



## GUIDELINES

### AUSTRALIA POST SUPERANNUATION SCHEME

### TOTAL AND PERMANENT DISABLEMENT CLAIMS

These Guidelines have been issued to the Claims Assessor appointed by PostSuper Pty Ltd (the **Trustee**), as trustee of the Australia Post Superannuation Scheme (the **Scheme**).

The Claims Assessor is required to form an opinion regarding the incapacity or otherwise of Employee Members of the Scheme who have sought payment of a Total and Permanent Disablement (**TPD**) benefit (a **TPD Claim**). For the avoidance of doubt, these Guidelines apply only to TPD Claims made by Employee Members.

These Guidelines:

- set out the definition of the term **Total and Permanent Disablement** in the Scheme Trust Deed, and describe the circumstances in which a TPD benefit is payable from the Scheme;
- refer specifically to each element of the TPD definition, and describe the factors relevant to each element;
- summarise matters which the Claims Assessor ought to take into account, or to disregard, when forming its opinion with respect to a TPD Claim; and
- include a Claims Assessment Summary which is to be completed by the Claims Assessor in relation to each TPD Claim and delivered to the Trustee.

These Guidelines are a general guide only to assist the Claims Assessor in discharging its duties. Circumstances may arise which warrant the Claims Assessor having regard to factors, or taking steps, other than those referred to in these Guidelines.

These Guidelines are dated 13 September, 2019.

## TOTAL AND PERMANENT DISABLEMENT CLAIMS

### 1. Role of Claims Assessor

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Under the Trust Deed of the Scheme the term **Claims Assessor** is defined in Clause 2 to mean:

*a specialist claims assessment panel or organisation or group of such panels or organisations appointed from time to time by the Trustee with the approval of the Corporation either generally or in any particular case.*

It is the role of any Claims Assessor appointed by the Trustee to form an opinion regarding:

- (a) the incapacity or otherwise of Members of the Scheme who have sought a TPD benefit; and
- (b) whether any claimed incapacity resulted from an illness or injury which was inflicted, incurred or aggravated for the purpose of obtaining a benefit under the Scheme.

In respect of Members who joined the Scheme before 1 July 2014 (**Pre July 2014 Members**) the Claims Assessor's opinion (alone) will be applied to determine eligibility of a Member for the TPD benefit under the Scheme. In respect of Members who joined the Scheme on or after 1 July 2014 (**Post July 2014 Members**) the Trustee will consider the Claims Assessor's opinion when satisfying itself whether the Member is eligible for a TPD benefit.

### 2. What is TPD?

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TPD Benefits are paid pursuant to Rule 4.3 of the Scheme's Trust Deed, which provides as follows:

*A Member who ceases to be in the Service by reason of Total and Permanent Disablement shall be entitled to receive a lump sum benefit equal to:*

- (a) *in the case of a Member who had withdrawn from, and not resumed, membership of the Scheme before the date of cessation of Service – the greater of the Accrued Retirement Benefit and the MRB; and*
- (b) *in any other case – the Death Benefit.*

The Trust Deed of the Scheme provides that one of the matters which must be satisfied for a Pre July 2014 Member to receive a TPD benefit is that:

*the Trustee receives a certificate signed on behalf of the Claims Assessor to the effect that in the opinion of the Claims Assessor the Member is incapacitated to such an extent as to render the Member unlikely ever to engage in regular employment for which the Member is, for the time being, reasonably qualified by reason of education, training or experience.*

For Post July 2014 Members the test is very similar, but requires that the Trustee (not the Claims Assessor) be reasonably satisfied that the Member is:

*unlikely, because of ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.*

With respect to Post July 2014 Members, the Trustee requests your opinion as to whether it should be satisfied that the Member satisfies the above test.

In both cases, the incapacity must arise from *disablement due to illness or injury*. The requisite disablement must be established as at the date the Member ceased to be in the Service. For this purpose, "Service" means employment with an employer participating in the Scheme.

In addition, TPD:

*shall not include disablement as a result of illness or injury which in the opinion of the Claims Assessor ... has been inflicted, incurred or aggravated for the purposes of obtaining a benefit under the Scheme.*

The full definition of TPD contained in the Trust Deed is annexed to these Guidelines.

Based on the above, the Claims Assessor must form an opinion as to whether each of the following elements is satisfied:

- the Member is incapacitated through illness or injury;
- to such an extent as to render the Member unlikely ever to engage in regular employment (or in respect of Post July 2014 Members whether the Member is unlikely to engage in gainful employment);
- being regular employment for which the Member is, for the time being, reasonably qualified by reason of education, training or experience (or in respect of Post July 2014 Members being gainful employment for which the Member is reasonably qualified by education, training or experience); and
- the disablement did not result from an illness or injury which was inflicted, incurred or aggravated by the Member for the purpose of obtaining a benefit.

Each of these elements is discussed below.

### **3. The Member is incapacitated through illness or injury**

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#### **3.1 Obtain medical and other evidence as required**

To ascertain whether a Member has an incapacity arising from disablement due to illness or injury, the Claims Assessor should have regard to the medical reports provided to it and make a determination as to whether those reports are sufficient to enable it to form an opinion regarding the Member's incapacity. This may vary from case to case. Only one medical report may be necessary to establish the extent of an extremely severe injury

leaving the Member with no chance of recovery, while other conditions are susceptible to conflicting diagnoses and prognoses, and more than one report may be required.

Where there is any doubt about:

- (a) the nature or extent of the incapacity claimed by a Member; or
- (b) the completeness of the medical reports provided,

the Claims Assessor should arrange for the medical examination (or re-examination) of the Member.

The Claims Assessor should also consider whether it is desirable to obtain additional independent medical reports (for example, reports from specialist medical practitioners) where the medical reports are not clear, or conflict, or a medical practitioner has indicated that further reports may be of assistance.

Where the Claims Assessor is in doubt as to whether a Member's condition as assessed and described by a particular medical practitioner would constitute TPD within the meaning of the Trust Deed, it should consider whether it would be appropriate to arrange for the provision of a supplementary report which expresses the views of the medical practitioner in light of the TPD definition. For example, this may be necessary where a medical report was obtained for a different purpose (for example, entitlement to workers' compensation payments), as the inquiry may be of a different nature to that required for a TPD Claim under the Trust Deed.

The Claims Assessor should also consider whether additional information should be obtained from other sources regarding a Member's condition. Such sources might include (without limitation) an interview by an appropriately trained and experienced counsellor, or a surveillance report provided by an appropriately trained and experienced surveillance officer.

There is no general rule of "procedural fairness" requiring that *all* additional information from external sources be provided to a Member for comment. However, case law demonstrates that in order to give genuine consideration to a claim, claimants should be given the opportunity to answer the contents of *adverse* reports before they are relied upon. Accordingly, the Claims Assessor should always consider whether information obtained from other sources should be provided to the Member for comment.

Where medical documents in the file suggest that the Member may have suffered from other injuries and/or illnesses (for example, psychological issues), it may be appropriate to seek additional information with respect to the potential impact of those injuries and/or illnesses on the Member's capacity for work. This is the case even in circumstances where those other injuries and/or illnesses are not expressly relied upon by the Member as the basis for their incapacity in their claim application forms.

Information which cannot (or is not) verified should not be taken into account (for example, unsubstantiated hearsay evidence that the Member has been seen engaging in activities inconsistent with the claimed injury or illness).

### 3.2 Reviewing medical reports

- (a) When reviewing the medical reports relating to a TPD Claim, the Claims Assessor should have regard to matters including the following:
- (i) if the Claims Assessor forms the view, on the basis of the medical reports, that the Member is not incapacitated to the necessary extent, the medical reports should clearly address the elements that gave rise to that opinion. It is not sufficient, for example, to rely upon medical evidence stating that symptoms may be 'exaggerated' or that there are inconsistencies in the symptoms stated by the Member so as to raise doubt as to the Member's genuineness. The medical reports should include information regarding the Member's medical condition itself which supports the Claims Assessor's view;
  - (ii) whether the medical reports are final and conclusive. Do there appear to be any gaps in the medical reports, any issues which appear to be inadequately addressed or is any report based on insufficient information (for example, has a doctor prepared a report based on written materials regarding the Member's condition without examining the Member)? Is any report expressed to be preliminary? Does any reporting medical practitioner state that further investigation, tests or treatment would be required to enable them to form a concluded view? If there is any question that a medical report, or the medical reports taken as a whole, is or are incomplete or otherwise inadequate, the Claims Assessor should arrange for appropriate further medical examinations or re-examinations to be conducted. Where a medical report contains ambiguities or is otherwise unclear, the Claims Assessor should consider whether the medical practitioner concerned should be asked to provide clarification;
  - (iii) the prognosis provided by medical practitioners or, if one is not provided, the reasons why;
  - (iv) any reference in a medical report to a Member's state of mind (for example, lack of motivation to return to work or general depression) should not of itself influence the Claims Assessor to form the opinion that a Member is not incapacitated;
  - (v) care should be taken in considering medical reports prepared after a lengthy period has elapsed from the date of the incapacity. A medical practitioner who did not examine the Member around the date of leaving the Service may be less able to comment on a Member's condition as at that date than a medical practitioner who provided a contemporaneous report. Where a medical report does not include a view as to what the Member's state of health would have been at the date of leaving the Service, such a report should be treated as inconclusive. It may be

appropriate for the Claims Assessor to ask the medical practitioner to comment on this issue; and

- (vi) whether each medical practitioner providing a report appears to be appropriately qualified to do so.
- (b) When reviewing non-medical reports relating to a TPD Claim, the Claims Assessor should have regard to matters including the following:
- (i) whether each person providing a non-medical report appears to be appropriately qualified to do so; and
  - (ii) whether any matter contained in a non-medical report conflicts with matters set out in medical reports obtained in respect of the Member. If there is such a conflict, the Claims Assessor should consider whether the matter should be referred back to the relevant medical practitioner(s) for clarification, or whether further medical examination of the Member is required.

Should the Claims Assessor form the view, based on the medical and other reports (if any), that the Member is incapacitated, the Claims Assessor must then satisfy itself of the remaining elements set out in section 2 above. These elements are discussed in sections 4-6 below.

### **3.3 Mechanism of employment cessation**

The Trust Deed requires a Member to have ceased employment *by reason of* TPD. However, it does not require a Member to have been terminated by their employer on medical grounds. It is not inconsistent for a Member to resign or to take a voluntary redundancy, and also to have ceased employment by reason of TPD. For example, a Member may have resigned or accepted the redundancy due to their medical incapacity. Accordingly, the fact that a Member has ceased employment voluntarily should not prevent the Claims Assessor from forming the view, based on consideration of available evidence, that the Member ceased employment by reason of TPD.

## **4. To such an extent as to render unlikely ever to engage in regular employment**

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### **4.1 “to such an extent as to render” (Pre July 2014 Members only)**

For Pre July 2014 Members, the Member must be incapacitated *to such an extent as to render* the Member unlikely ever to engage in regular employment. The Claims Assessor must be satisfied that the incapacity (and not some other factor such as increased family responsibilities) has made the Member unlikely ever to engage in regular employment.

#### 4.2 “unlikely ever” / “unlikely”

The Member’s prognosis is fundamentally a medical question. The medical evidence should therefore include the opinion of the reporting medical practitioners as to the likelihood of the Member’s resumption of work or attendance to a profession or occupation.

The TPD definition does not require that a Member’s incapacity be established to be permanent. The Claims Assessor must form an opinion as to the likely future development (or lack of development) in the Member’s condition. The term “unlikely” used in the TPD definition has its ordinary meaning. It means “not likely”, “improbable”, “having no real chance”, or having greater than a 50% chance of not occurring. The reference to “ever” (for Pre July 2014 Members only) means the test must be applied in respect of any time in the future and not just to a limited foreseeable period. However, this element does not extend to cover a remote possibility that the Member would ever work again.

#### 4.3 “regular employment” / “gainful employment”

The terms *regular employment* and *gainful employment* are not defined in the Trust Deed and, therefore, takes their usual meaning.

The *Oxford English Dictionary* defines ‘*regular*’ to mean (as relevant here):

*‘Reliably or continually provided or existing; continuing without interruption; stable; spec. (of employment) secure; not temporary or casual.’*

While ‘*gainful*’ (for Post July 2014 Members only) is defined to mean (as relevant here):

*‘Productive of gain or profit; profitable, advantageous; Leading to pecuniary gain; lucrative, remunerative.’*

Importantly, note that the phrases ‘*regular employment*’ and ‘*gainful employment*’ are limited by the following phrase ‘*for which the Member is, for the time being, reasonably qualified by reason of education, training or experience*’ and this must be the focus of the assessment by the Claims Assessor. The definition requires unfitness for employment, without distinction between full-time work and part-time work other than by regard to the work which the member is reasonably capable of performing by reason of education, training or experience. This may mean that a Member in pre-injury or illness full-time employment but able to work part-time post-injury or illness may not satisfy the criteria for payment of a TPD Claim, although this conclusion may not be appropriate in cases where there has been a significant reduction in the regularity of employment which the Member is likely to be capable of undertaking following their illness or injury.

## 5. Member reasonably qualified by reason of education, training or experience

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### 5.1 Information to be gathered

When assessing the employment for which a Member is for the time being reasonably qualified by reason of education, training or experience, the Claims Assessor should have

regard to the Member's education, training and experience at the time the assessment is made. Generally, this is at the time the Member ceases to be in the Service of the relevant Employer or, if later, 6 months after the Member was last at work.

To assist with its assessment of this issue, the Claims Assessor should obtain such information as it considers appropriate, which may include (without limitation):

- (a) details of the Member's formal educational qualifications;
- (b) details of any training or qualifications undertaken by the Member outside the primary, secondary or tertiary education system;
- (c) a summary of the Member's work history;
- (d) an opinion from the employer of the Member, based on the employer's observation of the Member during the course of their employment with the employer, as to the employment for which the Member might be reasonably qualified. (The employer's view is not to be taken to be decisive in this regard.); and
- (e) to the extent required having regard to the nature of the illness or injury, the opinions of the reporting medical practitioners as to the seriousness of the illness or injury, its relationship to the likelihood of the Member resuming work and, in view of the injury or illness, the limitations on the nature of the work the Member could undertake if they were to recommence work.

## **5.2 Reviewing information regarding qualification**

In light of the above information, the Claims Assessor should form a view of what (if any) employment the Member is reasonably qualified to undertake. The Claims Assessor should note the following:

no determination should be attempted as to what further training or education might be undertaken by the Member. If employment would only be suited to the Member after the Member had been trained or re-trained, it is not open to the Claims Assessor to find that the Member is reasonably qualified for the position. If the Member has undertaken significant re-training, any additional qualifications that they may have obtained should not be considered as part of their education, training or experience as at the date of cessation. However, the requirement for *minor* retraining to obtain a particular position (for example, on the job training or a certification) does not necessarily mean that the Member was not already reasonably qualified for that position;

- (a) the fact that a Member might, in the opinion of the reporting medical practitioners, be able to undertake particular types of work should not be treated by the Claims Assessor as decisive of itself. The issue to be determined is whether there is any regular employment which could be carried out within the Member's physical and mental limitations and in light of their employment history and qualifications. For example, if a Member's employment history showed experience in labouring type work only, and no other training or qualifications, the only position for which that

Member would reasonably be qualified would generally be labouring work. It may not be reasonable to determine, for example, that a Member may undertake light clerical work if the Member's education or employment history did not disclose training or experience in such work. However, a Member who has experience only in unskilled heavy manual work might be reasonably qualified to perform light manual work. Any transferable skills should be considered;

- (b) *incapacit[y] to ... engage in regular employment* means "the actual availability of employment". This means the likelihood of obtaining employment needs to be considered. For this purpose, the Claims Assessor needs to consider the Member's particular circumstances and their actual job prospects in the real world. It is the actual capacity to obtain and keep a job which is important. However, the Claims Assessor is not required to specifically identify an actual position with a particular employer; and the Claims Assessor should consider whether it would be helpful to also obtain a Vocational Assessment to clarify any uncertainty with respect to the above issues.

## **6. Self-inflicted disablement**

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**6.1** The Claims Assessor should be satisfied of the following before it concludes that an injury or illness was self-inflicted for the purpose of obtaining a benefit:

- (a) that the injury or illness was incurred, inflicted or aggravated by the Member; and  
(b) that the Member did so for the purpose of obtaining a benefit under the Scheme.

These issues are addressed separately below.

### **6.2 Illness or injury was self-inflicted**

Where the materials before the Claims Assessor raise any question as to whether an illness or injury which has led to a Member's incapacity may have been self-inflicted, the Claims Assessor should consider:

- (a) whether the Member should be examined or re-examined by an independent medical practitioner with a view to determining whether the illness or injury was incurred, inflicted or aggravated by the Member; and  
(b) what other enquiries (if any) should be made. For example, employer records may be available which include sufficient details of the circumstances of an injury for the Claim Assessor to form a view on this point.

### **6.3 Obtain a benefit**

Should the Claims Assessor form the view that the illness or injury of a Member was incurred, inflicted or aggravated by the Member, the Claims Assessor should conduct enquiries aimed at determining whether the Member did so for the purpose of obtaining a benefit.

The Claims Assessor will need to consider what enquiries might be relevant and appropriate in the particular circumstances. For example, the Claims Assessor may wish to consider asking the Member for an explanation, or arranging for the Member to be examined and assessed by a psychiatrist to establish (to the extent possible) the state of mind of the Member at the time the injury or illness was incurred, inflicted or aggravated.

## **7. Claims Assessment Summary**

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The Claims Assessor should complete a Claims Assessment Summary in respect of each TPD Claim dealt with by it, and deliver such summaries to the Trustee. The Claims Assessment Summary should set out a statement of reasons for the Claims Assessor's opinion. Without limitation, the statement of reasons should include explanation of the following issues:

- (a) where the Claims Assessor has been required to deal with conflicting or inconsistent medical reports, the statement of reasons should provide an explanation as to why the opinions of certain reports are preferred over others; and
- (b) where the Claims Assessor has formed the opinion that the Member is not TPD on the basis that he or she is likely to engage in some alternative employment for which they are reasonably suited, the statement of reasons should identify, with particularity, *which* available occupations the Member is reasonably suited to.

## **8. General**

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All opinions formed by the Claims Assessor must be formed in good faith (that is, such opinions must not be capricious, arbitrary or perverse).

In carrying out its enquiries and investigations and in discharging its obligations as regards the forming of opinions and the provision of certificates to the Trustee, the Claims Assessor must, and must ensure that its officers, employees and agents will, comply with all applicable laws, including without limitation State and Federal Laws relating to privacy, discrimination and equal opportunity.

## **SCHEME TRUST DEED DEFINITION OF “TOTAL AND PERMANENT DISABLEMENT”**

***Total and Permanent Disablement*** means:

- (a) in relation to a Member who last became a Member of the Scheme on or before 30 June 2014, disablement due to illness or injury as a result of which:
  - (i) the Member has suffered while a Member the loss of two limbs or the sight of both eyes or the loss of one limb and the sight of one eye (where limb is defined as the whole hand or the whole foot); or
  - (ii)
    - (1) the Member has been continuously absent from work for a period of not less than six months or such lesser period (if any) as may be agreed between the Corporation and the Trustee from time to time either generally or in any particular case; and
    - (2) the Trustee receives a certificate signed on behalf of the Claims Assessor to the effect that in the opinion of the Claims Assessor the Member is incapacitated to such an extent as to render the Member unlikely ever to engage in regular employment for which the Member is, for the time being, reasonably qualified by reason of education, training or experience,
- (b) in relation to a Member who was admitted to membership of the Scheme on or after 1 July 2014, ill-health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**PROVIDED THAT** unless the Corporation otherwise determines, either generally or in any particular case, Total and Permanent Disablement shall not include disablement as a result of illness or injury which in the opinion of the Claims Assessor or, if there is for the time

being no Claims Assessor, the Trustee, has been inflicted, incurred or aggravated for the purposes of obtaining a benefit under the Scheme.

**PROVIDED FURTHER THAT** where pursuant to this Deed the Trustee has effected a policy of insurance under which insurance is or may become payable in respect of the disablement of the Member or group of Members the Trustee shall determine that Total and Permanent Disablement shall have the same meaning as is given to those words for the purposes of such policy in which event any determination by the relevant insurer as to whether or not a Member is so disabled in terms of such policy shall be binding on all persons interested for the purposes of the Deed.

## CLAIMS ASSESSMENT SUMMARY

**Name of Claimant:** \_\_\_\_\_

**Date of Birth:** \_\_\_\_\_

**Job Title Immediately  
Prior to the Disability:** \_\_\_\_\_

**Date of Commencement of  
Absence from Work:** \_\_\_\_\_

**Date Member joined the Scheme:** \_\_\_\_\_

**Nature of Disability:** \_\_\_\_\_

**List and Summary of  
Medical Reports:** \_\_\_\_\_  
\_\_\_\_\_

**Summary of Claimant's  
Work History:** \_\_\_\_\_  
\_\_\_\_\_

**Summary of Claimant's  
Qualifications (if any):** \_\_\_\_\_  
\_\_\_\_\_

**Summary of Claimant's  
Training (if any):** \_\_\_\_\_  
\_\_\_\_\_

**Decision of Claims Assessor:** Is it the opinion of the Claims Assessor, having had regard to the above matters, the medical reports received and the matters referred to in the current Claims Assessor Guidelines issued by the Trustee:

- That the claimant [is/is not]\*<sup>1</sup> [incapacitated to such an extent as to render the claimant unlikely ever to engage in regular employment for which the claimant is, for the time being, reasonably qualified by reason of education, training or experience<sup>2</sup> / unlikely, because of ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience<sup>3</sup>]?
- That the claimant's illness or injury [was/was not]\*<sup>4</sup> inflicted, incurred or aggravated for the purposes of obtaining a benefit under the Scheme?
- That the reasons for the Claims Assessor's opinion are as follows:

.....  
 .....  
 .....

**Signed:**

**Dated:**

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<sup>1</sup> Delete as appropriate

<sup>2</sup> For Pre July 2014 Members

<sup>3</sup> For Post July 2014 Members

<sup>4</sup> Delete as appropriate