

When the fringe frays – an update from the Superannuation Complaints Tribunal

28 February 2014

Jocelyn Furlan
Chairperson



Agenda

- Update on statistics and activity
- Stronger Super reforms
- Recent cases of interest



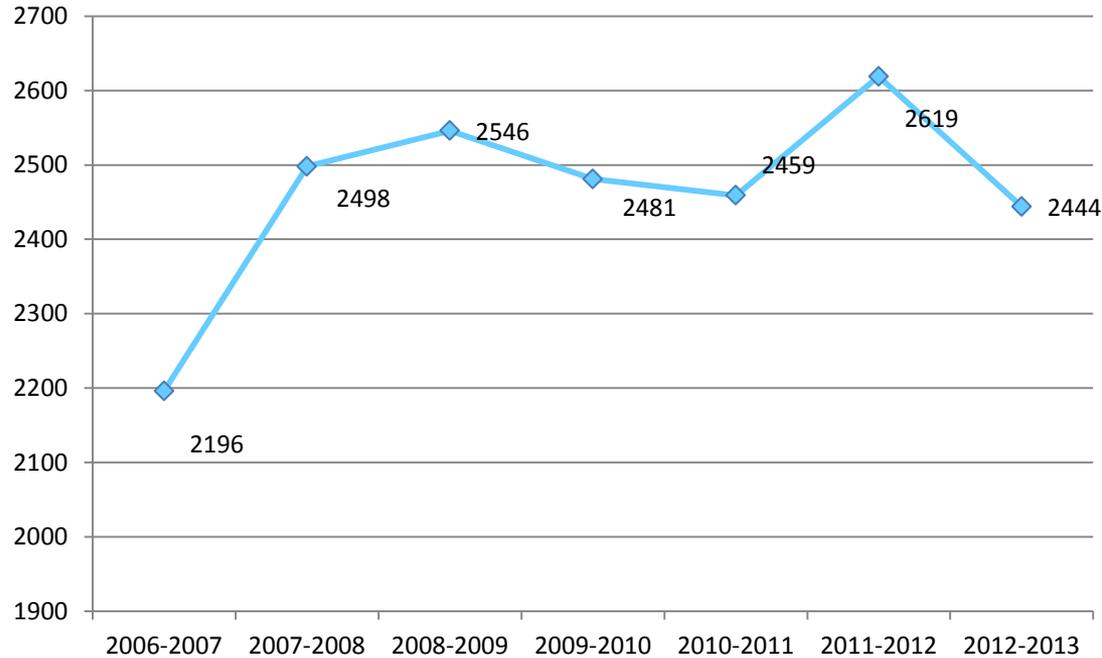
Update on statistics and activity

- 2,444 written complaints received 2012-13
- 40% outside jurisdiction (usually because the complaint has not first been made to the trustee/insurer)
- 10.5% withdrawn by the complainant, 46.3% withdrawn by the Tribunal, 32.7% resolved by formal and informal conciliation, and 10.5% went to review
- 133 complaints resolved at review in 2012-13 – trustee/insurer decision affirmed in 76% of cases
- 4 appeals to the Federal Court from determinations in 2012-13; and 1 application for judicial review



2014: Superannuation. Beyond the Fringe

Statistics (continued)



Statistics (continued)

Top ten administration complaints



Stronger Super reforms

New time limits for TPD claims

- For Trustee decisions made **before 1 July 2013**:
 - If a member permanently ceased employment because of the disability that gave rise to the claim for the TPD benefit, then the member needs to have made a claim for the TPD benefit to trustee within 2 years of permanently ceasing employment
 - In *all cases*, the member also needs to make a complaint to the Tribunal with 2 years of the trustee's decision about the TPD claim.



Stronger Super reforms (cont)

- If a trustee's decision was made **on or after 1 July 2013**, then:
 - If the member permanently ceased employment because of the disability that gave rise to the claim for the TPD benefit, the member:
 - needs to make a claim for the TPD benefit to the trustee within 2 years of permanently ceasing employment, and
 - needs to make a complaint to the Tribunal within 4 years of the trustee's decision



Stronger Super reforms (cont)

- If the member did **not** permanently ceased employment because of the physical or mental condition that gave rise to the claim for the TPD benefit, then the member needs to make a complaint to the Tribunal within 6 years of the Trustee's decision.



Stronger Super reforms (cont)

Reasons for decisions

- *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*
 - Expands SIS s101 in relation to complaints handling:
 - trustees to give written reasons in relation to decisions on complaints about the payment of a death benefit
 - on request, trustees to give written reasons in relation to other complaints within 28 days
 - on request, trustees to give written reasons for failure to make a decision on any complaint within 90 days (also within 28 days)



Stronger Super reforms (cont)

Reasons for decisions

- *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013*
 - Substitutes Corps Reg 7.9.48 in relation to complaints notifications:
 - within 30 days of decision on non-death complaint, trustees to advise of right to request reasons
 - within 45 days of the making of a non-death complaint, trustees to advise of right to request reasons if trustee fails to decide within 90 days



Stronger Super reforms (cont)

Interplay between s 64 and the requirement to give reasons

Section 64 of the Complaints Act –

- If, in connection with a complaint, the Chair or a Tribunal member becomes aware that a contravention of any law or of the governing rules of a fund may have occurred,
 - (i) in the case of a contravention of a law that is administered by APRA—the Chair must give particulars of the contravention to APRA and, if appropriate, ASIC; or
 - (ii) in any other case--must give particulars of the contravention to ASIC and, if appropriate, APRA.



Administration complaints methodology

- Section 37(6) of the Complaints Act provides that the Tribunal must affirm the decision under review if it is satisfied that its
operation
in relation to **the complainant**
was **fair and reasonable**
in the **circumstances**.
- The test is therefore whether the decision was fair and reasonable in the circumstances – NOT what decision the Tribunal would have made
- The test is the operation of decision, not the trustee's process



Administration complaints methodology

Methodology in light of s 37 of the Complaints Act

- Representations - the Tribunal will ask the complainant for information about why he/she formed the expectation he/she had in relation to the transaction
- Reliance - the complainant is then asked what he/she would have done differently had he/she known the true situation
- Loss - the Tribunal will ask the complainant to quantify his/her loss



Case study 1

- The Complainant turned 60 on 27 July 2008 and his benefit was guaranteed as the highest of three benefits
- The highest was his accumulation benefit - \$584,771
- In October 2008 he discovered that the benefit was subject to market fluctuations
- On 14 January 2009 it was worth \$480,378, \$103,000 odd less



Case study 1

- His complaint was that the value of his accumulation benefit should be guaranteed – he was not informed that it wasn't guaranteed
- His 60th birthday was his 'normal retirement date' for benefit calculation purposes but he kept working
- After his complaint, the Trustee wrote to all members in the same category to clarify that their benefits were subject to the market



Case study 1

- The Complainant argued:
 - He was not told ‘in layman’s terms’ that the guarantee stopped and because he didn’t know until October 2008, could not make informed decisions
 - The fact that the Trustee fixed the problem meant there was one



Case study 1

- The Trustee said that the benefit had been calculated in accordance with the rules
- **Note: this is often not what the complaint is about and is not an answer!**
- **First issue:** disclosure - the Fund's annual report for 2008 says that defined benefits are not affected by investment performance. No mention is made about crystallised benefits



Case study 1

- The August 2008 benefit statement in a notes box states:
 - Your account is your benefit multiple at age 60 multiplied by your FAS credited with interest from your 60th birthday
- The Trustee's letter of 30 October 2009 to all relevant members stated:
 - Following a number of member enquiries we are writing to clarify how your super is calculated once you turn 60



Case study 1

- Tribunal's view – the Complainant was informed, but not as clearly as he could have been
- **Next issue:** reliance and loss
- Loss not quantified and Complainant did not take any action in October 2008, and couldn't have (other than commencing a transition to retirement) because he was still working
- **Outcome?**

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Case study 2

- The Complainant was a member of a defined benefit fund and had an accumulation account.
- Until 30 June 2010 the accumulation account was guaranteed to earn a minimum return of 4% as long as it remained invested in the Growth investment option.
- In December 2009 the Trustee (at the request of the employer) amended its trust deed to remove the minimum guaranteed return from 1 July 2010
- The Complainant's account earned 0.9% return in 2011/12, less than 4%
- The Complainant complained.



Case study 2

- The Complainant argued that the Trust Deed amendment was unlawful and that he had relied on statements by the Fund that his account would earn a minimum return of 4% to his detriment. His loss was \$5,344.34
- The Trustee submitted that the issue of whether the trust deed amendment was valid was outside the Tribunal's jurisdiction and the decision to apply a crediting rate of less than 4% to the Complainant's account for the year ended 30 June 2012 was fair and reasonable because the Trustee properly applied the terms of the Trust Deed as they applied at that time.
- Outcome?

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Questions?

Thank you

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superannuation”*

