



Richmond and Bennison

SUPERANNUATION AND INSURANCE CLAIMS – A GUIDE TO DEATH, TOTAL AND PERMANENT DISABLEMENT CLAIMS AND TOTAL AND TEMPORARY DISABLEMENT CLAIMS

This guide includes the following:

- Compulsory superannuation contributions and benefits available.
- Period of insurance coverage.
- Payment of death benefits.
- Total and Permanent Disablement – what is it?
- Making a claim.
- Effect of a superannuation lump sum or pension on WorkCover weekly payments.
- Grounds for withdrawal of superannuation contributions.

Compulsory superannuation contributions and benefits available:

Most workers are members of a superannuation fund. Since 1992 workplace superannuation has been compulsory. At present employers are required to contribute 9% of wages into a superannuation fund.

Ideally an employee will contribute to a superannuation fund until retirement age and fund a comfortable retirement. Unfortunately not everyone is able to continue working to retirement age. Many funds arrange group life insurance for its members and deductions are made from contributions to pay for this insurance. Others arrange their own personal insurance to protect them against the risk of being unable to work.

The most common forms of insured benefits are death benefits and total and permanent disablement benefits. Sometimes funds have a temporary and total disablement benefit or salary continuance benefit.

Period of insurance coverage:

Generally insurance cover only lasts for one month or two months after the last superannuation contribution has been paid. After this the insurance period expires. If a person wishes to claim a death, or total and permanent impairment insured benefit, they must prove the death or disability occurred in the insured period.

Payment of death benefits:

It is common for members of funds to be requested to nominate beneficiaries to whom the member wishes the benefit to be paid. The Trustees are not bound by this nomination. Most superannuation funds are required to pay the benefit to dependants of the member or the estate of the member. The trustees have discretion when deciding the proportion payable to each dependant.

A dependant is a person who was financially dependant upon the member, emotionally dependant upon the member or was entitled to receive financial assistance from the member. This can include children, step children, parents and spouses.

If a dependant is unhappy with the decision of the Trustee he or she may apply for review of the decision, and if still unhappy, can have the decision reviewed by the Superannuation Complaints Tribunal.

Total and Permanent Disablement – what is it?

Total and permanent disablement is usually defined as the loss of a variety of limbs or as a narrative description similar to the following:

“having been absent from work for six consecutive months, the worker is unable to return to his/her pre-injury work or return to an other employment for which the worker is suited by education, training or experience.”

Making a claim:

Upon request, a superannuation fund will provide a number of claim forms that must be completed and the fund may also request additional information. A member can also provide further information which he or she believes should be considered in determining their claim. The fund or its insurer may write for medical and other information. The answers provided by a member can be very important and the process can be quite complex.

If a claim is rejected, a review of the claim can be requested. Generally a fund will agree to review a decision upon the receipt of further relevant material. If the review is unsuccessful, the decision can be reviewed by the Superannuation Complaints Tribunal. If a member wishes to seek review from the Superannuation Complaints Tribunal it must be requested within two years of the date of resignation of employment and within twelve months of the date of decision.

Alternatively a claim for damages for the loss caused by the rejected claim can be made in a court. The member then needs to establish that the fund breached its duty to the member, for example, the fund did not act in good faith. If the fund could reasonably have reached the decision made, it will not be overturned by the court and sometimes claims will be sent by a court back to the fund for re-determination.

The effect of a superannuation lump sum or pension on WorkCover weekly payments:

If superannuation contributions or an insured benefit are accessed, a worker will probably face a preclusion period during which weekly payments from WorkCover will be suspended.

The *Accident Compensation Act 1985* requires workers who receive a superannuation lump sum or pension to notify their claims agent. This must be done within fourteen days of first receiving payment. If this is not done the worker can be found guilty of a criminal offence.

If a worker wishes to withdraw their own contributions and use these whilst receiving WorkCover weekly payments, permission must be obtained from WorkCover to use the contributions. This will only be approved for approved capital expenditures.

If a benefit is received and rolled over this will not effect the worker's entitlement to WorkCover weekly payments. If rolled over the benefit will accumulate interest compared with the unclaimed insured benefit the amount of which remains unchanged until granted. The benefit can then be accessed once the entitlement to weekly payments ceases.

Grounds for withdrawal of superannuation contributions:

Normally contributions are preserved until after a person has retired from the workforce after 55 years of age.

In certain circumstances early release can be obtained. These circumstances including the following:

- *Severe financial hardship* – a person must be in receipt of a commonwealth income support payment, and have been in receipt of that benefit for the last 26 weeks continuously and satisfy the fund that he or she is unable to meet reasonable and immediate family living expenses.
- *For payment of medical treatment* where the treatment is necessary to treat a life threatening illness or injury, or to alleviate acute or chronic pain or mental disturbance, and where such treatment is not readily available through the public health system.
- For payment of *medical transport* necessary for medical treatment as described above.
- For *modifications to the family home and/or vehicle* to meet the special needs of a disabled member or his or her disabled dependant.
- *Palliative care, or death, funeral or burial expenses* for a member or his or her dependant.
- To *prevent foreclosure* of a mortgage over the member's principle place of residence.
- If a member is *permanently leaving Australia*.

- If the Fund is satisfied that a member is *permanently incapacitated* for employment.

Should you require further information or any assistance in relation to a superannuation claim please ring Michael Moran, of Level 2, 116 Hardware, Street, Melbourne on (03) 9670 0488 or Toll Free on 1800 620 979.

Disclaimer: This information is of a general nature and should not be used to ascertain the entitlements of any particular individual. There can be exceptions to the above circumstances and individuals should obtain specific advice to address their circumstances. Further the law changes and information contained herein may no longer be accurate.