre-disability income?

'temporary incapacity' condition of release prescribes non-commutable income stream for purpose of continuing pre-disability income (part or whole)

'permanent incapacity' condition of release prescribes one or more lump sums or one or more pensions/annuities that comply with pension/annuity standards

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Other interpretation issues

- Indexation of income benefits – does the ‘temporary incapacity’ condition of release limit the extent of permitted indexation?
- Can temporary incapacity benefits be paid to a member who was unemployed?

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Can trustees restrict the circumstances in which incapacity benefits are payable?

- Restricting the definition of ‘total and permanent disablement’ would be ‘consistent with’ condition of release
- For a MySuper product:
 - What are ‘reasonable conditions’?
 - What are the trustee’s obligations for assessing restricted definitions of ‘total and permanent disablement’?

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Comments and Conclusions

- Uncertainty is an impediment to reform of product design
- Is legislative reform desirable?