

# AFCA SUBMISSION

Regarding the conduct of AFCA in relation to [REDACTED] One Path Custodians Pty Ltd. (ANZ/IOOF) Death benefit payout.

Beneficiaries are at the mercy of the Superannuation Company who will make decisions if and when payments are to be made.

Although I support the concept of superannuation, I have been disgusted at the conduct of One Path Custodians Pty Ltd (ANZ/IOOF), and the subsequent sanctioning of such behaviour by AFCA. I believe in their ruling, AFCA has supported their ineptitude and possible wilfully neglectful behaviour.

## **Background history.**

The case pertains to a death benefit payout from my father [REDACTED] to myself [REDACTED] the executor and sole beneficiary.

My complaint was that One Path took a protracted amount of time to payout one fund- that with a substantially higher amount, yet chose to payout the other fund containing a very small amount in one third of the time.

This delay left me with a loss of \$13,321.79.

Having made complaints to One Path commencing 25. March 2020, on recommendation from my lawyer I escalated the matter to AFCA.

I provided the following information to AFCA. This showed that I had tried to resolve the matter with the trustee before escalating to the “impartial and independent” body AFCA.

I also wrote to ANZ [REDACTED] (after AFCA’s ruling) in regard to my matter. He passed the issue onto [REDACTED] [REDACTED] did not address any of my grievances and referred back to AFCA’s ruling and advised I may take the matter to the Federal Court.

## **My complaint regarding ANZ/IOOF One Path Custodians pertained to the following:**

### **a) Loss of monies**

One Path notified me that on the 12. Feb. 2020 that fund was worth \$95,311.

One Path ‘Death Claim Resolution’ letter dated 5. March 2020 stated that the benefit of \$95,196.46 be paid to the estate. This letter was ignored by One Path and AFCA.

On 16. March when One Path closed the account the value was \$81,874.67 due to market movements.

**b) Unreasonable delay in paying out the fund.** (refer to Table 1 Superannuation Payout times). The fund chose to take no action for 23 days and then took another 10 days to pay out. This slow time frame to take action resulted in a loss of \$13,436.33 for me. This was particularly difficult to accept as I had lost my employment due to COVID and have under my care 2 elderly relatives. Aside from Jobkeeper there was no income flowing into the household and such a loss was incredibly difficult for me.

I believe this may mean I may be viewed as a vulnerable customer.

I expected that AFCA would acknowledge the inept nature of the Trustees staff's actions and rule with logic and fairness including that they would consider documentation provided but not adhered to.

In assessing timeframes I expected AFCA to consider that the other ANZ/IOOF account had been paid in one third of the time but there is no indication that they did.

The delayed payout of this Super fund does not seem to reflect industry standard. This was also supported in a letter to One Path from my lawyer. I note it is also the trustees responsibility to ensure the fund is operated efficiently, honestly and fairly. I do not believe the efficient aspect, nor the fair aspect was examined and addressed satisfactorily by the Trustee nor AFCA.

I would also note the situation in the investment markets at the time my request to payout was made, were volatile, and the Trustee should have been aware of that. As part of the trustees responsibilities to look after the members interests I would have expected that the Trustee would have made arrangements to make payouts in a timeframe which reflected the risks to members of delay. There is no evidence that the Trustee had responded to the investment market situation which the members were exposed to by speeding up the payout timeframes. Further AFCA did not seem to take this aspect into account, which I believe it should have.

This led me to wonder if small amounts can be and are paid out expeditiously, and large amounts are retained on purpose.

Perhaps Trustees desire to keep funds as long as possible as opposed to paying out expeditiously when requested by the beneficiary is for the benefit of the Superannuation Company. Is this perhaps a type of 'soft policy' implemented with larger sums of money?

It would be prudent to question why a fund with a meagre amount can be paid out in 11 days and a fund with substantially more money is retained three times as long. A forced payout only occurred after much badgering to the finance company. Poor service and poor communication results in mistrust towards financial institutions and when AFCA rules in favour of such conduct there is no confidence in arriving at justice for the individual.

### **c) Poor and unacceptable business practices**

On the 11. Feb. 2020 my solicitor advised probate was granted and **instructed** One Path to close and pay out my fathers superannuation funds.

In excess of 10 attempts were made to obtain information from One Path between 12. Feb- 18. March 2020 by myself and my solicitor. These attempts were unsuccessful.

The One Path staff did not allow us to speak to the processing team, and on one occasion one employee stated he was told not to release any information to me, also refusing to forward me onto a Supervisor when I requested this.

Communication was poor and information it seemed was withheld on purpose.

Complaints that were made to [REDACTED] (Head of Pensions and Investment Operations) and also to [REDACTED] (Pensions and Investments Complaints Consultant) had no positive outcome.

[REDACTED] acknowledged the value at \$95,196.46 and closed the complaint (28. April 2020) without attending to the pay out delay issue.

All complaints to ANZ One Path resulted in them closing the matter down with the suggestion to take the matter to the Federal Court. This is indicative of the arrogance that the public have learnt to expect from large banking institutions and other financial companies.

## **1. AFCA'S RESPONSE 13. August 2020**

██████████

a) AFCA ignored Trustees own 'Death Claim Resolution letter. ██████████ accepted that trustee pay out \$13,321.79 less than that stated in the letter. The discrepancy was simply ignored.

b) AFCA ██████████ ignored the fact that one ANZ/IOOF account is paid out in 11 days, yet the other account with the majority of funds takes 3 times as long. This discrepancy was not addressed.

c) The Trust Deed referenced no time frames and One Path gave no reasonable explanation as to the delay. They were not held accountable by AFCA.

██████████ wrote "I have relied on One Path Custodians' explanation of its processes..."  
"trustees responsibilities are to make reasonable enquiries to identify potential beneficiaries on notification of death"

As this was a sole beneficiary probate case, there was no requirement for the trustee to wait to distribute to various potential beneficiaries.

This did obviously not apply in my fathers other IOOF Super account.

██████████ used this as an excuse for the unnecessary delay caused by One Path.

AFCA's response on this is unacceptable.

d) ██████████ also wrote... "the obligations on the trustee to freeze investments & close accounts upon a members death is not legislated". To use someone else's money as they wish in effect allows them to keep trading at their discretion.

## 2. AFCA ADJUDICATION 18. September 2020

18. August 2020 letter from ██████████ (lawyer for ██████████) submits the file to an adjudicator for final determination. (letter attached)

██████████

a) Again the discrepancy in payout timeframes between the 2 ANZ/IOOF accounts appears to be ignored. ██████████ was "satisfied the trustee took a reasonable timeframe".

This does not seem to consider the Trustees responsibilities to look after member interests by responding to current conditions and process payments more quickly, nor did he appear to closely examine the efficiency aspect to Trustees responsibilities.

b) ██████████ wrote he was "satisfied the trustee was not required to follow solicitor's instructions". "only the trustee can decide to close the account and distribute the death benefit". I would expect that a financial company would have to follow a solicitor's instruction where it reflects members instructions.

As superannuation is imposed on workers by Government regulation, there are serious ramifications if Super companies have no accountability of processes as to if and when money is paid out to its owner.

This gap in regulation on superannuation companies, resulting in the free reign manner in which they operate leaves the consumer extremely concerned about a system that is meant to support good governance and a solid financial position for the future of workers heading into retirement.

There appears to be zero accountability for financial institutions that can abuse their power to the detriment of customers. Accountability we expect to be administered by AFCA.

These decisions leave Australians with little confidence in a system imposed on them and a body that is meant to oversee and address poor conduct.

c) [REDACTED] found that the trustees' decision is fair and reasonable. He, like [REDACTED] appeared to ignore One Paths Death Claim Resolution letter. The fact that my father's other ANZ/IOOF account had paid out in 1/3 of the time, again appeared to be ignored.

It would seem that if the facts that do **not** support a positive result for the Superannuation company, they are ignored.

#### **TABLE 1 SUPERANNUATION PAYOUT TIMES**

Notification of probate granted and instruction to pay out 11. Feb 2020				
ANZ/IOOF Estate Acct.	Paid out	\$1,014.57	23. Feb 2020	11 days
ANZ/IOOF ONE PATH	Paid out	\$81,874.67	16. Mar 2020	33 days
AMP Acct.	Paid out		18. Feb 2020	6 days

#### **ACCOUNT VALUES**

12. Feb 2020-	\$95,064.83	
5. Mar 2020-	\$95,196.46	Statement in Death Claim resolution letter.
10. Mar 2020-	\$81,874.67	Received 16. March

My experience with AFCA was adverse.

After first submitting my complaint to AFCA, [REDACTED] called me to explain the process of how disputes are resolved and the timing behind this. I appreciated his phone call and found him to be very helpful. I did however find it somewhat odd that he expressed numerous times that I should not 'get my hopes up'. It left me in an ambivalent state as I wondered why one would make this comment. Now, on reflection to that phone call and my ambivalence, I ruminate whether this could have been a suggestion that AFCA was never going to find in my favour.

My solicitor commented that he felt I had been treated unfavourably. We realised the financial difficulty in advancing the matter to the Federal court.

#### **CONFLICTS OF INTEREST**

Regulated superannuation funds are required to be members of AFCA. Firms apply and pay to be a member.

With reference to the Royal Commission- Conflicts- Recommendations Section 4.2 p. 45

"Where possible conflicts of interest & conflicts b/n duty & interest should be removed".

I believe this should be applied to AFCA as the dispute resolution scheme for financial services.

At present, in any ruling, would AFCA's duty be to those that fund it?

Would it be sensible to raise funding for AFCA via other means. eg. financial institutions pay a levy to the government. The government then funds AFCA through their budget. It would seem sensible to further separate the relationship.

Thank you for taking the time to consider my submission.

I welcome you to contact me should you require any further clarification.

Kind Regards

[REDACTED]  
[REDACTED]



**ONEPATH CUSTODIANS PTY LIMITED**

**DEATH CLAIM RESOLUTION**

**Retirement Portfolio Service (Fund)**

1. The Trustee of the Fund, OnePath Custodians Pty Limited, received recent advice regarding the death of [REDACTED]. The applicable Trust Deed of the Fund was considered.
2. The Late Member held the following account:  
  
OneAnswer Term Allocated Pension, [REDACTED] death benefit of approximately \$95,196.46;
3. The Trustee notes that the Late Member:
  - a) the member completed a valid Non-Lapsing Direction;
  - b) the nominated beneficiary is a Legal Personal Representative (as defined under the Fund's Trust Deed);
  - c) it has consented to the Direction;
  - d) it has not revoked its conditional consent.
4. The Trustee is required under the Trust Deed to pay the benefit in accordance with the direction.

**IT WAS RESOLVED THAT:**

The benefit be paid to The Estate of the late [REDACTED]

**Signed and Dated by the Trustee Delegate:**

**Dated:** 5/3/2020

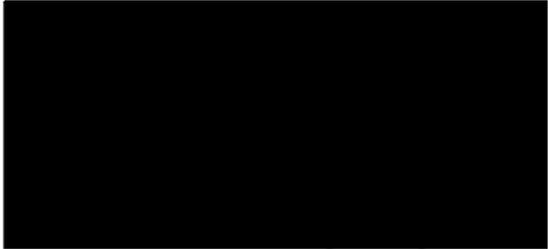
[REDACTED]

.....  
[REDACTED]

**OnePath Custodians Pty Limited**



IN ASSOCIATION  
WITH ALLSOP GLOVER LAWYERS



18 August 2020

[Redacted]  
[Redacted]  
[Redacted] [Redacted]

Dear Sir,

[Redacted]  
[Redacted]

On behalf of [Redacted], I acknowledge receipt of your preliminary assessment dated 13 August 2020.

I note your finding that OnePath Custodians acted properly in assessing the death benefit and releasing payment "in a reasonable timeframe".

My client does not accept your preliminary assessment and requests that the file be submitted to an adjudicator for final determination.

It defies plausibility that OnePath's actions were reasonable when, having acknowledged receipt of instructions from this office on 12 February 2020 (and confirming that "Our Customer Service team will respond "within 3-5 business days"), it took until 13 March 2020 for the payment to be processed. Furthermore, during that period and despite multiple efforts from this end to advance matters, it turned out to be impossible to make contact with anyone at OnePath who was actually handling the matter. So much for the assertion that someone from the Customer Services team would respond within 3-5 business days!

This is all the more galling for my client when information was conveyed on 12 February last that the deceased's account at that time had increased to \$95,064.83 and further noteworthy in this regard is OnePath's Death Claim Resolution dated 5 March 2020 (copy attached) which refers to a "death benefit of approximately \$95,196.46" and is signed by [Redacted]. This clearly suggests that if the appropriate paperwork and administrative action had been taken on 5 March 2020 (and not been delayed for a further 8 days) the matter in issue would not have arisen.

A copy of this letter has been forwarded to OnePath Custodians Pty Ltd.

Yours sincerely,

[Redacted]

[Redacted]  
[Redacted]