



## TPD claims – your complete guide

**Author:** [Tanya Neilson](#)

**Email:** [tanya@guardianinjurylaw.com.au](mailto:tanya@guardianinjurylaw.com.au)

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If you have sustained an injury or illness that is preventing you from working, you may be able to [claim total permanent disability \(TPD\) benefits](#) attached to your superannuation policy. Your injury may be a physical injury, chronic illness or [mental illness](#). This article is a guide to all you need to know when making a TPD claim, from eligibility to entitlements to TPD payouts. We also look at options if your claim is rejected, what timeframes apply, options for multiple claims, taxation on benefits and much more.

### 15 common questions about TPD claims answered

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## What is a TPD claim?

Total permanent disability entitlements are insurance entitlements attached to your superannuation fund. Each fund has its own policy with different rules, requirements and definitions that need to be met to access your entitlements.

For the most part, TPD policies define total and permanent disablement as the fund being satisfied that:

*... on medical and other evidence, that the insured member has been unable to engage in employment for six consecutive months because of sickness or injury; and is so disabled that the insured member is unlikely to ever engage in his or her own occupation or any other occupation for which he or she is reasonably suited by education, training or experience.*

For a successful TPD claim, you must have no real prospects of obtaining commercial employment in the open labour market that you would be otherwise qualified to do.

**Important note:** *this is a general definition and different policies have different definitions. So, it's important to understand the TPD meaning for your specific policy. We can look at your policy, for free, and advise you on your eligibility and entitlements.*

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## Am I eligible for a TPD claim?

To be eligible for your TPD entitlement, you need to prove that you meet the fund's definition of total permanent disability. The definition has a number of elements that need to be unpacked.

### Unable to engage in employment for six consecutive months

Most definitions require you to have been unable to engage in employment for six consecutive months. It should be noted that generally, funds do not consider return to work attempts, working in a restricted manner or undertaking alternate duties as returning to work.

### Education, training and experience

Most definitions require you to be unlikely to ever engage in your own occupation or any other occupation for which you are suited by education training or experience. The funds are expected to take a realistic and common-sense approach when considering this aspect of your claim.

They need to consider what your previous education, training and experience has been. For instance, they cannot expect a manual labourer to be able to find, obtain and keep work in an

office. Likewise, they cannot expect an administrative worker to be able to find, obtain and keep working as a manual labourer.

Practically, the fund needs to consider whether it is probable that you would actually obtain employment in an actual paid position.

## Activities of daily living definitions

Some superannuation funds have an “activities of daily living” definition for total and permanent disability.

This definition is usually very onerous and requires you to show that you are unable to perform at least two out of five activities of daily living. These include being unable to:

- feed yourself;
- toilet yourself;
- get in and out of a chair without assistance; and/or
- walk any distance.

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## What else will the super fund look at when I lodge a TPD claim?

### “Real world” employment

When determining whether or not you are able to engage in your own or any other occupation for which you are reasonably suited by way of education, training or experience, funds are required to consider whether or not you are able to obtain, undertake and keep a “real world” job. A “real world” job can’t be fanciful or made up. It needs to be a job that actually exists.

There have been many cases which look to what a “real world” job actually is. The courts have determined that if someone has a highly sympathetic employer who has created a role for them or if they are compelled by a WorkCover insurer to employ them, this is **not** a real world job.

Likewise, if a worker can only perform light duties and requires frequent and unplanned breaks to manage pain, the fund is required to consider if this type of job would actually exist in the open labour market.

Finally, if you are employed by a large employer who has thousands of employees and they are unable to find suitable alternative employment, this can go a long way to suggesting that a real world job simply doesn’t exist.

## “Active” employment

Most superannuation policies have an “active employment” requirement.

This generally means that you are employed to work 15 hours or more per week to be eligible for TPD cover. Again, you need to check the policy to see if the fund has an active employment requirement. We can look at your policy, for free, if you are having difficulty determining this definition.

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## Reasonable retraining

Most funds will have included in their TPD definition that:

*“... will be unable ever to be gainfully employed in his or her usual occupation or any other occupation for which he or she is reasonably suited by education, training and experience.”*

When considering if you can be reasonably retrained, the fund needs to look at what you could be reasonably retrained to do given your education, training and experience whilst taking into account the restrictions imposed by your injury or illness.

## Under the care of a medical practitioner

An increasing number of policies require you to be under the care of medical practitioner in order to be entitled to claim your TPD benefit.

Along with being under the care of a medical practitioner, the policies require you to be complying with the advice and treatment given by the doctor. This becomes particularly difficult if you have issues accessing medical care or have exhausted all relevant and appropriate care.

If you are having difficulty with meeting this requirement, you should seek legal advice. We provide free advice and "no win, no fee" claims.

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## What evidence do I need when lodging my TPD claim?

To give your TPD claim every chance of success, you need to ensure that the appropriate evidence is submitted with your claim.

In most cases, the fund will require you to provide two completed medical attendant statements from your treating general practitioner.

Your GP will be asked whether or not you have the capacity to return to your pre-injury role or some other role. So that your treating doctors can best fill in the form, it is a good idea to give them the TPD definition so that they can understand the framework they are operating in.

In some instances, providing clinical notes from treating health practitioners can be beneficial.

Also, reports from vocational assessors or occupational physicians may be of benefit if meeting the TPD definition looks like it may be challenging.

Lastly, if you have returned to a supported role, having a statement from your employer about the actual duties that you perform and whether or not this is in a created and supported role, can be a good idea.

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## What do I need to look out for when lodging a TPD claim?

If you are considering lodging a TPD claim, it is crucial that you check your individual policy to determine if you actually held cover at the time you stopped working.

Most policies require you to have been “at work” immediately prior to sustaining the injury or developing the illness. “At work” can mean that you were actively performing or capable of performing all of your normal duties, without limitation or restriction due to injury or sickness. They can also require you to have not been in receipt, or entitled to claim, any income support benefits including [workers' compensation](#), [TAC benefits](#) for a road accident and government benefits prior to claiming TPD benefits.

You also need to check whether or not your super fund has a “special risk” occupation exclusion. This means that if you were employed to undertake a high-risk occupation such as work in mines, on oil rigs etc., you may be unable to claim. If this is the case and you have been paying superannuation TPD premiums, you can seek a refund of the premiums.

## How much will my TPD payout be?

The amount of TPD insurance you are entitled to is the amount you were insured for as at the date of your injury or the date you last worked in your pre-injury role. Sometimes determining your date of disablement can be difficult and needs to be carefully considered.

***Important note:*** *the amount of your TPD payout is calculated based on the amount of insurance you had at the time you stopped working, NOT the time you lodge your claim (which could be months or years later).*

You should also be aware that if you stopped work some time ago and your employer hasn't been making contributions and you haven't been paying contributions, then your TPD cover will be NIL. This is why it is important to check the cover in place when you stopped working in your pre-injury role.

## What if the Superannuation fund is taking too long to determine my TPD claim?

The superannuation fund generally has six months in which to make a decision from the date they received all relevant material in order to assess your TPD claim. Super funds will often request additional information which will result in them having additional time to determine the claim. They may also arrange for you to be assessed by a medico-legal doctor.

Whilst there is no way to compel a superannuation fund to make a decision concerning your claim, you can certainly put the fund on notice that you will be seeking interest to be paid on the insured amount from the date it was reasonable for the fund to assess your claim until the date it was approved. Interest is calculated in accordance with the *Insurance Contracts Act*.

## Can I claim TPD while on worker's compensation or TAC?

Yes, you can certainly pursue a TPD claim whilst you are in receipt of worker's compensation or transport accident benefits (TAC benefits).

TPD claims do not affect worker's compensation or transport accident claims because the lump sum benefit payable is not considered income. The evidence obtained in the worker's compensation or transport accident claim can often be used to support your TPD claim.

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## Do I have to repay Centrelink or Medicare after my TPD benefit is paid out?

When your TPD benefit is paid, it is not considered income. This means that you do not have to repay Centrelink or Medicare.

## Can I lodge more than one TPD claim?

If you have more than one superannuation fund with TPD insurance, you can certainly bring more than one claim.

Be aware however, that because super funds have different trust deeds, the requirements for each claim may be different. It is important to check that you had cover with the various funds as at the date you were injured or became unable to work.

## Do I have to pay income tax on my TPD benefit?

You do not have to pay income tax on your TPD benefit. However, your TPD lump sum benefit is paid into your super account and forms part of your fund balance. You will need to pay tax if you withdraw your benefit from the fund balance.

Your superannuation fund should be able to provide you with an estimate of the tax that will be payable upon withdrawal of the benefit. It is also recommended that you seek clarification and advice from your accountant regarding the taxation implications.

## How am I paid once the claim is approved?

When your TPD claim is approved, you are entitled to both the insured benefit (the lump sum you were insured for) and the balance of your superannuation fund.

You have options with regard to what you do with the approved funds. These include:

- withdraw the entire amount;

- keep the entire amount with your super fund;
- Withdraw or rollover part of the benefit;
- Rollover the entire benefit to another super fund or self-managed super fund.

Because everyone's financial situation is different, it is crucial that you obtain financial advice to ensure that you make the best financial decision.

## My TPD claim has been rejected; what now?

If your TPD claim has been rejected, you may have the right to dispute the superannuation fund's decision. Your dispute options depend upon the reasons for the fund rejecting the claim and include:

1. Obtaining further appropriate evidence and submitting this to the fund for reconsideration.
2. Making a complaint to the [Australian Financial Complaints Commission](#) (AFCA). AFCA is charged with investigating complaints about financial institutions, including superannuation funds.
3. Issuing proceedings in the relevant court. Which court you issue proceedings in will depend upon the monetary amount in dispute.

You can read more detailed information about denied TPD claims in our blog, ["Here's what to do if your TPD claim is rejected"](#).

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## Timeframes for making a TPD claim

There are no time frames in which you need to lodge a TPD claim.

Historical claims can be brought where the appropriate evidence still exists. Obviously, the longer the claims are left, the more difficult they become.

If the superannuation fund has declined your claim, most States provide you with 6 years in which to issue proceedings in the relevant Court. Legal advice early on is crucial to ensure that you understand any relevant time limits.

## Should I get a TPD lawyer involved?

Most people are unaware of their TPD entitlements. With TPD benefits being paid as a lump sum, they can make a significant financial difference if you have sustained an injury or developed an illness that is permanently preventing you from working.

Although TPD claims may initially seem simple, they can quickly become complex. It is for this reason that obtaining legal advice early on is important. A TPD lawyer will ensure that you understand your entitlements, have your claim appropriately prepared to include the appropriate evidence and have an experienced representative liaise with the superannuation fund on your behalf.

At Guardian Injury Law, we are experienced in pursuing successful TPD claims. We undertake all work on a "no win, no fee" basis. We are skilled at providing clear legal advice so that you can make informed decisions every step of the way.

## Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

[enquiries@guardianinjurylaw.com.au](mailto:enquiries@guardianinjurylaw.com.au)

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