



Superannuation
Complaints
Tribunal

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31 May 2011

Mr Richard St John
Statutory Compensation Review
PO Box 6295
Kingston ACT 2604

Dear Mr St John,

Compensation arrangements for consumers of financial services

The Superannuation Complaints Tribunal ('the Tribunal') welcomes the opportunity to comment on this consultation paper. The purpose of this paper is to provide background information in relation to the Tribunal's structure and operations as input into the review.

About the Tribunal

As the consultation paper notes, the Tribunal was established in 1994 by the *Superannuation (Resolution of Complaints) Act (Clth) 1993* (the SRC Act). It is an independent dispute resolution body that deals with superannuation related complaints arising from the decisions and conduct of regulated trustees, insurers and other decision makers in relation to superannuation. The Tribunal therefore only deals with complaints about superannuation funds that are regulated by APRA (the only exception being a small number of exempt public sector superannuation schemes that have elected to come within the Tribunal's jurisdiction).

The Tribunal offers a free, user-friendly alternative to the court system for disputes relating to superannuation. The objectives of the Tribunal are set out in section 11 of the SRC Act – to resolve complaints in a manner that is "fair, economical, informal and quick", firstly through conciliation and, where that fails, by review of the decision or conduct.

The role of the Tribunal relates primarily to determining the fairness and reasonableness of the operation of decisions of trustees in relation to complainants. Therefore a trustee or other decision maker may not have been in breach of its governing rules or any statutory obligations, but its decision may nevertheless be varied or set aside by the Tribunal (and another decision substituted) if the decision operates unfairly or unreasonably.

In reviewing a decision and making a determination the Tribunal effectively 'stands in the shoes' of the decision-maker (typically the trustee) and has the powers, obligations and discretions of the trustee. Accordingly, there are no financial limits on the Tribunal's jurisdiction.

The Tribunal can only deal with complaints about a trustee's or insurer's decision or conduct with respect to the particular member – it cannot deal with complaints about the management of the fund as a whole. (Section 14(6) of the SRC Act)

In cases where the Tribunal determines that there is a liability to 'compensate' a fund member for unfairness or unreasonableness, the source of 'compensation' is usually from the assets of the superannuation fund. In cases where the dispute relates to the payment of an insured benefit, if the complainant is successful, the amount is usually payable by an insurer under its group life policy.

The Tribunal is not aware of any instances where a fund or an insurer has been unable to comply with a determination of the Tribunal because of financial constraints. In addition, professional indemnity insurance does not appear to be an issue for trustees or insurers in relation to the complaints dealt with by the Tribunal.

The Tribunal does not express any view in relation to the need for any additional compensation measure in relation to financial services not connected with superannuation.

We trust this information is of some assistance in this review and we will follow developments in this area with interest. If any further information would be useful, please do not hesitate to contact me on 03 8635 5551 or by email at jocelyn.furlan@sct.gov.au.

Yours sincerely,

Jocelyn Furlan
Chairperson