



## Total & Permanent Disability Benefits

*This brochure is intended to provide you with general information about some of the issues that the Tribunal takes into account when reviewing complaints about Total and Permanent Disability (“TPD”) claims.*

### What is Total and Permanent Disability?

The rules of superannuation funds usually provide for a benefit to be paid where a member can no longer work and is unlikely ever to work again due to physical or mental illness or injury. This is commonly referred to as a TPD benefit. Some funds may refer to this in different ways eg, as a ‘disability benefit’ or an ‘incapacity benefit’.

Each superannuation fund has its own governing rules (trust deed) and insurance arrangements (policy), that will contain TPD definitions under which the benefit is payable.

Generally, a TPD definition requires an assessment about whether or not, in the opinion of the trustee (and insurer) following an injury or illness, the member will ever again be able to work for reward or engage in any gainful occupation for which he/she is reasonably qualified by education, training or experience.

However, as the TPD definition is not always expressed in exactly these terms, the Tribunal is required in each case to look at the wording in the particular definition in the fund’s trust deed and/or insurance policy.

A member can ask the trustee what the TPD definition is in the trust deed and the policy.

Importantly, to obtain a TPD benefit, in most cases, it is not sufficient that a member is unwell and may not be able to work in the job that he/she previously worked in. TPD is a difficult test to satisfy and it is not the same as the test used to receive benefits from Centrelink, Workers’ Compensation or Veterans Affairs.

Usually to obtain a TPD benefit, a member’s condition must be permanent.

### Eligibility to claim a TPD benefit

Eligibility to claim a TPD benefit will depend on whether the member is covered for a TPD benefit.

For most funds, to be covered, a member must be “at work” or in “active employment” at all relevant times. The relevant time may be the time the member completed his/her application for membership, or the date the person commenced employment, or the date on which any new TPD insurance arrangements start.

If there are any issues with whether a member was in fact covered for a TPD benefit, these will need to be resolved before a member can be assessed for receipt of that TPD benefit.

### Commonly used terms in TPD definitions in trust deeds and policies

- **“Unlikely ever to work again”** – A trustee must apply the ordinary meaning of the word “unlikely” and consider if there is “no real chance” or it is “improbable” that the member will ever work again. The word “ever” allows a trustee to look well into the future but it does not extend to cover a remote possibility that the member could ever work again. In determining whether the member is “unlikely” ever to be able to work in a job for which that person is qualified, the realities of the labour market must also be considered. There is no obligation to consider whether actual positions with actual employers are open to the member.



- **“Reasonably qualified” or “reasonably suited”** – When deciding whether or not a person will ever again be able to engage in paid work for which he/she is “reasonably qualified” or “reasonably suited” in terms of his/her education, training or experience, the following may need to be considered:
  - Work which requires “retraining” in order to gain skills which he/she did not previously have cannot be considered because, without the retraining, the member cannot be said to be “reasonably qualified” to undertake the work. However, retraining that a member undertakes after ceasing work, but before the insurer or trustee has made an assessment, may be considered.
  - Retraining is different from a member’s transferable skills (acquired throughout his/her working life). These transferable skills may enable him/her to undertake work, even if it is different from his/her pre injury occupation.
- **“Suitable employment”** – This is a question of fact, having regard to the physical condition of the member, the nature and character of the member’s occupation prior to the illness or injury and the work offered after the illness or injury. Merely paying remuneration at the same level does not in itself render the employment suitable.
- **“As a result of...”** – Many TPD definitions require that the member’s cessation of employment to be “as a result of” his/her TPD. This is a question of fact to be determined from the circumstances. The taking of early retirement or redundancy does not necessarily preclude a finding that a member was TPD.

### Medical evidence must be relevant, timely and adequate

The medical evidence considered by the trustee and insurer must enable them to determine that the member suffered an illness/injury that makes him/her TPD whilst an insured member of the fund. The member’s medical condition at the date he/she ceased work and the impact of that condition on his/her ability to work in the future will be relevant.

Medical reports obtained for Workers’ Compensation claims, or Centrelink purposes, may help the trustee and insurer determine the permanency of the disabling condition. However, the reports will usually not have used the definition of TPD in the trust deed and insurance policy. A payment of disability benefits from Centrelink or Workers’ Compensation does not give rise to an automatic entitlement to payment of a TPD benefit.

### Expert reports must lie within the relevant areas of expertise

If a specialist doctor is treating a member, a report from the specialist addressing the issue of TPD is highly desirable, and should address the TPD definition with a medical opinion as to whether the member is TPD. A report from a general practitioner may not suffice. All reports obtained should provide comprehensive analysis of whether a member is unlikely ever to return to employment for which he/she is reasonably suited by education, training or experience.

### Medical evidence must not be preliminary or conditional

Medical reports provided may be discounted if they express preliminary opinions or are subject to the outcome of further tests or treatment. Time for a member’s medical condition to stabilise should be allowed. If evidence suggests that a member’s condition may improve in the future, this will be a relevant factor in deciding whether or not the



member is TPD. If a member suffers from more than one illness medical evidence relating to the combined effect of those illnesses on the likelihood of the member returning to any work is relevant. Usually this is best ascertained by a report from an occupational physician.

### Subsequent evidence

Trustees, insurers and the Tribunal at review may take into account evidence provided after the trustee and the insurer made their decisions if that evidence relates to the member's condition at the relevant time, usually when the member ceased work, or to a condition which has subsequently developed as the result of the original disabling injury/illness.

### Inability to obtain or retain suitable employment

A member must show that the illness or injury causing the TPD prevents the member from obtaining suitable employment. Where a member has unsuccessfully returned to work following an injury, consideration is given to whether this is a genuine return to work, or an unsuccessful rehabilitation attempt.

### Economic and non-medical considerations

Trustees, insurers and the Tribunal must consider the member's particular circumstances and actual job prospects in the real world and make their determination upon that basis. It is the actual likelihood of obtaining employment that is important and this has to be considered in the socio-economic conditions and geographic location in which the particular member finds him/herself together with his/her education, training and experience.

### Age

A member's age may also be relevant in assessing a TPD claim. The definition usually requires that a person is unlikely ever to be able to work again. Obviously, for a younger person this is a longer period of time than for an older person.

### The effect of refusal to undertake treatment

A genuinely held belief stopping a member from undergoing treatment should not automatically preclude the member from succeeding in a claim for a TPD benefit. For example, a genuinely held religious view, or a reasonably held fear of undertaking a recommended operation which is likely to improve the person's condition should not automatically disqualify a member from obtaining payment of the benefit.

---

**The assessment of a TPD claim can be complex. This brochure highlights only some of the issues for the trustee and the Tribunal to consider when they are required to consider the payment of a TPD benefit.**

*For more information  
please visit the  
Tribunal's website:  
[www.sct.gov.au](http://www.sct.gov.au)*

*Or contact us at:*

*Superannuation  
Complaints Tribunal*

*Locked Bag 3060  
Melbourne VIC 3001*

*Phone: 1300 884 114  
(for the cost of a local call  
anywhere in Australia)*

*Facsimile: 03 8635 5588*