

WEBINAR: A PRACTICAL GUIDE TO TPD

Psycho-Social Disability claims

QUEENSLAND CLC – 13 APRIL 2022

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This webinar is presented in partnership with [Economic Justice Australia](#).

TPD Claims – Interactive poll

Q 1 Have you run a TPD claim?

Q. 2 Have you run an appeal on a rejected TPD claim?

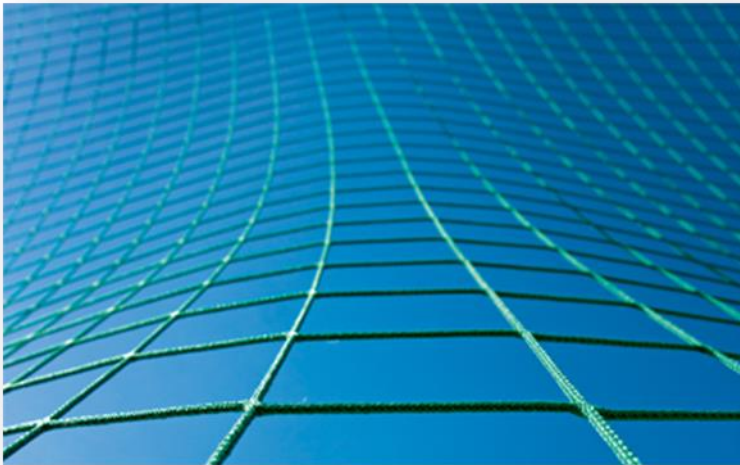


Mental Health (TPD) Claims A Background & Overview

Total and Permanent Disablement Insurance

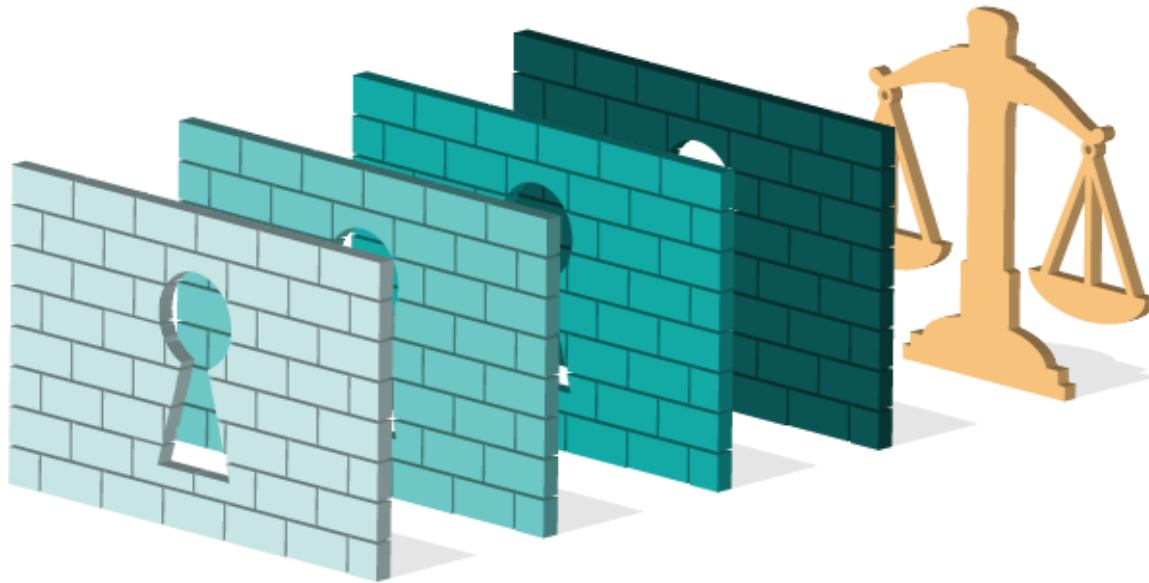
TPD plays a crucial role as a safety net in supporting the financial security of Australians.

ASIC REP 633 Holes in the safety net:
a review of TPD insurance claims



TPD Insurance – A Brief Overview

*Access to
Justice*



Many people who are permanently ill or injured will have worked at some time during their lives...

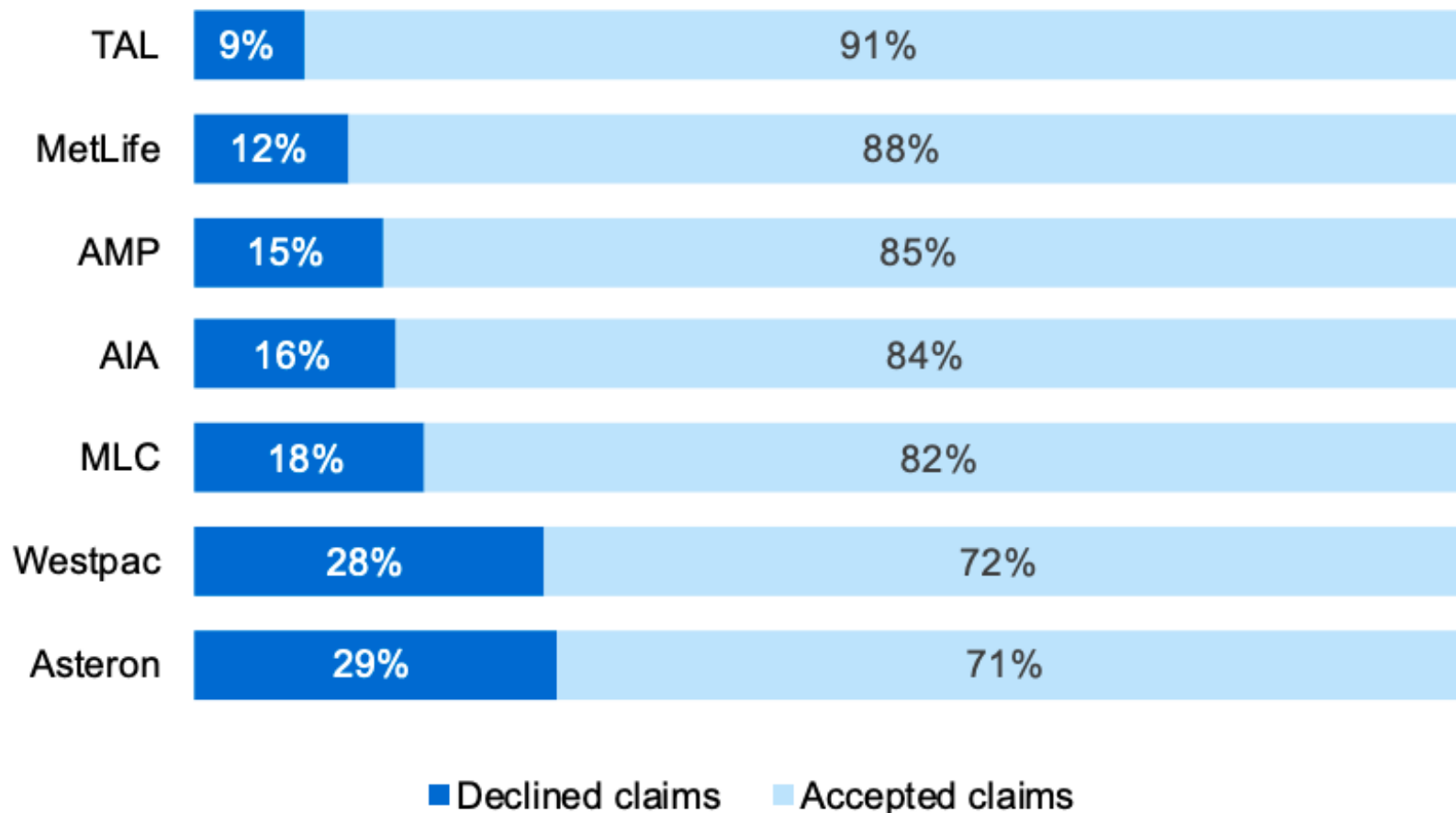
However ASIC reports that a significant number of people do not know they may be able to claim for total and permanent disability cover through their superannuation ASIC REP 591



Holes in the Safety Net

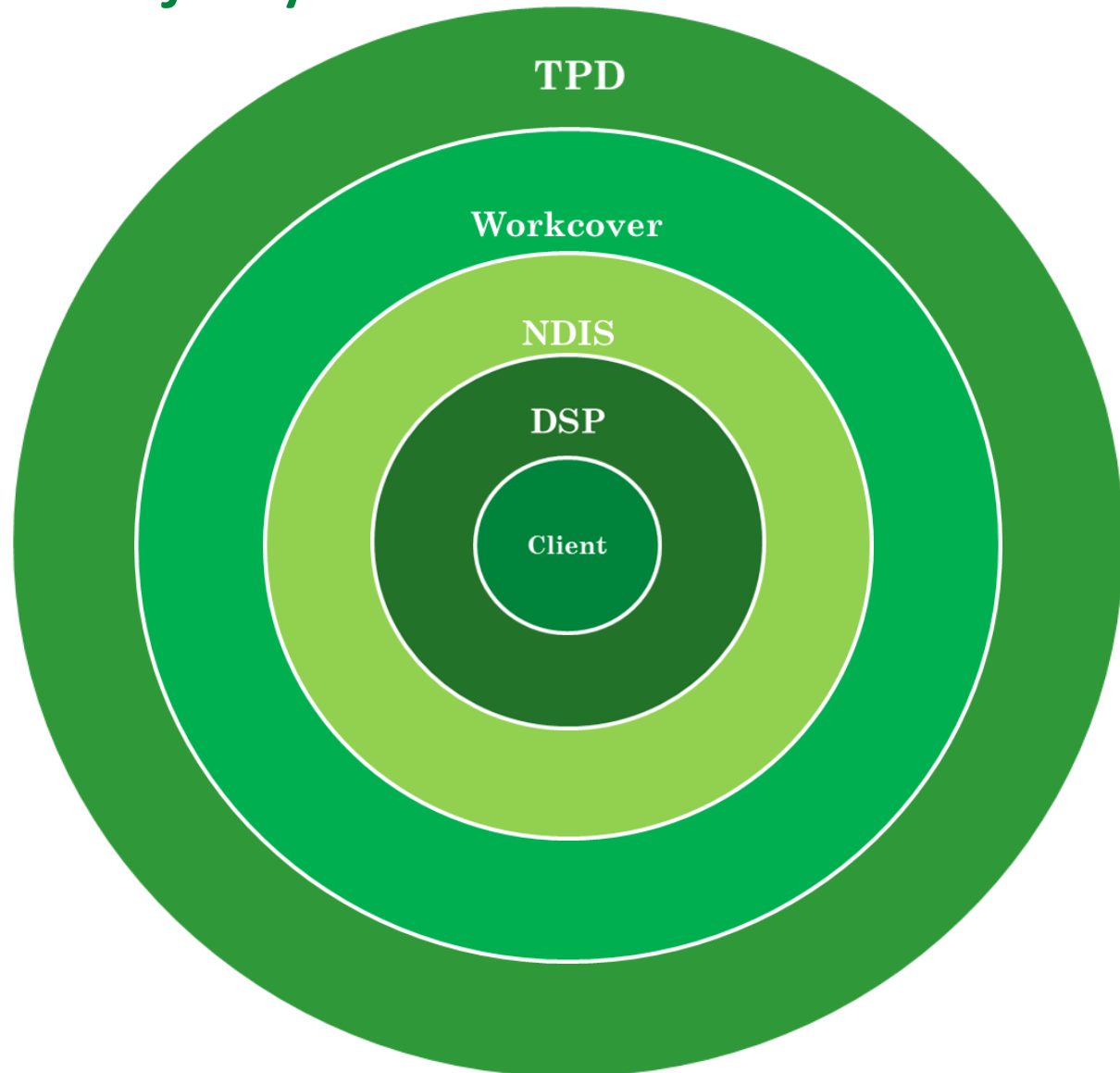
ASIC Report 633

Figure 2: Declined claim rates for TPD cover, by insurer (2016–17)



Permanent Disablement – Illness Or Injury


*The
Safety
Net*



TPD (Mental Health) Claims

Seminar Outline

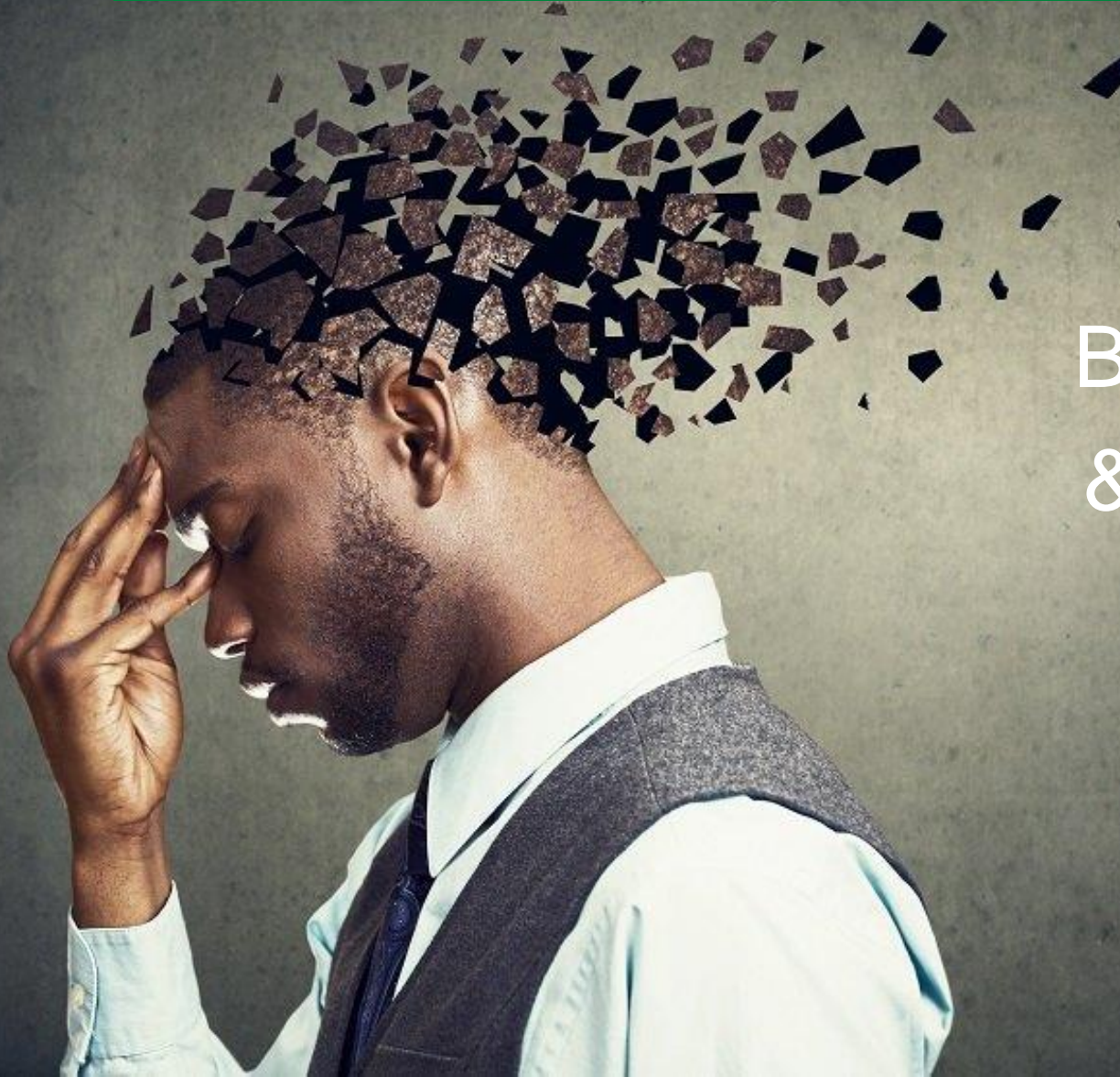
1. **Mental health claims –background & overview**
2. **Policy coverage issues - what to look out for & why**
3. **Key challenges in mental health claims – tips & traps**
4. **Navigating claims handling issues – ‘Red flags’**
5. **Challenging refused claims – Forums for resolution**



Background to TPD Mental Health Claims

Total & Permanent Disablement

Section 1 Background & Overview



TPD (Mental Health) Claims A Background & Overview

Rise in Mental Health conditions (Worldwide)

- Covid-19 triggers 25% increase in depression and anxiety worldwide.
- 82% of young Australians experienced mental health issues last 2 years
- r
- 49% of all Australians (over 25 years) experienced mental health issues during the same period
- Depression is one of the leading causes of disability. Suicide is the second leading cause of death among 15-29-year-olds. People with severe mental health conditions die prematurely – as much as two decades early – due to preventable physical conditions.



Mental Health (TPD) Claims A Background & Overview

Rise in Mental Health conditions (Australia)



- Mental illness is very common. One in five (20%) Australians aged 16-85 experience a mental illness in any year.
- Of the 20% of Australians with a mental illness in any one year, 11.5% have one disorder and 8.5% have two or more disorders.
- Almost half (45%) Australians will experience a mental illness in their lifetime.

Mental Health (TPD) Claims A Background & Overview

Mental Health - Australian's Most Common Ailment

- A recent survey of 1500 GPs across Australia indicated 62% of the most common ailments dealt with were psychological.
- Psychological ailments the most common cause for a patient visit (62%), followed by respiratory conditions (45%), musculoskeletal issues (43%) and endocrine and metabolic problems (36%).



RACGP

Royal Australian College of General Practitioners

TPD (Mental Health) Claims Background & Overview

People with Psycho-social Disability

- redefining Mental Illness - The Mental Health continuum

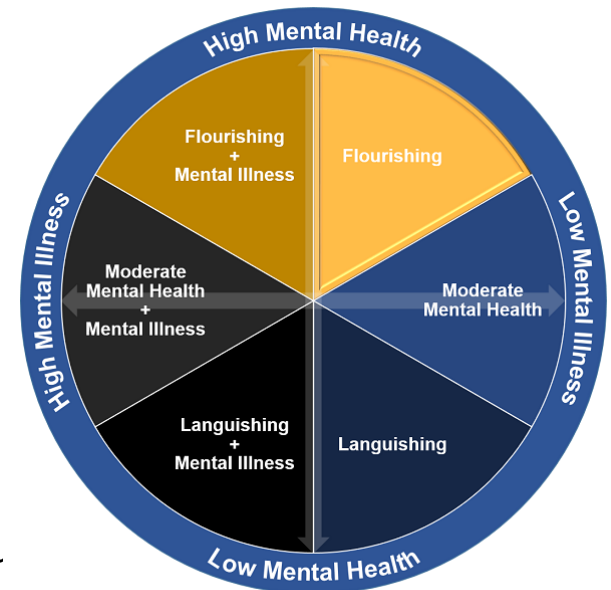
Mental Illness (WHO)

➤ a health problem that significantly affects how a person feels, thinks, behaves and interacts with other people

➤ Is diagnosed according to a set of standardised criteria

Mental health issues

- ✓ Mental health problems are more common than Mental Illness.
- ✓ Mental health problems interferes with how a person feels, thinks, behaves and interacts with other people, but to a lesser extent than a mental illness"
- ✓ Mental health problems may develop into a mental illness if they are not adequately addressed.
- ✓ They can be experienced temporarily as a reaction of the stressors of life, but are not always diagnosable health condition.



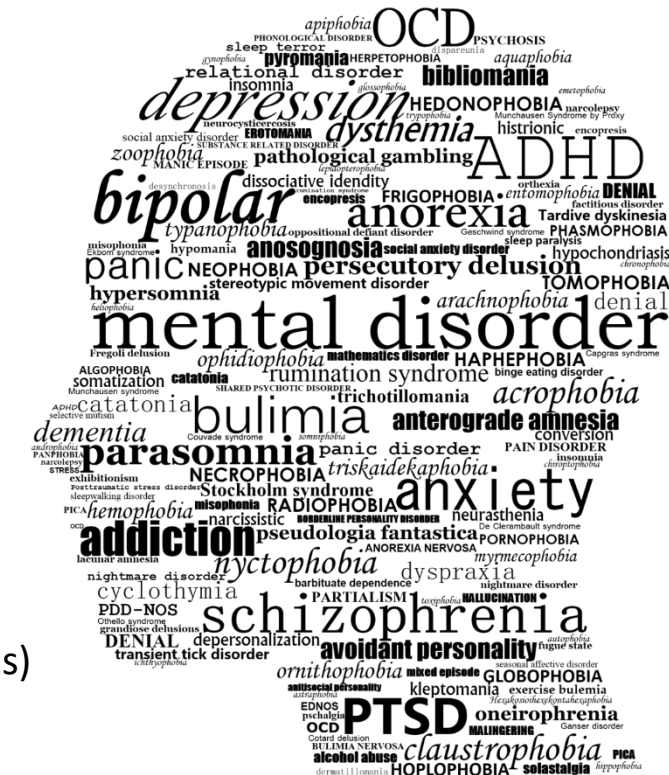
Corey Keyes' "Complete Model of Mental Health"

TPD (Mental Health) Claims Background & Overview

Mental health continuum – Diagnosis of condition (Illness)

Main groups of DSM V mental disorders (Mental Illness) are:

- Anxiety disorders*
- Eating disorders (for example anorexia or bulimia)
- Mood disorders (for example depression or bipolar) *
- Personality disorders (for example borderline personality disorder)
- Psychotic disorders (for example schizophrenia)
- Substance abuse disorders (for example drug addictions)
- Trauma-related disorders (for example post-traumatic stress disorder) *
- Adjustment disorder (for example with depressed mood) *



TPD (Mental Health) Claims Background & Overview

Significant challenges in response to Mental health crisis

Health system

- Capacity of health system to respond
- Appropriate training & support
- Pathways to rehabilitation

Economy

- The cost of mental illness to collective wellbeing has reached \$211B pa, approximately 12% of annual economic output

Financial system

- Product design issues
- Appropriate training & support

Legal system

- Awareness of issue – appropriate training & support
- Capacity to respond



TPD (Mental Health) Claims Background & Overview

Practical challenges – Identifying TPD Injury / Illness

Mental Illness

- A clear diagnosis / prognosis - as at date of disablement (pre-disablement + ongoing)
- Significant levels of disablement – impact on
 - ability to obtain and retain good mental health treatment
 - Clear instructions on impact of condition on capacity for employment

Mental health issues

- Appropriate mental health treatment plan
- Impact may not be diagnosed or as easily identified – may (or not) be reflected in
 - Absenteeism,
 - Poor productivity
 - Poor performance
 - Conflict in the workplace

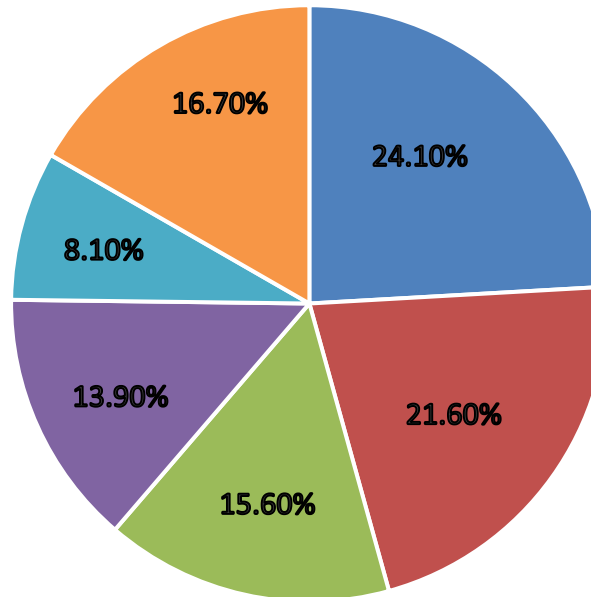


TPD (Mental Health) Claims A Background & Overview

TPD claims – A Snapshot

Mental health claims – 24%

% of Claims

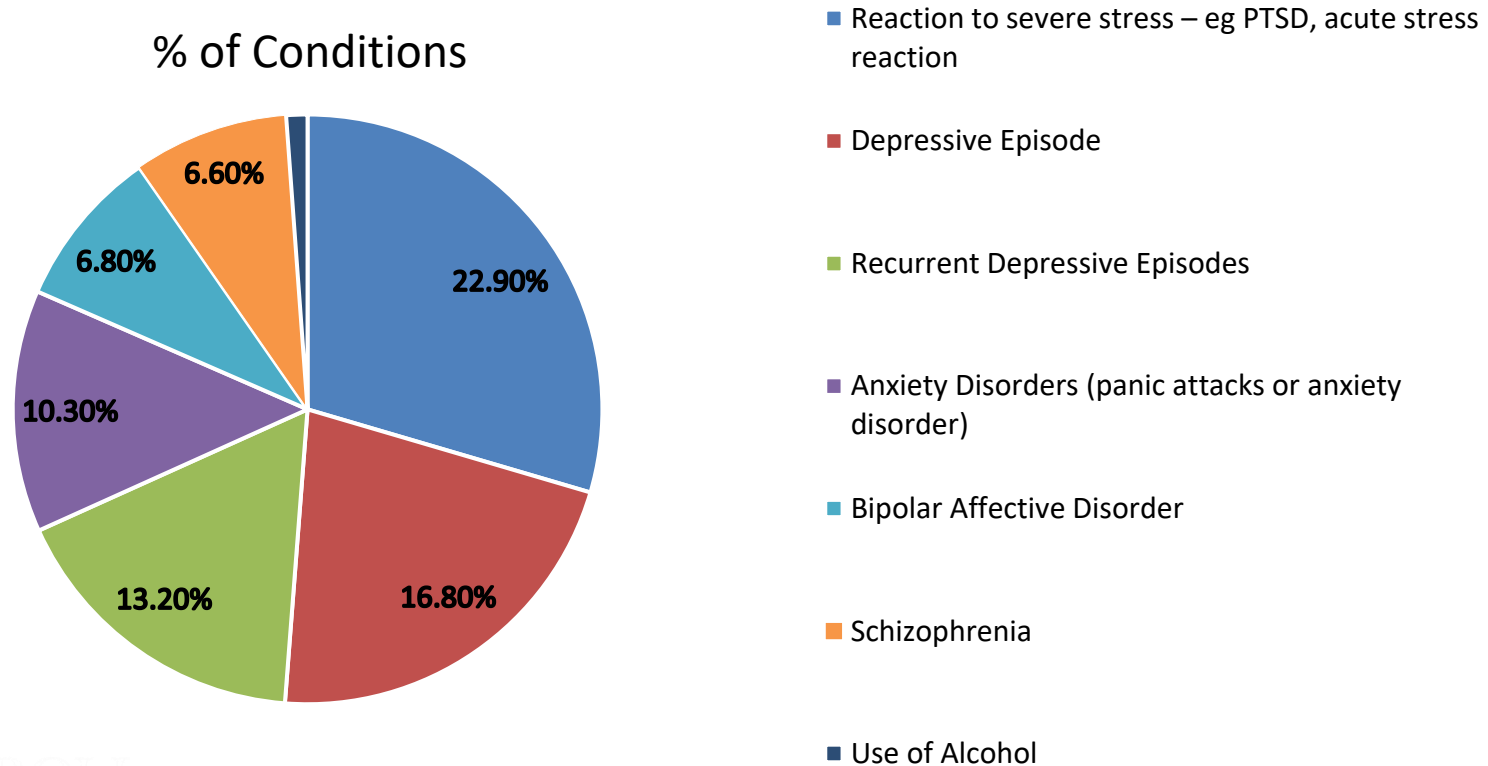


■ Mental Health Conditions
■ Accidents
■ Cancer

■ Musculoskeletal Issues
■ Nervous Systems Disorders
■ Other

TPD (Mental Health) Claims A Background & Overview

TPD claims (Mental Health) conditions – A Snapshot

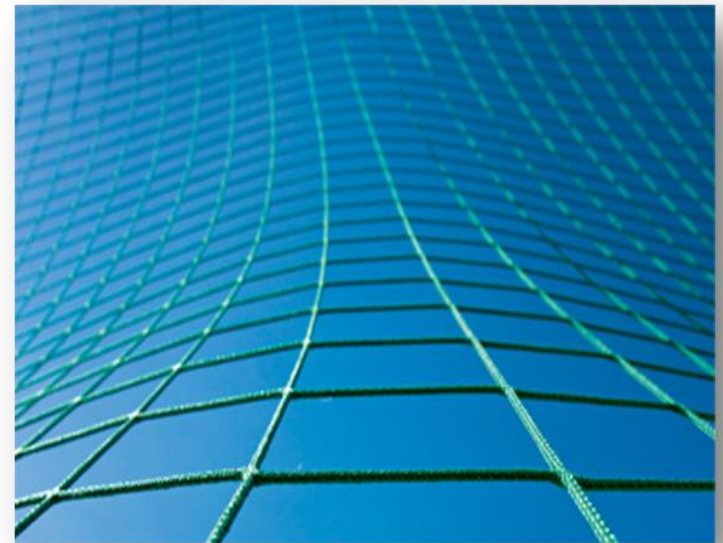


TPD (Mental Health) Claims Background & Overview

TPD Safety Net! (Lump sum payment) – No-fault Insurance

Default cover

- **Credit issue / financial hardship**
- **Employment dispute / Work injury**
 - ❖ Performance / termination
 - ❖ Bullying complaints
- **Centrelink issue**
 - ❖ Disability Support Pension
- **NDIS issue**
 - ❖ Permanent and Significant Disability



TPD (Mental Health) Claims Background & Overview

Mental health / Mental Illness claims

- ✓ Bullying / Adjustment disorder/
Mental illness
- ✓ PTSD / Chronic PTSD

Physical Injury / Mental health

- ✓ Workplace injury / Adjustment disorder /
Mood or Anxiety disorder
- ✓ Cognitive Impairment / Mood or Anxiety
disorder
- ✓ Neurological/Mood or Anxiety disorder



Section 2

Policy Coverage Issues

*What to look
out for & why !*

Total & Permanent Disablement Introduction

Total and Permanent Disablement - Overview

TPD insurance is a form of life insurance which pays a specified lump sum to the policyholder in the event the life insured suffers total and permanent disablement

Cover arises within the context of Injury or Illness which causes the Life Insured to be incapacitated to such an extent unlikely to ever engage in future work

Most TPD cover in Australia is held in Group Life Insurance – Default Cover

Trustee (Super) holds cover for its Members by engaging in Group Life Cover with Life Insurers

TPD (Mental Health) Claims

Policy coverage – Mental Health Conditions

There are three main definitions of '**totally and permanently disabled**' used in TPD policies.

- **Own occupation** – the consumer is considered totally and permanently disabled if, due to illness or injury, they are unable to work in their 'own occupation' ever again.
- **Any occupation**—This is the general or 'common form' of TPD definition. The consumer is considered totally and permanently disabled if, due to illness or injury, they are unable to work ever again in 'any occupation' for which they are suited by 'education, training or experience'.
- **Activities of daily living (ADL)** - consumer is considered totally and permanently disabled if due to illness or injury, they are additionally unable to meet, usually, three ADL such as feeding, bathing and toileting themselves without aid or assistance.

Other types of TPD cover include '**Home Duties**' '**Cognitive Loss**' and '**Loss of Limbs**'.

Total & Permanent Disablement Policy Coverage - Illness or Injury

Illness or Injury – Permanent Disablement

TPD policies define 'totally and permanently disabled' in different ways.

In 2011 the NSW Court of Appeal described the general or 'common form' of TPD definition:

illness or injury which causes the life insured to be incapacitated to such an extent as to render the member unlikely ever to engage in or work for reward in any occupation or work for which he or she is reasonably qualified by education, training or experience.

Manglicmot v Commonwealth Bank Officers Superannuation Corporation Pty Ltd [2011] NSWCA 204.

TPD (Mental Health) Claims

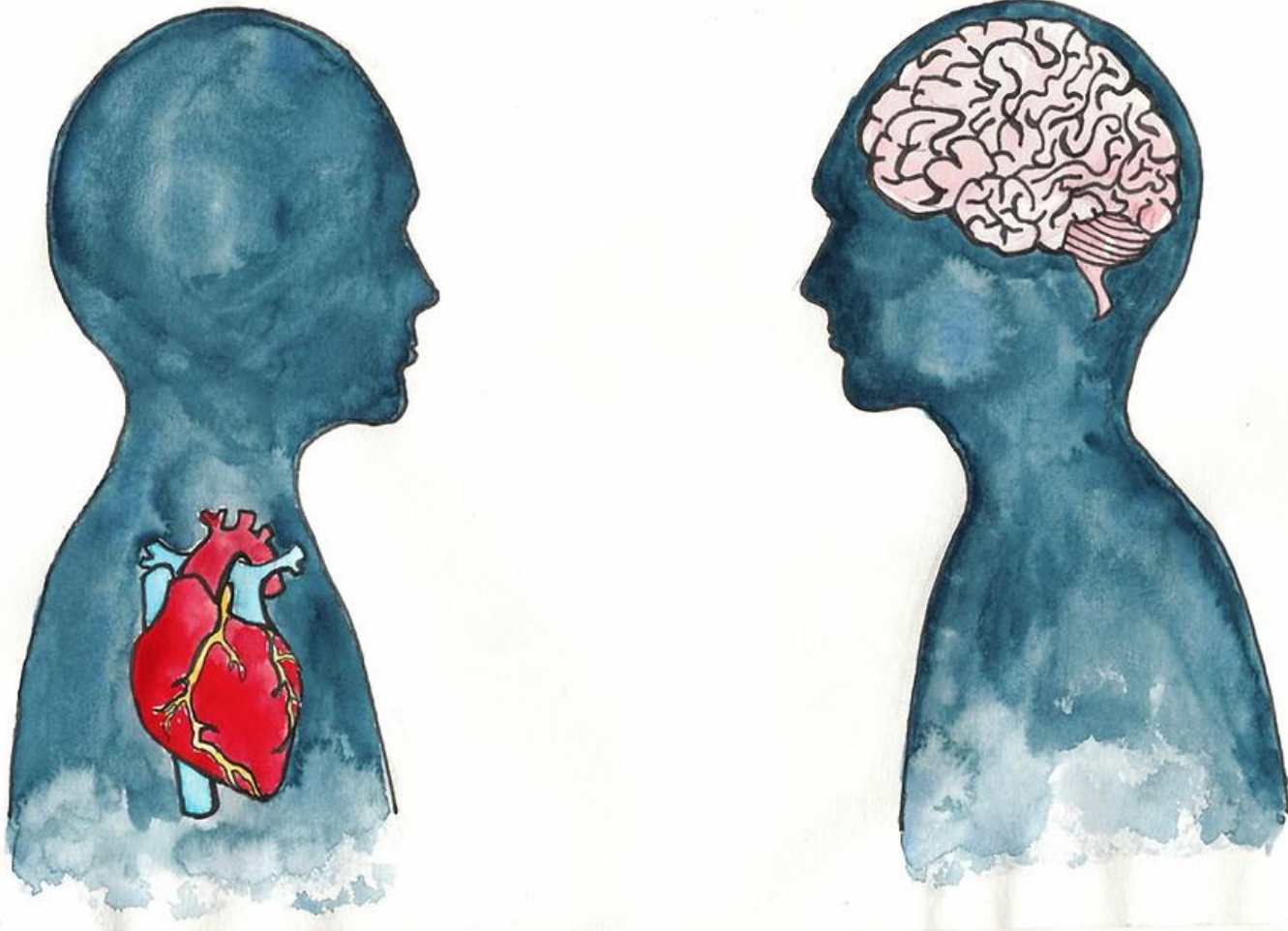
Policy coverage – Mental Health Conditions

Common elements to establish TPD cover (regularly found in TPD cover)

1. The life insured must have been absent from work for usually 6 consecutive months;
2. Ability to work consecutive period (up to 2, 6, 12 months) after commencement of cover without restriction or limitation
3. The injury or illness has caused the life insured to be absent from work
4. The insured is under the care of a treating doctor ;
5. The trustee or insurer must form an opinion as to the likelihood that the life insured will ever return to work;
6. Incapacity for return to 'work' – by reason education, training or experience

TPD (Mental Health) Claims Policy – Mental + Physical Conditions

TPD Cover (Injury or Illness) – Physical +/-or Mental



TPD (Mental Health) Claims

Policy coverage – (Mental Health) Conditions

– Example 1

Eligibility for full cover met	Limited cover	No cover in force
<i>Any occupation</i>	<i>Conditions occurred after commencement</i>	<i>At date of disablement</i>
Neurological disorder (severe epilepsy) / Mood disorder (severe depression)		
Active employment Ability to work 30 hours / week on a full time basis for 2 consecutive months At Work and not restricted by injury sickness from carrying out duties <u>After</u> commencement of cover, <u>and</u> At Work Ability to carry out duties and actually performing those duties	Unable to establish At Work for requisite period (up to 2months / 6 / 12 months) Active employment after commencement of cover Eg modification of duties, reduced/limited hours, <u>Limit of cover</u> Claims arising for a condition which occurred <u>after</u> cover commenced ie No cover for pre-existing condition Subject to ADL test	Any pre-existing condition which results in a disablement after commencement of cover

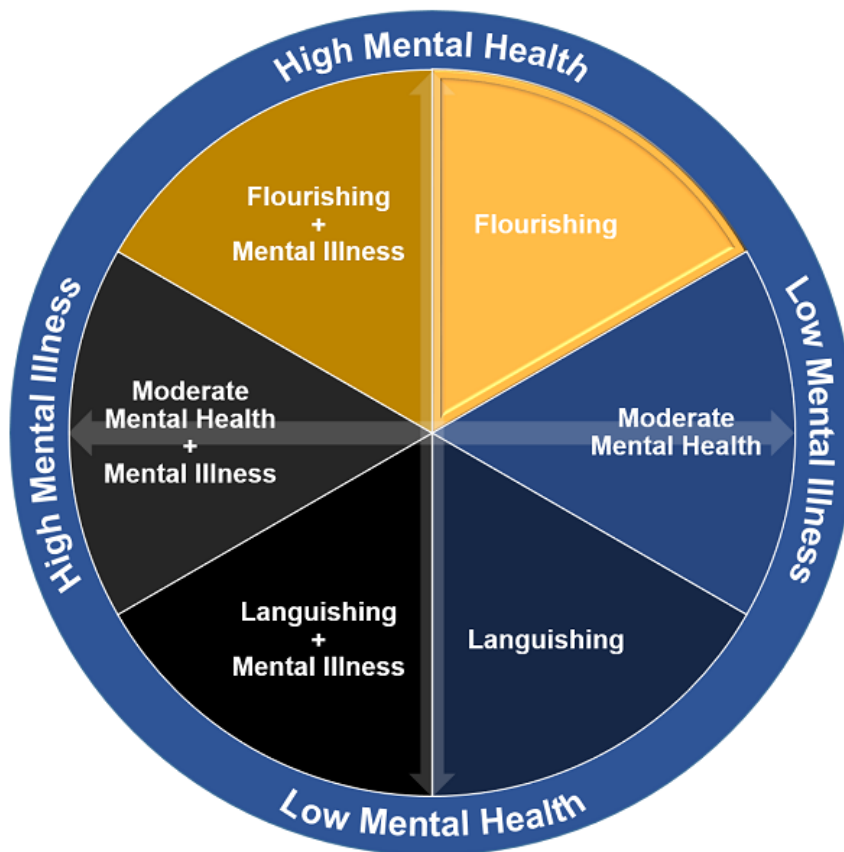
TPD (Mental Health) Claims

Policy coverage (Mental Health) Conditions – Example 2

Eligibility for full cover met <i>Any occupation</i>	Limited cover <i>Activities of Daily Living</i>	No cover in force <i>At date of disablement</i>
Physical injury with mental health issues (major depression)		
<p>Under 60 years of age</p> <p>In our opinion, solely because of injury or illness, the Member has ceased work from the event date for 6 consecutive months ; and</p> <p>Unlikely to ever return to gainful employment (education, training, experience)</p>	<p>60 years of age or over</p> <p>Activities of Daily Living</p> <ul style="list-style-type: none"> - Bathing - Dressing - Feeding - Mobility - Toileting <p>Unable to perform 2 or more ADL</p> <ul style="list-style-type: none"> - without assistance of adult or suitable aid 	<p>At date of disablement not able to establish</p> <ul style="list-style-type: none"> - Permanently and irreversibly unable to perform 2 or more daily activities; and - Incapacity for gainful employment based on education, training or experience

TPD (Mental Health) Claims A Background & Overview

Mental Illness / Mental Health Continuum



Corey Keyes' "Complete Model of Mental Health"

TPD (Mental health) claims

Policy coverage – Mental + Physical: Examples

TPD Definition	Mental Illness	Mental Health condition	Physical condition
Any/Own occupation - Illness/Injury	Workplace bullying Injury	Workplace bullying Injury – Alternate diagnosis	
Activities of Daily Living	Workplace injury (Hospital) – Additional injury		Workplace injury (Hospital)
Cognitive loss		High Risk employment case study	High Risk employment case Key Injury
Home Duties		House Duties (secondary issue)	House duties (Primary issue)

Navigating the T P D P a t h



Total & Permanent Disablement

Section 3

Key Challenges in Mental Health (TPD) Claims

- Tips and
Traps



Preparing a TPD Claim – A Brief Guide



Mental health (TPD) claims – *Tips and Traps*

Pre claim – Things to watch out for!

KEY ELEMENTS - POTENTIAL TPD CLAIM



TPD (Mental Health) Claims Policy – Mental Conditions

Key Policy Concepts

- ✓ **Cover in force at date of disablement**
- ✓ **Nature of condition(s) – prior to / at commencement of cover / date disablement / ongoing**
- ✓ **Impact on employment – at commencement of cover / date of disablement / ongoing**

Preparing/Lodging a TPD Claim

Engagement with Claims Assessment process

Notice of Claim (date of disablement) – request for documents



Lodgement of claim (Super fund)



Initial claim assessment – Insurer



Further inquiries – Insurer



Recommendation – Insurer



Approval – Super fund

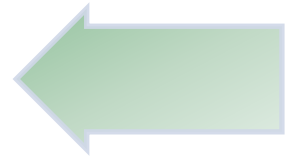


Preparing a TPD Claim – *Tips & Traps*

Mental health (TPD) claims – *Some challenges*

Pre Claim issues

- Difficulty in obtaining Instructions – trauma-informed best practice
- Health
 - Understanding nature of mental health condition
 - Client may not self-identify have mental health condition – IME psychiatrist
 - Mental health treatment plan – safety / self-care issues
 - Treating doctors – GP + psychologist
- Employment
 - Last physical date in employment
 - Moved to light duties
- Financial
- Personal
 - Trust – solicitor / client relationship
 - Capacity for instructions



Preparing a TPD Claim – Practical Tips

Medical / Employment / Personal

Insurance cover -
date of
disablement

Medical evidence –
illness or injury

Claims assessment
process – pre-claim
assessment by
Super funds

Employment
information – last
date of
employment

Early requests for
information

Super
statements

Product terms – TPD
definition

Obtain copy of
policy
documents e.g.
PDS & Trust
deeds

Preparing a TPD Claim – A Brief Guide

Claim form

Doctors Reports x 2

→ Treating GP & Specialist

Employer Statement

Certified ID

Lodging a TPD Claim

– Things To Watch!

Timing of
claims

- Medical /
Employment/
Personal
information
- -Early
withdrawal of
Super (risk to
Member)

C l a i m s

- Waiting period
(Usually 6 Months)
- Cover in force at
date of
disablement
- Failed attempt at
return to work

Lodging a TPD Claim

– Things To Watch!

Treating Doctor's
reports

- G P
- P s y c h i a t r i s t

Diagnosis
/prognosis -

- Failed
attempt at
return to work

- Fitness to return
to work –
education,
training &

- Last physical

E m p l o y e r
s t a t e m e n t

date in
employment

- Date(s)
worked light
duties

- Relationship
with a (now)
former
employee

Running a TPD Claim – *Tips & Traps*

Mental health (TPD) claims – *Tips and Traps*

Initial Claim assessment - Insurer

Full cover / Limited cover

- Establish insured is 'at work' / 'active employment' / gainful employment
- Physical / mental health condition

Further inquiries – Insurer

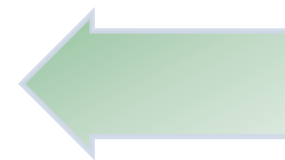
Condition, prognosis, pre-contractual disclosure,

- Insurer Questions for treating doctors
 - Needs to match Policy terms
 - **Opportunity to obtain questions**
 - **Suggest further questions**
 - **Obtain copy of reports**

Ongoing treatment / Capacity for gainful employment

- IME Occupational physician

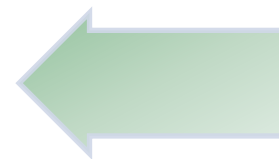
- IME Psychiatrist



Running a TPD Claim – *Tips & Traps*

Mental health (TPD) claims – *Tips and Traps*

Procedural fairness letter – Insurer / Trustee



condition, prognosis, pre-contractual disclosure, capacity for gainful employment

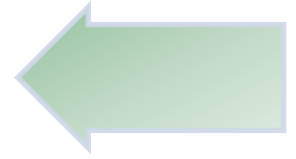
- Timely response is key
- Obtaining Medical Attendant Statements
 - Eg Michael Malek, Tania
- Privacy



Finalising a TPD Claim – *Tips & Traps*

Mental health (TPD) claims – *Tips and Traps*

Recommendation (to pay) – Insurer



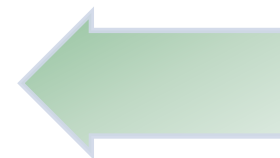
- Tax advice / Centrelink issues / Financial advice
- Trustee for approval



Finalising a TPD Claim – *Tips & Traps*

Trustee – Approval on Release of funds

➤ Withdrawal of funds – tax implications



There are three key forms of superannuation benefits:

- **preserved benefits**—which must be retained in superannuation until ‘preservation age’;^[59]
 - **restricted non-preserved benefits**—which cannot be accessed until an employee meets a condition of release; and
 - **unrestricted non-preserved benefits**—which do not require an employee to meet a condition of release and may be accessed upon request
- Condition of release – Certified by two medical practitioners TPD (SIS Regs 6.01(2) + ATO Tax rulings



Total & Permanent Disablement

Section 4

Navigating Claims Handling

- *Red flags in TPD
claims assessment*

TPD (Mental Health) Claims

Navigating claims handling



Red flags in TPD claims assessment



Fair Assessment of claim	Red flag
<p>Good faith and fair treatment-</p> <p>Utmost good faith (whole of claim), Fair and Reasonable</p>	<p>Failure to afford opportunity to Insured to respond to adverse medical opinion</p>
Inquire and Investigate	<p>Failure to make further inquiries to resolve conflicting evidence</p>
Ask relevant questions to this claim	<p>Failure to ask treating doctor information relevant to the condition suffered & applicable test for TPD</p>
Consider all the information to the claim	<p>Failure to consider evidence of psychiatrist and prefer evidence of neurologist – mental illness</p>
Reasons for decision – reasonableness of decision	<p>Failure to account for its decision</p> <p>Failure to provide practical information to support the decision</p>

TPD (Mental Health) Claims

Navigating claims handling



Trustee (Super fund) – SIS Act duties



To act honestly in all matters concerning the entity (scheme): s 52(2)(a);

To exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide: s 52(2)(b);

To ensure that the trustee's duties and powers are performed and exercised in the best interests of the beneficiaries: s 52(2)(c);

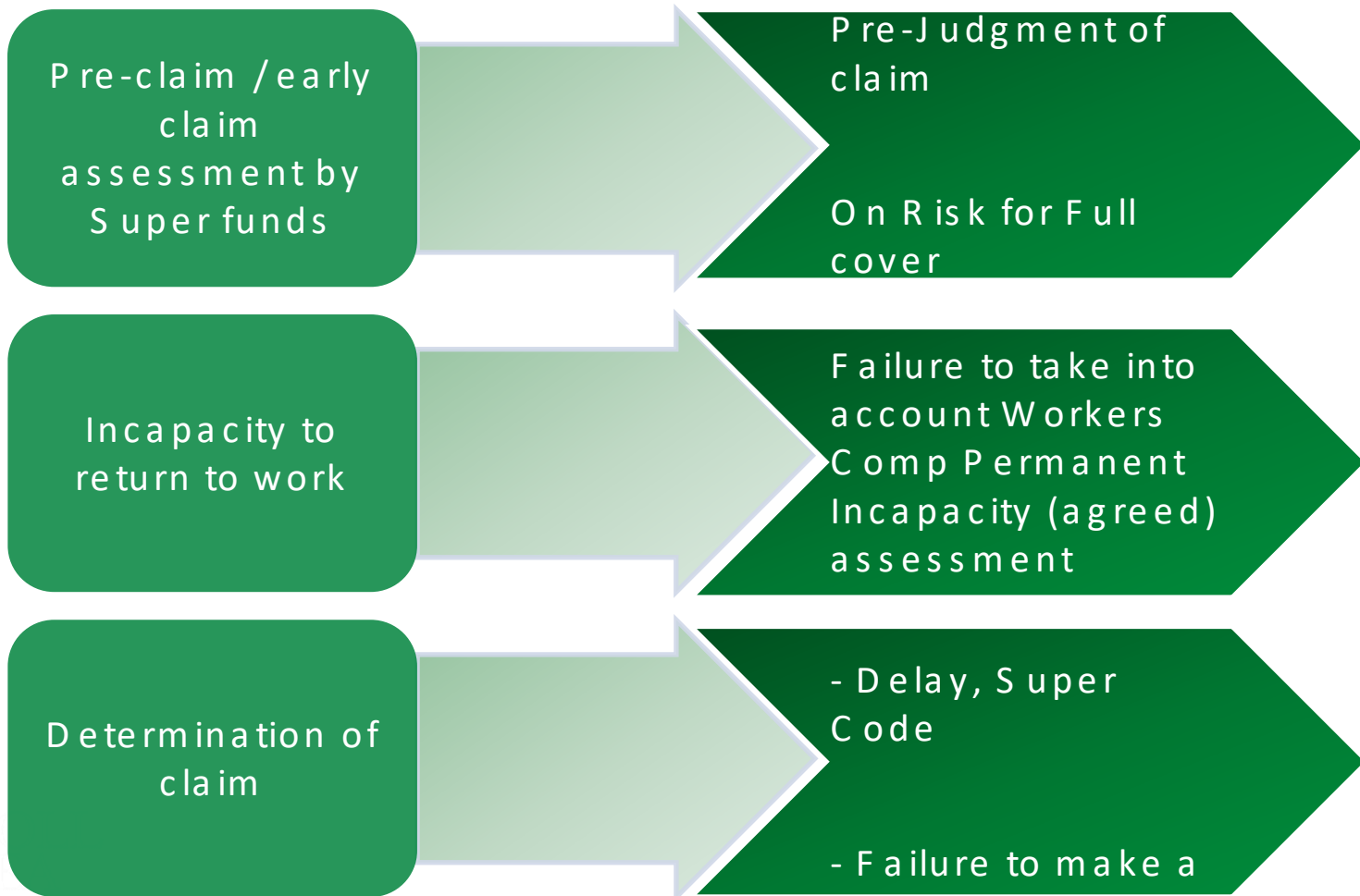
To give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons in the event of any conflict: s 52(2)(d)(i);

e) not to enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers: s 52(2)(h)

(To "do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success": s 52(7)(d).

Red Flags

– Mental Health (TPD) C



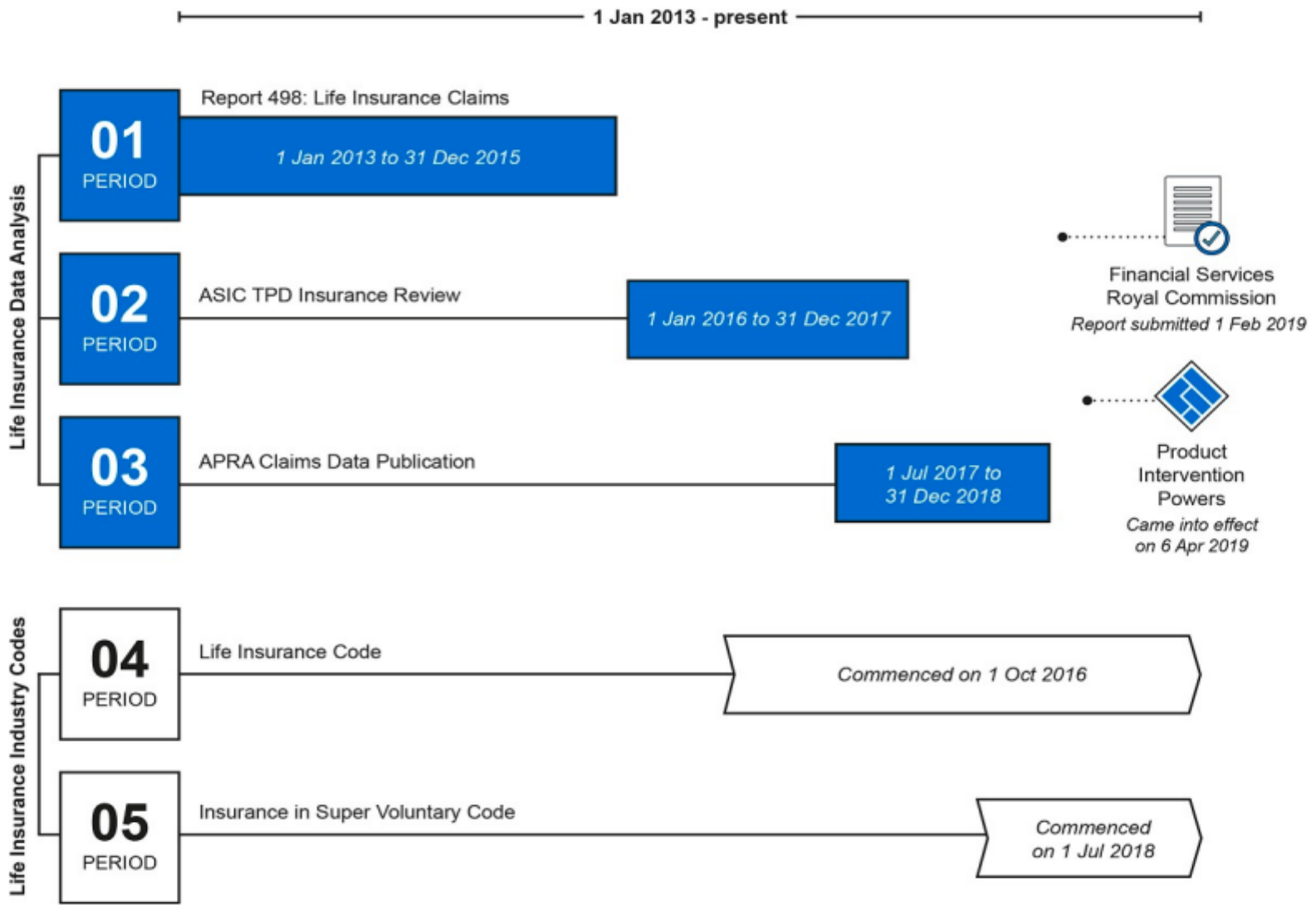
Financial Services – Regulatory Environment

- Superannuation Industry Supervision (SIS) Act & SIS Regulations
 - Superannuation Act
 - Corporations Act
 - Insurance Contracts Act
 - Life Insurance Act
-
- Insurance in Superannuation Code of Practice
 - Life Insurance Code of Practice



Holes in the Safety Net - ASIC Report 633

Figure 6: Recent regulatory milestones in life insurance



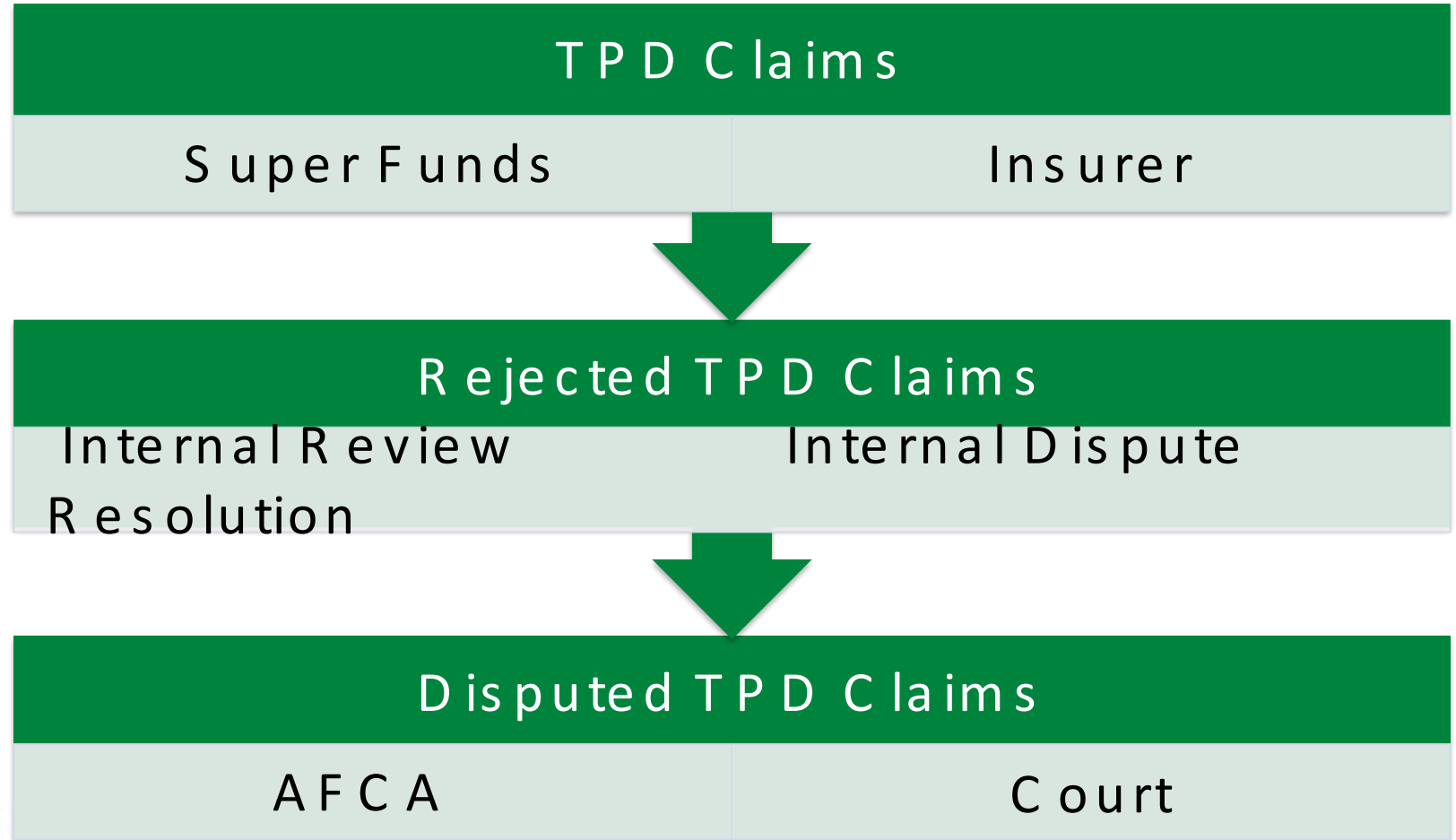
Section 5

Challenging Refused Claims

- *Forums for
resolution*



TPD Disputes – Forum For Resolution



TPD Payments

- Lump sum payments
- Tax implications
- Centrelink



IDENTIFY A POTENTIAL TPD CLAIM:



References

Section 1

- <https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide>
- <https://www.smh.com.au/lifestyle/health-and-wellness/urgent-national-priority-pandemic-s-staggering-mental-toll-on-young-australians-20220318-p5a5v0.html> National Survey conducted by Royal Australian College of General Practitioners (2018)
- FSC 4 Oct 2019 press release – FSC/KPMG Life Insurance Date (2019)
- www.sobanewjersey.com/blog/2020/march/whats-the-difference-between-mental-illness-and-/
- The Impact of Psychosocial factors on Mental Health and their Implications in Life Insurance, Research Paper, Oct 2019, FSC and KPMG

Section 3

- See for insurance Best practice Service standards – vulnerable disadvantaged clients including with acute mental illness, trauma informed best practice, https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0012/41511/Legal-Aid-NSW-Quality-Standards.pdf

Section 5

- ASIC REP 633 Holes in the Safety Net & ASIC REP 696
- IDR/EDR contacts – see afca.org.au

THANK YOU

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