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R E A D Y

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**CONGRESS**

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PERTH 23-25 NOV 2016



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

# RISKY BUSINESS: How To Manage Your Best Interest Duty And Manage Claims Effectively

**Mark Everingham**

Managing Director of Personal Risk Professionals



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# AGENDA

- Insurance inside vs outside of Superannuation
- Top 5 lessons to learn regarding Best Interest Duty for insurance
- The role of the Professional Adviser in effective claims management





# IS ASIC INTERESTED IN INSURANCE IN SUPER?



ASIC  
Australian Securities & Investments Commission

REPORT 413

## Review of retail life insurance advice

October 2014

Making a recommendation to pay for insurance from Superannuation

Making a recommendation to pay for insurance from superannuation

Good advice that recommends a client pay insurance premiums from their superannuation contributions cannot ignore the advantages and disadvantages of this strategy. Specifically, advisers should ensure their client understands that:

- the insurance policy is owned by the trustee of the superannuation fund on behalf of the member;
- the *Income Tax Assessment Act 1997* dictates how the proceeds are taxed, which differs from personally held insurance policies. If the client meets the SIS Act permanent incapacity definition and the trustee pays their superannuation (including total and permanent disability insurance) balance out, the tax payable depends on a range of factors, including age and the existing tax-free component of their superannuation; and
- superannuation is not a personally held asset and generally is not dealt with by a person's will or estate planning. Clients must ensure their nomination of beneficiaries reflects their wishes and they must decide whether they need a binding or non-binding nomination of beneficiaries. If there is no nomination of beneficiary, the superannuation fund trustee will use their discretion on how to pay death benefits.

Generic warnings to clients that paying for insurance from superannuation has cash flow benefits but will erode retirement savings are not adequate.

Advisers should address the key risk of funding insurance premiums from superannuation funds, that is, that it may prevent the client from meeting their retirement objectives. Advisers should give adequate consideration to this risk when recommending this strategy. This should include consideration about making concessional or non-concessional contributions that at least negate the effect of insurance premiums on retirement benefits. If this option is not appropriate for the client's circumstances, the risks of the strategy need to be clearly explained to the client, including communicating the cost impact.

Advice recommending a contribution strategy should also consider the impact on the client's cash flow. This may include comparing the value of making concessional and non-concessional contributions equivalent to the insurance premiums. We expect advisers to:

- communicate that the cost impact of insurance is simply being deferred from today's cash

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Report 413  
Review of retail life insurance advice



# INSURANCE IN SUPER – WHAT’S IN & WHAT’S OUT

Effective 01/07/2014

Cover Type	Inside Super	Outside Super
Life Insurance	Yes	Yes
Total & Permanent Disability	Yes – SIS compliant	Yes
Trauma	No	Yes
Income Protection	Yes – SIS compliant	Yes
Business Expense	No	Yes

Beware pre 1 July 2014 cover



# POLICY PURPOSE – PERSONAL

- Who needs to receive the benefit vs who can receive the benefit from Super
  - Dependant(s) of the member
    - Spouse
    - Child
    - Financial dependant
    - Independent relationship
  - Legal Personal Representative
  - Another person if the above can not be found



# POLICY PURPOSE – BUSINESS

- Is Super Ownership appropriate for business insurance cover?
  - ATO ID 2015/10
  - SMSF Holding buy/sell insurance cover
  - Breach of Section 62 of the Superannuation Industry (Supervision) Act 1993
  - Breach of the sole purpose test
  - Unclear on Master Fund owned insurance cover
  - Beware ASIC's view on funding insurance from super
  - Seek Advice





# POLICY OWNERSHIP & STRUCTURE

- PROs
  - Assists cash flow of current disposable income
  - Ability to fund Life & TPD cover via pre-tax dollars
  - Opportunities for tax effective pension upon death
  - Some protection from creditors
  - Estate Planning strategies to by-pass estate
  - Super-linking structures available





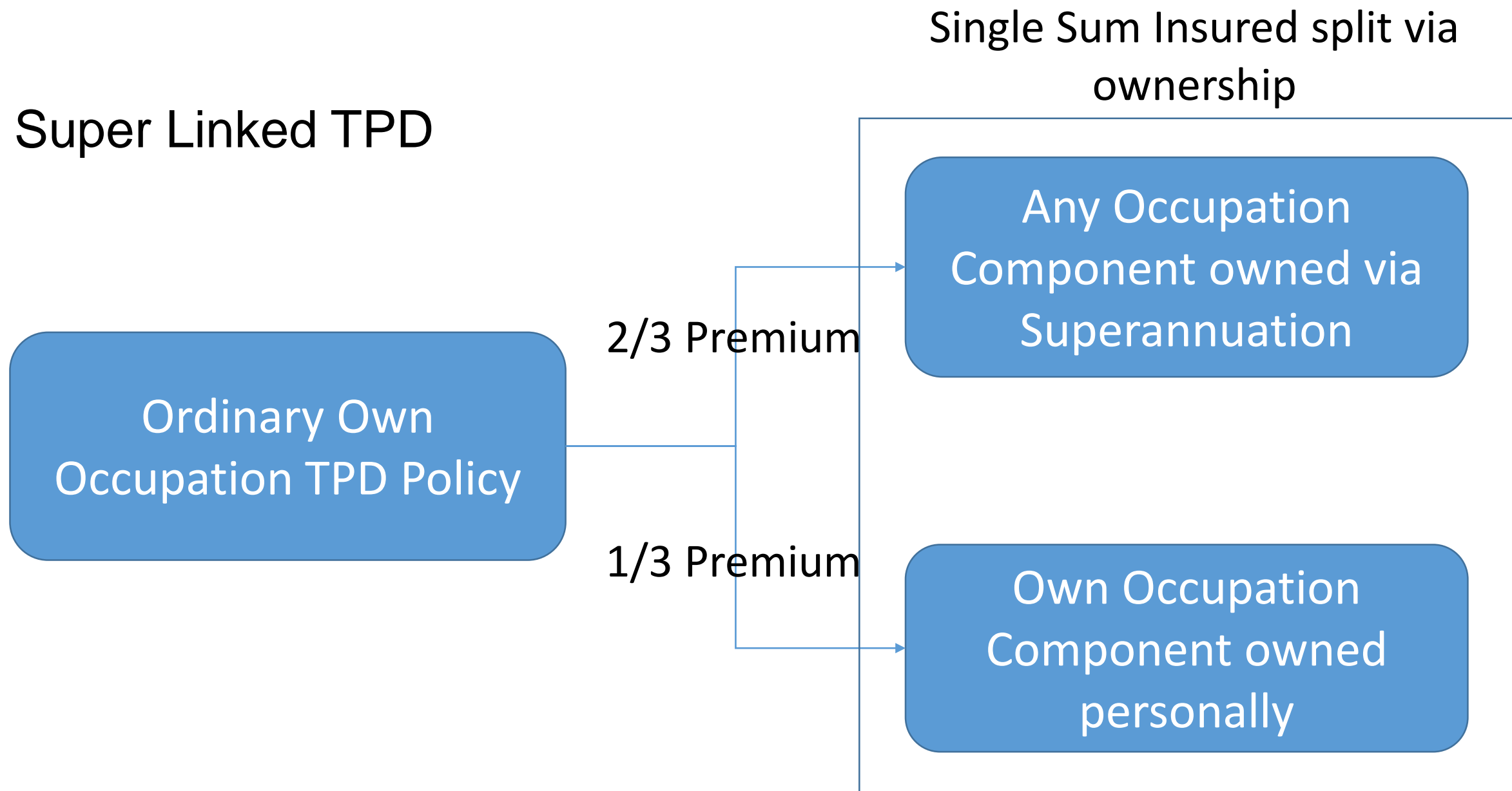
# POLICY OWNERSHIP & STRUCTURE

- CONs
  - Erosion of retirement savings (ASIC 413 Focus) & Concessional Caps
  - Tax payable on lump sum benefits
  - Restricted policy definitions to meet SIS – IP Benefit Especially
  - Restricted pool of beneficiaries
  - Additional claim process requirements
  - Trustee discretion may result in unsuitable beneficiaries
  - Changing regulatory risk



# POLICY OWNERSHIP & STRUCTURE

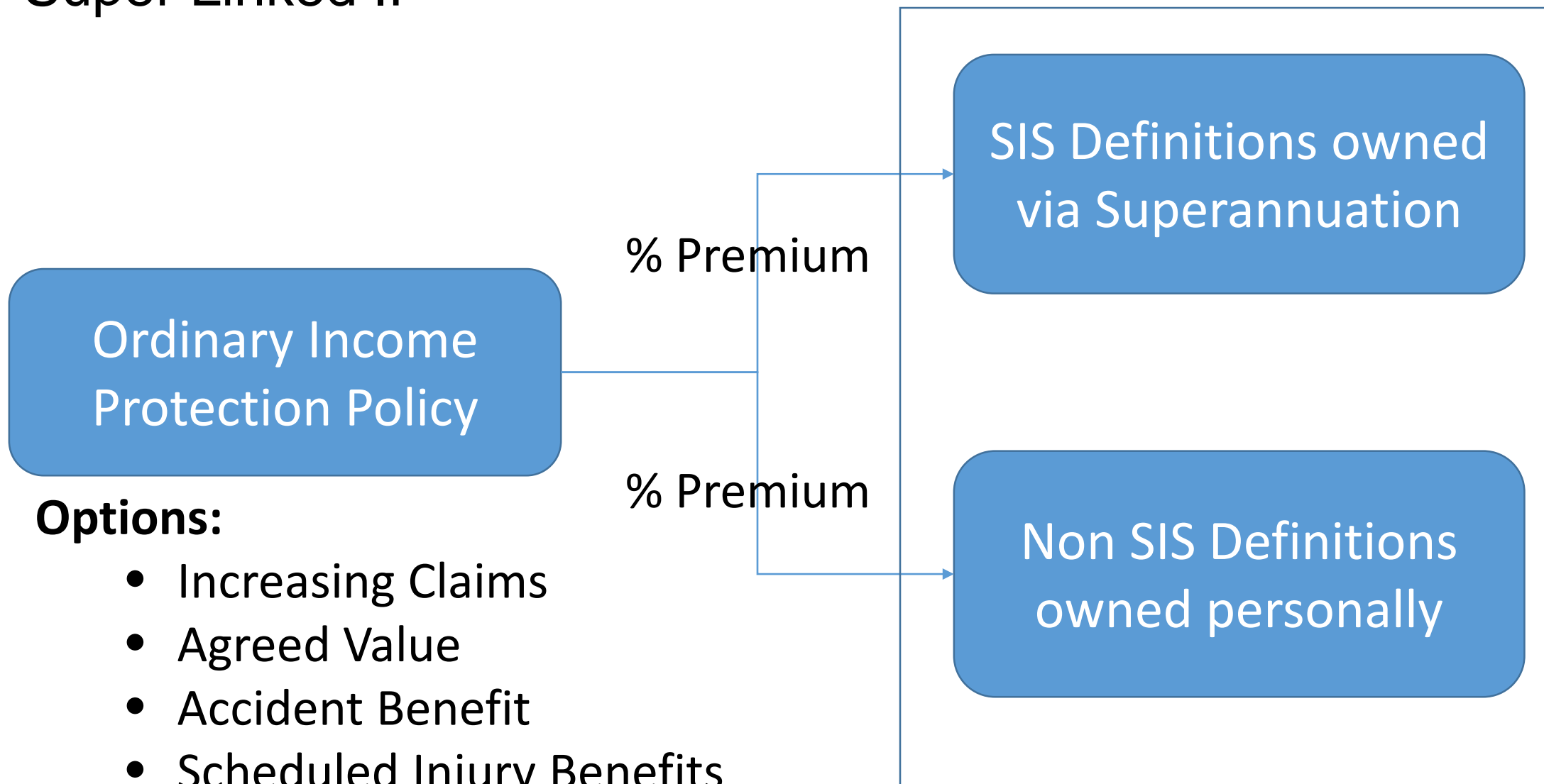
Super Linked TPD



# POLICY OWNERSHIP & STRUCTURE

## Super Linked IP

Single Sum Insured split via ownership



### Options:

- Increasing Claims
- Agreed Value
- Accident Benefit
- Scheduled Injury Benefits
- Critical Illness Benefits

### Options:

- Increasing Claims
- Indemnity
- Accident Benefit

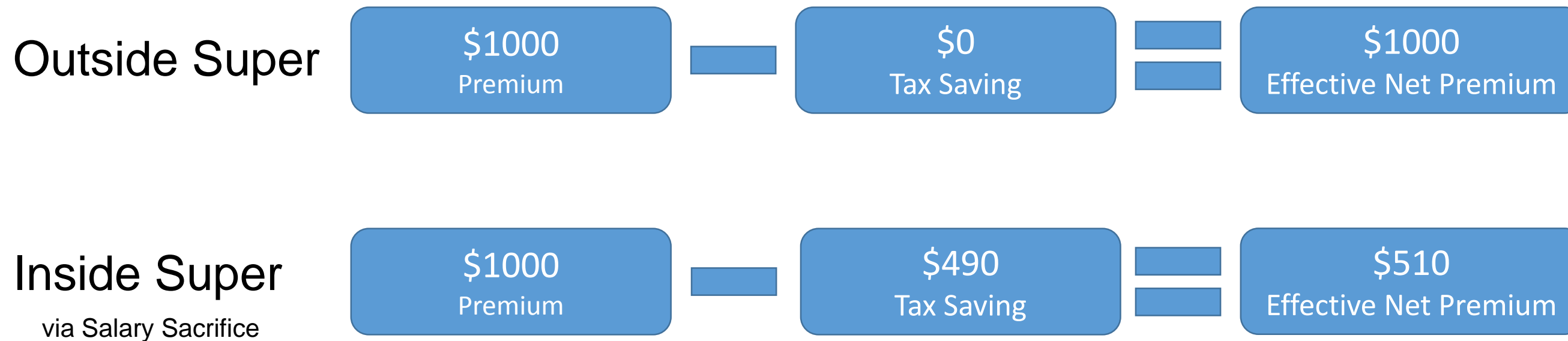
### Options:

- Agreed Value
- Scheduled Injury Benefits
- Critical Illness Benefits



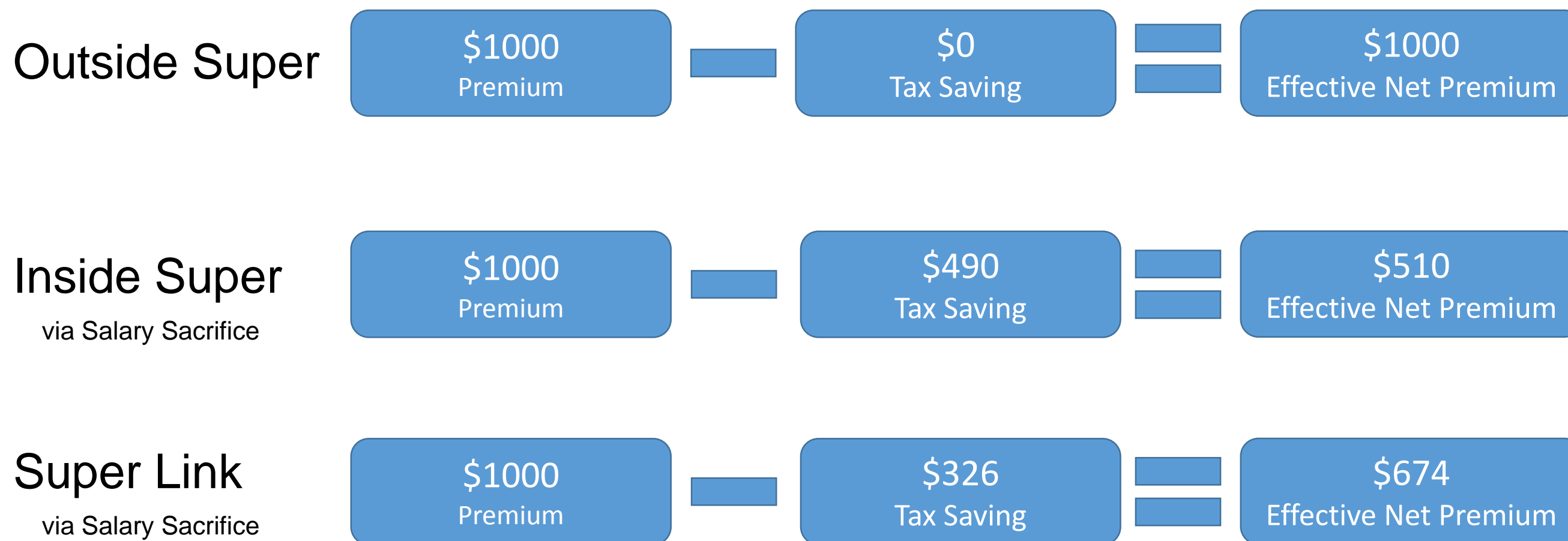
# THE AFTER TAX COSTS OF COVER

\$1000 Life Premium at 49% marginal tax rate



# THE AFTER TAX COSTS OF COVER

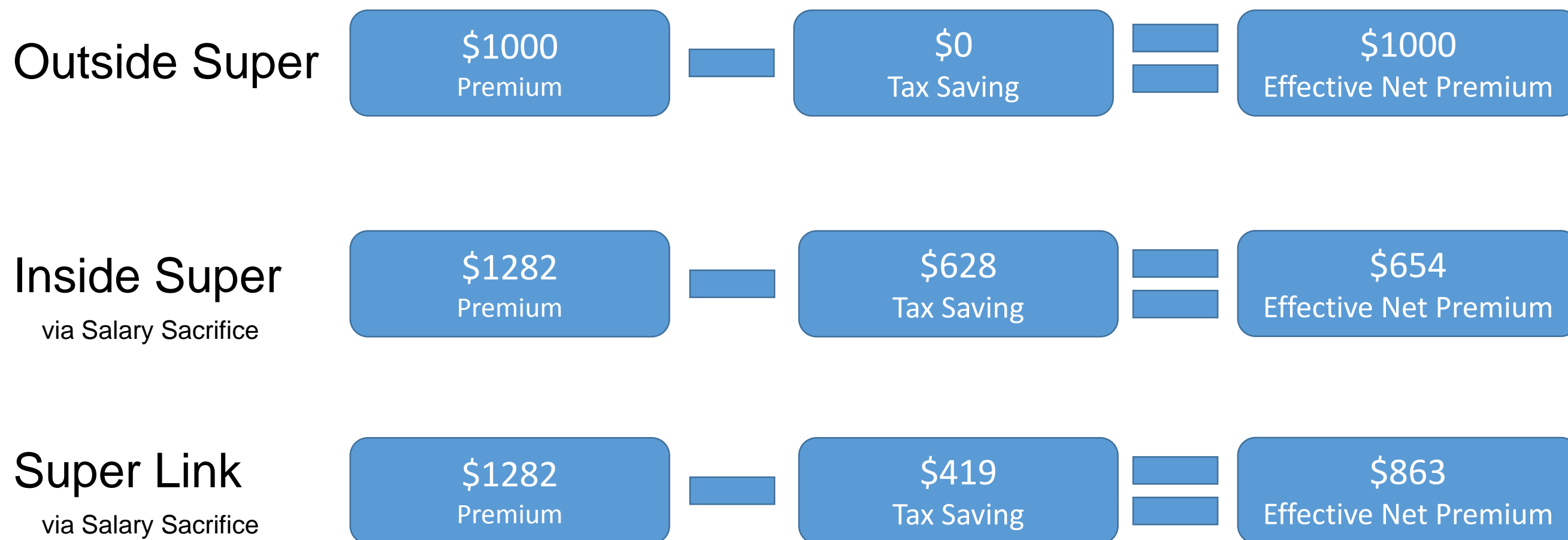
\$1000 TPD Premium at 49% marginal tax rate





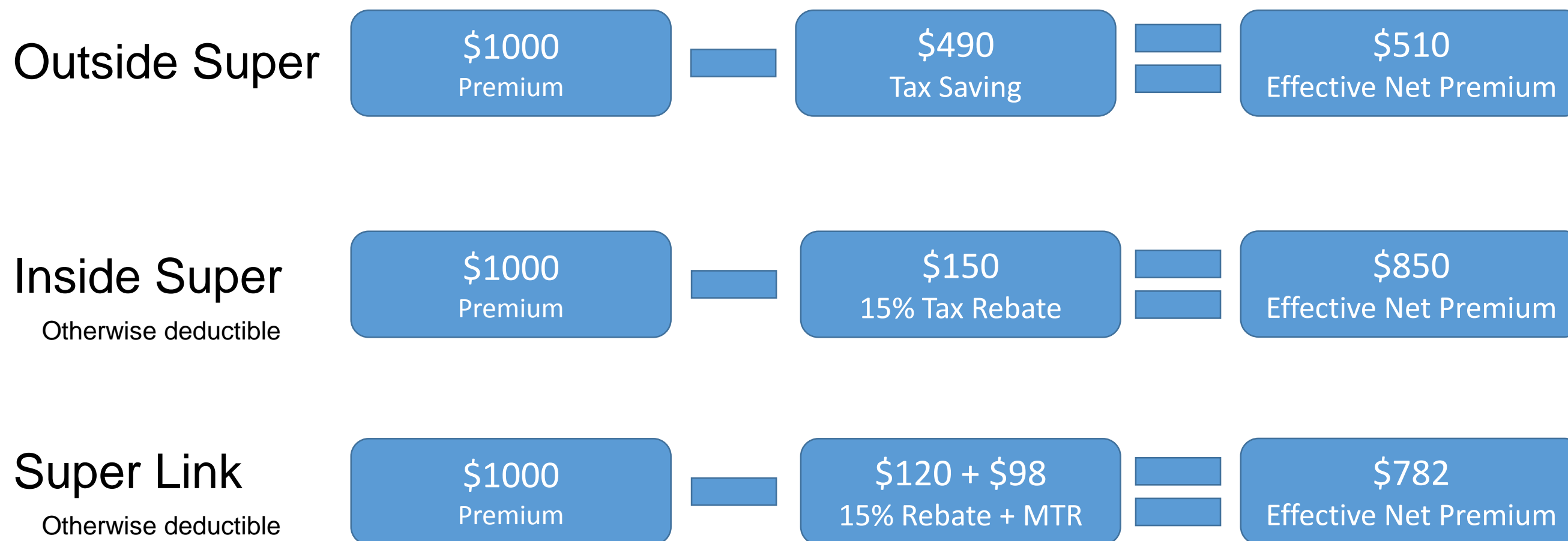
# THE AFTER TAX COSTS OF COVER

\$1000 TPD Premium at 49% marginal tax rate (grossed up max 22% tax)



# THE AFTER TAX COSTS OF COVER

\$1000 IP Premium at 49% marginal tax rate



# TREATMENT OF CLAIM PROCEEDS

- Death Benefits
  - Lump Sum paid to Tax Dependant are tax free
  - Lump Sum paid to Non Tax Dependant will have a tax free and taxable component
    - Taxed Component pays 17% tax
    - UnTaxed Component pays 32% tax
  - Benefits paid to estate are taxed at the ultimate beneficiary
  - Access to anti-detriment payments on lump sum benefits



# TREATMENT OF CLAIM PROCEEDS

- Death Benefits
  - Benefits can be paid as an income stream
    - Spouse
    - child under age 18;
    - child at least 18 and under 25 and was financially dependent on the deceased member;
    - the child has a qualifying disability.
  - Can create effective tax-free threshold of approx. \$46K per annum



# TREATMENT OF CLAIM PROCEEDS

- TPD Benefits
  - Benefit = Account Balance + Insurance Proceeds
  - Tax Exempt Component
    - Pre 1 July 1983
    - Undeducted Contribution Component
    - Exempt Invalidation Component
      - Benefit X day to retirement / (service days + days to retirement)
  - Taxable Portion = Benefit – Tax Exempt component





# TREATMENT OF CLAIM PROCEEDS

- TPD Benefits
  - Taxed Element:
    - Age 60 and over – tax free
    - Age 55-59 – First \$195,000 tax free then 17% on balance
    - Below 55 – taxed at 22%
  - Untaxed element generally applied only to certain Commonwealth and State Super Funds
  - Pension payments available also including 15% tax offset



# TREATMENT OF CLAIM PROCEEDS

- Income Protection Benefits
  - Assessable income in the hands of the member at MTR
  - Benefit paid to member subject to PAYG
- Consider ATO ID when trauma benefits are being paid from IP
  - ATO ID 2004/942



# CLAIMS PROCESS ISSUES WITH SUPER

- Super-Linked Cover assessed via super first (IP & TPD)
  - TPD Any Occupation first
    - Education Training & Experience
    - More Onerous
    - Tax on Benefits
    - Trustee Approval adds time



# IMPACT ON SUPER BALANCE

General information	
Current age	41
MTR% (including Medicare Levy and Temporary Budget Repair Levy)	39.0%

Life & TPD	Premium	Tax deductible %
Personally owned Life & TPD	\$0	0%
Super owned Life & TPD	\$2,500	100%
Combination of personally and super owned Life & TPD - Personally owned portion	\$0	0%
- Super owned portion	\$0	100%
Average yearly premium growth rate	5.0%	
Age to cease funding Life & TPD premiums	65	

Superannuation information	
Superannuation funding type	Existing super savings
Net rate of return on super savings (accumulation phase)	7.0%
15% super fund tax credit available	Yes

Summary of Life & TPD funding impacts in current year	Personally owned Life & TPD	Super owned Life & TPD	Personally and super owned Life & TPD
Premium	\$0	\$2,500	\$0
Net premium	\$0	\$2,125	\$0
Cash flow impact 'before' personal tax deductions	\$0	\$0	\$0
Cash flow impact 'after' personal tax deductions	\$0	\$0	\$0
Net impact to super retirement savings (excluding foregone future earnings)	\$0	-\$2,125	\$0

Summary of Life & TPD funding impacts in current year	Personally owned Life & TPD	Super owned Life & TPD	Personally and super owned Life & TPD
Cumulative net premiums	0	\$94,567	0
Cumulative net premiums (in today's \$)	0	\$64,189	0
Net impact to super balance by age 70	0	-\$195,278	0
Net impact to super balance by age 70 (in today's \$)	0	-\$122,013	0
Net impact to overall wealth position by age 70 versus Personally owned Life & TPD		-\$123,003	0
Net impact to overall wealth position by age 70 versus Personally owned Life & TPD (in today's \$)		-\$80,516	0

- Example on left: “Saving Your Super Calculator”

## Saving Your Super Calculator

LIFE & TPD COVER

ANZ WEALTH

- What about other strategies such as repayment of debt?
- Seek Licensee Advice



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# LESSONS

- This is client by client proposition
- Consider impact on super balance vs cash flow affordability
- Allow the client to make a fully informed decision





# BEST INTEREST DUTY

REGULATORY GUIDE 175

Licensing: Financial product advisers—Conduct and disclosure

October 2013

## Section E



**E** Acting in the client's best interests and related obligations



**ASIC**

Australian Securities & Investments Commission

Wednesday 8 June 2016

16-187MR ASIC takes first action against licensee for alleged breaches of 'best interests duty'



# 1. SCOPE YOUR ADVICE – WHAT’S IN AND WHAT’S OUT

- Scaled Advice is advice that is limited in scope
- Quality Audit Document & Process
- Letter of Engagement confirming what advice is being provided & what advice is not being provided
- “If in doubt refer it out” – what else needs to be dealt with?



## 2. FULLY INFORM THE ADVISER

- Do we have all we need to provide advice?
- RG175.359 – Warn the client if advice is based on incomplete or inaccurate information
- Quality Audit Document & Process
- SOA to confirm warning of incomplete or inaccurate information



# 3. FULLY INFORM THE CLIENT

- Place them in a position to make an fully informed decision
- Benefits of the advice
- Consequences of the advice!!!!
- Replacement Product Advice!!!!
- This applies until the completion of underwriting and cancellations



# 4. THE ROBUST ADVICE PROCESS

- ASIC V NSG Services Pty Ltd
- The robust advice process vs the cookie-cutter sales approach
- Separate Advice from Product



- Advice needs to be specific and in clients best interest



# 5. IS THE CLIENT TRULY BETTER OFF

- Look at every angle – Do the strategic advice first
- Levels of Cover vs Affordability
- Stepped v Level Premium
- Super vs non super ownership
- Replacement Benefits vs Non-Disclosure Risk





# ASIC REPORT 498 – LIFE INSURANCE CLAIMS

## Key findings

- 18 Our review did not find evidence of cross-industry misconduct across the life insurance sector in relation to life insurance claims payments and procedures. Overall, where a decision has been made, 90% of claims are paid in the first instance. For death claims where a decision has been made, on average 96% of claims are paid.
- 19 However, we did identify issues of concern in relation to declined claim rates and claims handling procedures associated with:
- (a) particular types of policies, notably TPD;
  - (b) particular insurers (typically for particular policy types); and
  - (c) particular causes for consumer disputes.
- 20 These concerns will be the subject of ASIC's further action on life insurance: see paragraphs 45–54 and Section E.
- 21 Although the considerable majority of claims are paid, we are concerned that in some cases, claims are being declined on technical or contractual grounds that are not in accordance with the 'spirit' or 'intent' of the policy.
- 22 We identified that fairness should be given greater consideration by insurers. Not all insurance claims will be successful, but an issue arises when a policyholder's reasonable expectations about policy coverage do not align with the technical wording in the policy.
- 23 On this point, a key challenge for the life insurance sector is how to deal with that small number of claims that may not technically be covered under the 'fine print', but under any reasonable consumer or community expectation should be paid. We found that ex-gratia (i.e. goodwill) payments were inconsistently applied across the sector.



ASIC

Australian Securities & Investments Commission

## REPORT 498

# Life insurance claims: An industry review

October 2016

Key Findings on Page 6



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# THIS IS WHY WE EXIST!!



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# MANAGING CLAIMS – THE \$21MIL QUESTION

## PRP CLAIMS REGISTER

PRP Claims Register

Total Benefits Paid out =  
\$21,699,597 (as at Oct  
2016)

Year	Age	Occupation	Cover	Sum Insured	Benefit Payments	Total Benefit	Condition
2016	32	Electrician	TPD	\$226,180	0	\$0	Snowboarding Accident (in progress)
2016	32	Electrician	TPD	\$385,875	1	\$385,875	Snowboarding Accident
2016	32	Electrician	Income Protection	\$5,000	20	\$100,000	Snowboarding Accident
2016	26	Painter	Income Protection	\$9,750	1	\$9,750	Motorbike Injury (1 month + Accident injury Opt)
2016	36	Civil Labourer	Trauma	\$15,450	0	\$0	Hearing Loss (claim declined as definition not met)
2016	43	Financial Planner	Income Protection	\$13,750	3	\$41,250	Mental Health
2016	59	Director	Trauma	\$1,092,235	1	\$1,092,235	Stroke
2016	44	Chief Financial Officer	Income Protection	\$12,690	6	\$76,140	Melanoma
2016	44	Chief Financial Officer	Trauma	\$300,000	1	\$300,000	Melanoma
2016	59	Chief Financial Officer	Income Protection	\$32,967	6	\$197,802	Melanoma
2016	59	Chief Financial Officer	Trauma	\$868,128	1	\$868,128	Melanoma
2015	47	Radio Station Manager	Trauma	\$165,870	1	\$165,870	Parkinsons Disease
2015	40	Insurance Adviser	Income Protection	\$7,481	7	\$29,457	Mental Health
2015	40	Insurance Adviser	Business Expense	\$12,501	7	\$34,512	Mental Health
2015	39	Home Duties/Part Time Florist	Trauma	\$154,781	1	\$154,781	Non Hodgkins Lymphoma
2015	63	Anaesthetist	Income Protection	\$9,539	6	\$57,234	Melanoma - Trauma benefit within IP contract
2015	63	Anaesthetist	Trauma	\$255,256	1	\$255,256	Melanoma
2014	50	Nuclear Medicine Specialist	Income Protection	\$6,947	12	\$83,364	Eye condition
2015	52	Occupational Health & Safety Consultant	Income Protection	\$4,630	1	\$14,252	Quadriceps tendon tear
2014	58	Sales Manager	Income Protection	\$3,656	6	\$21,936	Breast Cancer - Trauma benefit within IP contract
2014	51	HR Director	TPD (Own)	\$2,000,000	1	\$2,000,000	Head Trauma
2014	58	Sales Manager	Trauma	\$105,000	1	\$105,000	Breast Cancer
2014	41	Psychiatrist	Income Protection	\$10,214	2	\$20,427	Lower Leg Fracture -Specified Injury Benefit within IP contract
2014	35	Practice Manager	Trauma	\$200,000	1	\$200,000	Melanoma
2014	50	Nuclear Medicine Specialist	Income Protection	\$21,588	6	\$135,816	Heart Attack
2014	50	Nuclear Medicine Specialist	Trauma	\$1,315,250	1	\$1,315,250	Heart Attack
2014	50	Nuclear Medicine Specialist	Income Protection	\$6,947	6	\$41,682	Heart Attack
2014	38	Accountant	Trauma	\$200,000	1	\$200,000	Melanoma
2014	62	Aged Care Worker	Group Salary Continuation	\$850	24	\$20,400	Bulging Disc and Osteo Arthritis of Lower Back
2014	3	Child	Child Trauma	\$200,000	0.025	\$5,000	Severe Burns (payment negotiated outside policy terms)
2014	48	Newsreader	Income Protection	\$96,000	3	\$288,000	Breast Cancer - Trauma benefit within IP contract
2014	64	Managing Director	Income Protection	\$4,902	1	\$2,487	Knee Replacement -degeneration of Parkinson's Disease
2014	48	Newsreader	Trauma	\$220,500	1	\$220,500	Breast Cancer
2014	33	Business Development Manager	Income Protection	\$5,000	2	\$10,000	Beck Surgery
2013	34	Practice Manager	Income Protection	\$1,000	1	\$1,000	Gallbladder removal & Coronary Artery Spasm
2013	47	Accountant	Income Protection	\$11,250	2	\$22,500	Broken Ankle/Fibula
2013	50	HR Director	Business Expense	\$10,000	6	\$60,000	Head Trauma
2013	47	Newsreader	TPD (Own)	\$1,440,000	1	\$1,440,000	Lumbo Spine and Mental Health
2013	55	Chemical Engineer	Income Protection	\$12,000	3	\$36,000	Fractured Pelvis
2013	56	Lawyer	Trauma	\$420,000	1	\$420,000	Prostate Cancer
2012	44	Anaesthetist	Income Protection	\$27,991	1.5	\$41,987	Fractured Wrist
2012	64	Anaesthetist	Income Protection	\$30,000	1	\$30,000	Cataract and Corneal Transplant
2012	48	Construction Engineer	Income Protection	\$8,200	1	\$8,200	Broken Wrist
2012	47	Director	Business Expense	\$7,500	1	\$7,500	Dengy Fever
2012	47	Director	Income Protection	\$7,441	1	\$7,441	Dengy Fever
2012	48	Obstetrician	Life	\$2,000,000	1	\$2,000,000	Stomach Cancer
2012	48	Obstetrician	TPD (Own & Any)	\$1,300,000	1	\$1,300,000	Stomach Cancer
2012	42	Electrical Engineer	TPD (any)	\$1,500,000	1	\$1,500,000	Neurosaroidosis
2011	45	Newsreader	Income Protection	\$17,000	64	\$1,088,000	Lumbo Spine and Mental Health
2011	41	Electrical Engineer	Income Protection	\$7,000	24	\$168,000	Neurosaroidosis
2011	61	Managing Director	Trauma	\$800,000	1	\$810,000	Parkinsons Disease
2011	61	Managing Director	Income Protection	\$5,000	6	\$30,000	Parkinsons Disease
2010	46	Obstetrician	Trauma	\$610,000	1	\$610,000	Stomach Cancer
2010	46	Obstetrician	Income Protection	\$22,330	86	\$1,920,380	Stomach Cancer
2010	46	Obstetrician	Business Expense	\$20,000	12	\$240,000	Stomach Cancer
2008	34	Home Maker	Trauma	\$230,000	1	\$230,000	Breast Cancer
2008	33	Vet	Trauma	\$350,000	1	\$350,000	Melanoma
2007	34	Managing Director	Income Protection	\$11,000	3	\$33,000	Broken arm
2006	35	Assistant Private Banker	Life	\$350,000	1	\$350,000	Vaginal Cancer
2004	30	Home Maker	Life	\$350,000	1	\$350,000	Suicide
2003	30	Farmer	Trauma	\$350,000	1	\$350,000	Testicular Cancer
				<b>Total Benefits Paid Out:</b>		<b>\$21,699,597</b>	<b>(as at Oct 2016)</b>



# WHO DO YOU ACT FOR?

- You are an advocate for the client
- Your role is to assist the client present the claim to the insurer
- Interpret and present information to meet claim requirements
- Act on behalf of your client to the insurer
- Allow client to focus on their situation



# YOUR ROLE SETTING AND MANAGING EXPECTATIONS

- Set realistic expectations with the client (don't over-promise)
- TPD Claims is a longer subjective process
- Income Protection is an ongoing assessment process
- Death & Trauma Claims simpler but not without complication
  - Trauma Technicalities
  - Suicide



# YOUR ROLE AS FACILITATOR

- Arrange & Assist in the completion of Claim Paperwork
- Coordinate the accountant
- Coordinate the appropriate medical attendees
- Don't be afraid to engage an expert when required





# YOUR ROLE AS EDUCATOR

- Educate the client of process to manage expectations
- Educate the accountant on financially what is being claimed upon
- Educate the medical professionals on the purpose of the policy
- Life Insurance is not workers compensation cover !!!!



# YOUR ROLE REVIEWING ALL INFORMATION

- Do not let anything go to the insurer without your review
- Position the information with the insurer upfront
- Keep an open dialogue with the claim assessor
- You should be the touch point for the claims process





# EDUCATING THE MEDICAL ATTENDANT

Year	Occupation	Cover	Sum Insured	Benefit Payment	Total Benefit	Condition
2011	Managing Director	Trauma	\$800,000	1	\$810,000	Parkinsons Disease
2011	Managing Director	Income Protection	\$5,000	6	\$30,000	Parkinsons Disease

“Parkinson’s disease means the unequivocal diagnosis of Parkinson’s Disease where the disease cannot be controlled with medication and shows signs of progressive incapacity. Parkinson’s Disease as a result of alcohol or drug abuse is excluded.”



# THE POWER OF REVIEWS & EXPERTISE

Year	Occupation	Cover	Sum Insured	Benefit Payment	Total Benefit	Condition
2013	Newsreader	TPD (Own)	\$1,440,000	1	\$1,440,000	Lumbo Spine and Mental Health
2011	Newsreader	Income Protection	\$17,000	64	\$1,088,000	Lumbo Spine and Mental Health

## ACTUAL CUSTOMER SCENARIO

Here is an example of when the action or inaction of Life Insurer's and their associated staff members have contributed to a poor outcome for the client until, I, the adviser, got involved.

My client was a news presenter for a television network and developed a chronic back condition as a result of a fall whilst on holidays. The constant pain of this condition rendered my client under to fulfil important duties of her occupation. This coupled with PTSD resulting from workplace bullying forced my client to retire from her position due to ill-health.

My client contacted me to review their insurance portfolio wanting to cancel her cover (Life, TPD, and Trauma & Income Protection) advising that cover was no longer required as my client had retired from working. Upon probing my client regarding the circumstances leading up to early retirement my client advised the above.

I informed my client that these were claimable events under income protection and the TPD policies as my client was permanently unable to return to work. My client was most surprised as in her mind the incident had occurred 2 years prior and had simply battled on.

I requested Income Protection Claim forms on 11/07/2011, completed forms were lodged on 16/08/2011 and the claim was

accepted on 06/09/2011.

Upon deterioration of my client's condition, we commenced the TPD claim process on 01/02/2012. We meticulously worked with my client to complete the claim forms and coordinate the supporting medical and financial information as we did for the income protection claim and completed claims forms with supporting medical & financial evidence was lodge to the insurer on 28/03/2012.

This triggered an arduous ordeal for my client to undertake lasting more than 12 months before the claim was accepted on 19/04/2013.



# WHAT IS THE QUESTION REALLY ASKING

Year	Occupation	Cover	Sum Insured	Benefit Payment	Total Benefit	Condition
2016	Electrician	TPD	\$226,180	0	\$0	Snowboarding Accident (in progress)
2016	Electrician	TPD	\$385,875	1	\$385,875	Snowboarding Accident
2016	Electrician	Income Protection	\$5,000	20	\$100,000	Snowboarding Accident

6. Do you consider any other treatment plan necessary and/or beneficial for recovery and return to work in their usual capacity? If 'Yes', please comment.  Yes  No

7. Would the patient benefit from Occupational Rehabilitation? e.g. Return to work program, studying, re-training, up-skilling etc? Please comment.  Yes  No



# MY STORY

Year	Occupation	Cover	Sum Insured	Benefit Payment	Total Benefit	Condition
2015	Insurance Adviser	Income Protection	\$7,481	7	\$29,457	Mental Health
2015	Insurance Adviser	Business Expense	\$12,501	7	\$34,512	Mental Health

- Financially Endorsed IP
- Note when Business Expense cover become business revenue cover





**“ The simple question to always ask yourself is:  
Will my client be in a better position as a result of my  
actions”**



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# Questions



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