Australian Institute of Superannuation Trustees

10 October 2014

The Hon. Michael O'Brien MP
Treasurer
State Government of Victoria
Level 4
1 Treasury Place
MELBOURNE VIC 3000

Email: michael.o'brien@parliament.vic.gov.au

Dear Treasurer,

**Re: Treatment of Life Insurance Policy Riders for the purpose of stamp duty**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the $600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.*

We write with regards to the recent changes to stamp duty on life insurance which were announced in the state budget and implemented as part of the *Building a Better Victoria (State Tax and Other Legislation Amendment) Act 2014*.

AIST seeks that the *Duties Act 2000* be amended to revert to the previously existing definition of life insurance that does not exclude total and permananent disability (TPD) and hence ensures that the abolition of stamp duty applies to all normal life insurance cover.

AIST welcomed the changes when they were announced that were made effective from 1 July this year which abolished duty payable on life insurance policies. AIST welcomes efforts that reduce the tax burden to all Australians, particularly where these efforts improve their retirement savings, and have the potential to alleviate Australia's chronic underinsurance problem.

Ground Floor
215 Spring St
Melbourne VIC 3000

**T** +61 3 8677 3800
**F** +61 3 8677 3801

info@aist.asn.au
www.aist.asn.au

We note, however, that the changes created a new class of dutiable policy with the definition of 'life insurance riders'. Included within the category of life insurance rider is cover for total and permanent disability (TPD). TPD cover is commonly taken out as part of a policy which provides cover for both death and TPD. This change has created some confusion within the industry, and AIST believes that the change has the potential to undermine the interests of superannuation fund members, as well as competition in the industry.

Most importantly, the changes classify TPD cover that is attached to a life policy as general insurance for the purposes of stamp duty, even though in all other areas of law (as well as in fact) a TPD policy is normally classified as life insurance cover.

Trustees who are members of AIST most commonly purchase life insurance in the form of a group life insurance policy. This allows members to move in and out of super funds without a new policy needing to be put in place. The normal level of default cover in place for new members of a super fund varies, but is generally a level of cover that includes cover for both death and TPD.

In addition, in most cases, the part of the premium payable on a policy for death and TPD that can be solely attributed to the TPD cover is the higher proportion of the premium. This potentially means that members who would have previously paid a 5% duty on their life insurance coverage under the old charging method may in actual fact, be paying more under the new charging method, as the amount payable has not only been increased to 10% of the TPD premium but is now payable annually, while previously duty was only payable at the time of entry to the fund. Obviously, existing members have been effectively grandfathered and will not be subject to the new regime; however this creates some additional issues which we would like to bring to your attention later in this letter.

To put the changes in very general terms, for new superannuation fund members who are located in Victoria, their premium would be subject to a 10% stamp duty upon that part of the premium that relates to TPD. As we previously brought to your attention, this is likely to increase premiums across the board. This comes at a sensitive time for this industry – life insurance premiums have risen across the board as a direct result of a 'perfect storm' of factors, including increasing claims for disability benefits, higher lapse rates and the entry into the market of a growing plaintiff lawyer industry, resulting in an erosion of superannuation fund members account balances. We see this stamp duty regime as creating substantial red tape at insurers and point out that whenever a premium increases, it is a fund member who is left to foot the bill, leading to a further erosion of their account balances.

On top of this, AIST has concerns that personal information that wouldn't normally be provided by funds to insurers would need to be provided, in order to accurately assess the level of duty payable. We note that in this day and age where consumers' privacy is under attack on many fronts, requirements for personal information should be decreasing rather than increasing.



Closer examination, however, appears to indicate that the notion of a new member, is itself an issue. In addition to members who receive coverage with a new superannuation fund, the act of entering into a new policy by trustees and insurers would mean that every member of the fund with existing TPD cover would be assessed as a new member. This creates a substantial disincentive to a competitive marketplace with regards to funds entering into new group life insurance contracts and may result in funds staying with existing insurers. In certain cases, it is plausible that this may mean that funds continue existing coverage which may be sub-optimal, as group life insurance evolves over time.

This confusion has resulted in different information being provided to funds by the many different insurers that they use.

A final problem that has been identified by AIST members is in the nature of a different taxation regime in one area of Australia, compared to others, or even compared to grandfathered members in Victoria. One of the aims of the MySuper regime was to avoid the kinds of cross-subsidisation issues that were evident in superannuation products prior to the commencement of MySuper. It is not practical to charge different rates of premiums for policies between groups of MySuper members, meaning that where a single premium rate is levied across all members of a fund, it would be arguable that this creates the kind of cross-subsidisation that has been outlawed under the MySuper regime.

Understandably, the issue of cross-subsidisation is something that we will also be raising with the Australian Prudential Regulation Authority.

It is AIST's observation that when the changes were announced, our interpretation was that stamp duty on life insurance policies would be abolished in Victoria, full stop. As the second largest state in Australia, funds and their insurers had quite reasonable expectations that this change would result in better value for superannuation fund members as a result of stamp duty being abolished and consequently, considering product changes to take this into account and provide this value to members.

It is generally regarded that the current situation is close to unworkable. AIST recommends that TPD be granted its natural meaning which, as a benefit of life insurance, would embrace the same exemption as what other life insurance benefits enjoy. This should be effected by the removal of all new modifications that change the meaning of life insurance to exclude TPD cover, including the complete removal of the new sections 196A and 196B of the Duties Act.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au .

Yours sincerely,



Tom Garcia
**Chief Executive Officer**