LEGAL PRACTITIONERS' LIABILITY COMMITTEE

Tax on super and TPD claims: remember to warn your clients

When advising a claimant on a superannuation total and permanent disability (TPD) claim, telling them there could be tax implications when making a withdrawal after the claim is approved should be one of your key messages.

When a TPD claim is approved, claimants usually need to make an initial withdrawal to pay legal fees and immediate expenses. In two articles on the Australian Lawyers Alliance's website, Andrew Reynolds points out that claimants withdrawing their entire benefit can incur hefty tax and Centrelink liabilities unexpectedly if they do not understand the following key points.

- **Tax is payable on the TPD benefit.** Tax is payable when a claimant withdraws their benefit from superannuation prior to their preservation age, which is between ages 55 and 60 depending on their date of birth. The standard tax rate when withdrawing superannuation before retirement age is 22 per cent. However, when withdrawing superannuation following a TPD claim this rate is reduced and is different for everybody. The rate of tax someone pays can be anywhere between one and 18 per cent and is different for each claim if the person has more than one superannuation account. Having an appropriate strategy for accessing TPD and superannuation benefits which is more flexible than a lump sum withdrawal can result in a significantly lower effective tax rate.
- **Consolidating superannuation accounts can increase the claimant's tax liability.** Rolling over superannuation funds can increase the tax payable when accessing a TPD benefit. The earlier the date a claimant commenced their superannuation account or any account rolled into their current superannuation account, the higher the tax rate they will pay when withdrawing their benefit.
- **Centrelink and other benefits may be affected.** A successful TPD claim does not affect a person's Centrelink or other benefits, because superannuation is excluded from Centrelink means testing until a person reaches their Centrelink Age Pension Age, which is between 65.5 and 67. Once money is removed from the superannuation fund it may affect a person's Centrelink entitlements.
- **Superannuation and TPD funds remain accessible.** Some claimants are concerned that if they leave money in superannuation it might be locked up. However, when a TPD claim is approved the claimant's existing superannuation balance and TPD claim becomes 'unrestricted, non-preserved', meaning the funds can be accessed at any time in future.

Alert your clients to these potential tax, entitlement and access issues at an early stage to give them ample opportunity to obtain expert financial advice, minimise surprises and avoid a claim against you.