



Superannuation
Complaints
Tribunal

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Our Reference: 01-3698
Your Reference:

27 June 2001

The Commissioner
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Attention: Commissioner John Cosgrove

Dear Commissioner

Review of the *Superannuation Industry (Supervision) Act 1993*

I have had the opportunity of reviewing the submissions in relation to the Superannuation Complaints Tribunal (SCT). There are 3 matters which I think may need some clarification.

1. Imposition of a Fee

The imposition of a fee would be a policy matter for the Government to consider. At the moment, different considerations seem to apply to different Statutory Appeal Bodies e.g. the Social Security Appeals Tribunal and the Veterans Review Board are fee-free whereas the Administrative Appeals Tribunal imposes a fee with certain categories of appeal being exempted (e.g. Commonwealth Employees Compensation Appeals, Veterans Appeals) as well as providing exemption from the payment of the fee for Social Security Healthcare Card Holders. Where the fee has been paid, it is refunded if the Applicant succeeds on the appeal (except in relation to small tax claims where a flat fee of \$50.00 non-refundable is applied).

All non-Statutory Alternative Dispute Resolution Schemes (e.g. Australian Banking Industry Ombudsman, Financial Institutions Complaint Scheme etc) are fee-free for consumers. The majority of superannuation complaints proceeding to determination (where most cost is incurred in preparation, Members sitting, writing up decisions etc) are cases where a Total and Permanent Disablement Benefit has been refused. Anecdotal evidence suggests most of such Complainants are either in receipt of Workers' Compensation or a Social Security Disability Pension. In such circumstances, it would seem either unlikely that a fee would be imposed or if a fee was imposed, there would be a claim for exemption.

The second most common case is death benefit distribution. Usually the Complainant is a person who has not received any benefit or claims to have received an insufficient benefit to meet their ongoing needs. Again, I suspect there would be a high number of exemptions claimed from the payment of any fee.

To be cost effective in terms of added administration, a fee needs to be substantial. The current AAT filing fee is \$526.00.

A combination of the above suggest the imposition of a fee may be administratively time-consuming and in any event, largely likely to be waived. Imposition on those circumstances would be counter-productive.

Additionally, could I suggest the Productivity Commission consider that currently the SCT funding is related to the levy imposed on the Industry e.g. last year when further funding was required, the levy was slightly increased.

Finally, superannuation is compulsory. It would seem counter-productive to the compulsory nature of superannuation that those dissatisfied with the decision of a Trustee or Insurer must pay a fee for a service in determining their dispute. While superannuation is granted some tax relief, it is not tax free and the consideration of the imposition of a fee should be looked at against the background of a Government trying to compulsorily encourage investment in superannuation.

2. A second point which arose from the submissions was a request that the name of the superannuation fund be revealed at the time the Tribunal decision is made public. It was claimed that the naming of the superannuation fund would, or may, assist other people with complaints against the same fund to more readily identify previous cases in which the fund has been involved. Presumably, the submission also extends to name the Insurer (where relevant) as well as the fund.

The naming of funds was an issue raised with me by the Senate Standing Committee on Superannuation (in particular by Senator S Conroy). I indicated that while the Tribunal was precluded by the secrecy provision (s 63) from naming individual Complainants and/or Trustees/Insurers, I had put the Industry on notice that where there had been a consistent failure by a particular Trustee or Insurer to adhere to acceptable standards, then I may be obliged to name that Trustee/Insurer in the Annual Report.

To date co-operation has been such that this has, in my opinion, not been necessary. Senator Conroy questioned me about the naming of funds so that people could judge which funds were performing better than others. I feel unable to do this as we see only a small proportion of complaints compared to the large number of claims that may be (successfully) dealt with by a fund. Accordingly, our naming or identifying particular funds may give a slanted view of the performance of those funds with respect to their members. This would clearly be counter-productive.

3. The final issue upon which I wish to comment is that relating to the part played by the SCT in the surveillance and enforcement of SIS Act breaches. Many of the referrals from the Tribunal to ASIC under the provisions of section 64 of the SCT

Act are of a routine nature (e.g. failure to provide a copy of a Trust Deed to a Member). However, some have successfully identified areas of substantive concern. The most recent one of the latter type has resulted in the attached enforceable undertaking given by the TWU Superannuation Fund to ASIC. I believe section 64 is an essential ongoing part of the Tribunal's role in monitoring the operation of the SIS requirements.

If there are other matters in addition to the above in relation to which the Tribunal can assist the Commission, then please do not hesitate to contact us.

Yours truly,

A handwritten signature in black ink, appearing to read 'Graham McDonald', written in a cursive style.

Graham McDonald
Chairperson