

## SUPERANNUATION AND TOTAL AND PERMANENT DISABILITY INSURANCE GUIDE

**If you have been injured and cannot return to work, you might be able to claim for total and permanent disability (TPD) benefits with your superannuation fund..**

**TPD benefits are a lump sum payment from your superannuation fund to you if you are disabled because of injury or illness.**

At McNamara Law we have a REAL approach to personal injury claims.

**As a firm that has been around more than 80 years we are:-**

### **1. Reliable**

As a local law firm with families and connections to the Ipswich region, we place a high value on offering high quality legal help to our clients, our reputation depends upon it!

### **2. Experienced**

When it comes to effectively and efficiently resolving your legal problem, experience matters! With over 80 years of experience working with the people of the Ipswich and Lockyer Valley regions of Queensland, we get you!

### **3. Approachable**

We've been around long enough to know that for many people legal problems are both difficult and stressful. What we bring to the table is not only experienced and dedicated legal help, but an approach that our clients often remark as "refreshing." In our firm, being "approachable" is a core value that we always aspire to live up to.

### **4. Local**

We've been helping the people of Ipswich and Lockyer Valley regions for over 80 years. Today we are one of the largest law firms in the local area with a deep-seated commitment to giving back.

**If an injury results in the loss of capacity, the injured person may have lost the ability to prepare a will or enduring power of attorney. Compensation payments may also effect the injured persons wishes in a will that had already been prepared.**

We recommend that if you, or a family member have been involved in an accident, you should seek advice about how the accident might effect your estate from one of McNamara Law estate lawyers.

McNamara Law understand that the financial strains that result from personal injures can place pressure on relationships. If your relationship has deteriorated because of an injury, you should seek advice from one of McNamara Law family lawyers.

## **What injuries can you claim for**

**To get a TPD lump sum, you must be able to show that you cannot do your normal employment or other suitable work that fits in with your experience or training level and education. You do not necessarily have to be unfit for all work, but only work that you have the skills to do.**

An example would be that if you had a leg injury and you have only undertaken or have skills in manual or process type work and the medical evidence supports you can no longer do that work, you may still be entitled to TPD benefits even if there is a suggestion you could do alternative lighter work such as office work.

In addition, you may be entitled to multiple claims where there are multiple policies or you may be entitled to both TPD and a Total and Temporary Disability payment (TTD)/income protection for which you are eligible if you cannot do your usual job for a while due to an injury or sickness.

TTD payments are usually provided monthly and can be up to 85% of income and payable for up to 2 years or aged 65. These payments, however, may be offset against any worker's compensation or common law damages or even Centrelink payments and could stop if employment is terminated or if you are paid a TPD lump sum.

**The injury does not have to be work related.**

A heart attack, cancer, mental illness, chronic fatigue, injuries at home or in car accidents can also be used as reasons for claiming TPD benefits.

## **How do you claim**

**Firstly it is important for a solicitor to examine the terms of the superannuation policy as it is a requirement to meet the definition of TPD in line with the funds Trust Deed and insurance policy.**

It is for that reason urgent legal advice should be obtained before making a claim.

## How do you claim (cont)

McNamara Law has extensive experience in reviewing superannuation policies and trust deeds.

If it looks as though you would meet the requirements of the definition you need to contact your superannuation fund to obtain the relevant claim documents and start the claim process.

## What documents do you need to support the claim

**Every claim will need an initial claim form completed. Some funds also call this document the member claim form.**

In addition to lodging the claim form, medical reports that support the claim, relevant documents from medical and other specialists, tax records, employment records and written submissions setting out why you are eligible for the benefit should be made.

How you fill out the form can significantly affect how the Fund and Insurer treats you.

## What happens after you lodge a claim

**The Fund may take some time to process your application before forwarding the claim to the Insurer and during that time they may request additional information from you or from your medical treatment providers.**

A decision is usually made within three to six months of the claim being lodged.

If the Fund takes longer than 6 months there may be unnecessary delay which should be followed up.

## What happens after the claim is accepted

**If you are eligible for TPD benefits, you would be paid the lump sum benefit and you can elect to withdraw the balance of your superannuation fund account.**

If you were successful in a claim for TPD and withdraw your superannuation you would receive the combined superannuation balance and TPD benefit less tax if you have not reached your preservation age.

You should seek tax and financial advice before deciding to draw superannuation from your fund.

## What happens if the claim is rejected

**If the Fund rejects the claim the first step is to lodge a complaint or request for an internal review.**

**The fund must respond to the complaint within 45 business days.**

If your claim is still denied by the Insurer, then you can either lodge a complaint with the Australian Financial Complaints Authority, or a claim with the Court.

The Authority can only deal with a complaint about a decisions of a trustee of a fund relating to the payment of a disability benefit because of total and permanent disablement (TPD) in the following circumstances:-

- 1.** If you permanently ceased employment because of the physical or mental condition that gave rise to the claim for the TPD benefit, then:-
  - a.** Both your claim for the payment of a TPD benefit was made to the trustee within 2 years of you permanently ceasing employment; and
  - b.** Your complaint is made to the Tribunal within 4 years of the trustee's decision about your claim; or
- 2.** If you did not permanently cease employment because of the physical or mental condition that gave rise to the claim for the TPD benefit, your complaint is made to the Tribunal within 6 years after the making of the trustee's decision about your claim.

If you commence a Claim in the Courts then pursuant to the Limitations of Actions Act (Qld) your Claim must be filed and served within (6) years from when the cause of action arose.

**Failing to commence proceedings within this time would result in you being barred from making a Claim or complaint.**

## How long will your claim take

**The following is a basic timeline of the likely progress of your claim. This is a guide only.**

STEP	TIME
Notify superannuation Fund of illness or injury that could prevent you from being able to work.	As soon as the injury or illness occurs that could prevent you from being able to work, but usually no longer than 12 months
Initial response from Fund explaining the claim process and information required	Within 10 business days of being notified of a potential claim
Lodge claim form	As soon as possible, but usually after the waiting period has expired (on average 3 to 6 months after the last date you were able to work)

## How long will your claim take (cont)

STEP	TIME
Fund investigations into claim	1 to 3 months after lodging the claim
For income related claims – Initial decision	No later then 2 months after lodging the claim, or 2 months after the end of the waiting period (which ever is later)
For all other claims (TPD) – Initial decision	No later then 6 months after lodging the claim, or 6 months after the end of the waiting period (which ever is later)
If the claim is rejected – to lodge an internal complaint	There is generally no time limit to lodge a complaint, but we recommend lodging the complaint within 1 to 3 months after the decision to reject your claim
Fund response to internal complaint	90 business days after lodging the complaint
External complaint to Superannuation Complaints Tribunal - *Australian Financial Complaints Authority	Within 4 years of the Funds decision to reject your claim (if the claim was lodged within 2 years of ceasing employment)
File a claim and statement of claim with the Court	Within 6 years of the Funds decision to reject your claim

## What are the time limits

**Time limits for bringing a claim may apply however this will depend on your insurance policies.**

We have seen a range of time limits, some of which are as little as 30 days, up 6 or 12 months, but in most cases the policy just calls for notification of the claim within a reasonable time.

If a claim is not lodged within the required time the Fund reserves the right to reject the claim, or reduce the benefit it they believe they have suffered any prejudice.

**In any case, the claim should be lodged as soon as possible.**

## What else should you know

**Most people will likely experience financial difficulties while they are unable to work. If this happens to you, in some cases you may be able to access your superannuation early:-**

### **1. Financial hardship**

You may be able to withdraw some of your super if you have received Australian Government income support payments continuously for 26 weeks and are unable to meet reasonable and immediate living expenses.

## What else should you know (cont)

The maximum amount that can be paid is \$10,000. You can only make one withdrawal from your super fund because of severe financial hardship in any 12 month period.

### 2. Compassionate grounds

You may be allowed to withdraw some of your super on compassionate grounds. The amount of super that you can withdraw on compassionate grounds is limited to what is reasonably needed.

**Applications for withdrawal of superannuation on compassionate grounds or for financial hardship must be made via the Department of Human Services (Centrelink) who can be contacted on 1300 131 060.**

If you have not reached the preservation age you may be required to pay tax on any superannuation withdrawn.

You should also seek tax and financial advice before deciding to draw superannuation from your fund.

It is also critical that you consider if at the time of the accident you:

- a. Were working; or
- b. Travelling in a vehicle.

If any of these cases, you may have other rights which may be lost if you do not take steps within extremely short time limits.

**If you do have another claim, you should seek legal advice about making a Total and Permanent Disability claim at the same time, as the claim processes are not always complementary.**