Superannuation Complaints Tribunal

Quarterly Bulletin

Issue No. 74

1 Oct – 31 Dec 2013

Chairperson's report

Conciliations

Last financial year the Tribunal conducted 424 conciliation conferences. For the first six months of this financial year we have conducted 359 – an 89% increase on last year.

The Tribunal considers conciliation is the most cost effective and efficient way of resolving complaints and is under a statutory obligation to try and resolve complaints within its jurisdiction by conciliation (section 27 of the *Superannuation (Resolution of Complaints) Act 1993*). The Tribunal issues notices to the parties to the complaint advising of the conference date and time and it is expected that all parties attending the conference have authority to resolve the complaint by settlement on the day.

However, in some cases, trustees and insurers are still not adequately prepared for the conciliation conference and an increasing number of conciliation conferences have to be adjourned in order for trustee or insurer representative to obtain further instructions and/or seek approval from the business area before making an offer to resolve the complaint. Trustees and insurers should ensure that their representatives have the authority to resolve the complaint.

Responding to Tribunal requests for information

A number of trustees request extensions of time to provide documents and information requested by a section 17 notice, sometimes advising that the relevant file has been archived, or that telephone recordings need to be obtained and reviewed. This can occur even where the complaint was only recently dealt with under the trustee's internal complaints resolution processes.

The Tribunal notes that the Stronger Super reforms now require trustees to provide reasons for decisions in relation to disputed death benefits, and on request in relation to all other types of complaints. Should a complaint dealt with by a trustee proceed to the Tribunal soon after, all relevant documentation and the results of the trustee's investigations should be readily to hand.

Currently, new complaints received are allocated for investigation around a month after jurisdiction has been established.

In this environment, trustees should not need to request extensions of time for the provision of information.

Providing documents electronically

If trustees and/or insurers send information or responses electronically to the Tribunal, the electronic file should be in PDF, Word or Excel format. Emails, USB devices and compact discs with executable attachments (e.g. exe and vbs files) are not accepted by the IT security system and should not be sent.

Emails with zip attachments are quarantined and withheld by the mail filter before being released, resulting in delays in the Tribunal receiving the email.

If information is sent electronically it is not necessary to also send a hard copy.

And finally...

The Tribunal has noticed that some trustees appear to only turn their minds to the

particular details of a complaint and begin to explore options for its resolution when they become aware that the complaint has been lodged with Tribunal, or are required by the Tribunal to provide information.

Trustees who don't already do so are encouraged to fully investigate and attempt to resolve complaints through their internal complaints resolution processes.

Jocelyn Furlan

Chairperson

Statistical overview

Quarterly statistics – Oct to Dec 2013

Telephone inquiries

The Tribunal received 2,895 telephone calls this quarter (last quarter – 3,285), which is a decrease of 11.8% compared with the previous quarter.

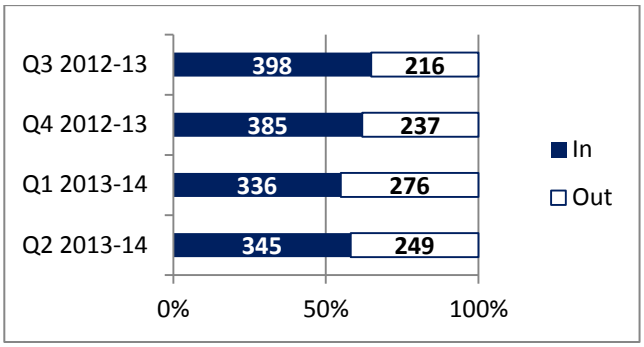
The Tribunal dealt with a wide range of inquiries, the most popular were queries about the Tribunal itself (76%), followed by complaint related inquiries (19.3%).

Written complaints

This quarter, the Tribunal received 594 written complaints (last quarter - 612), which is a decrease of 2.9% compared with the previous quarter.

Jurisdiction

Of the 594 written complaints received this quarter, 345 (58.1%) complaints were within jurisdiction (previous quarter – 54.9%). Of the 249 (41.9%) complaints closed as outside jurisdiction, 164 (65.8%) were closed pursuant to s.19 of the Complaints Act because the complainant had failed to lodge a complaint with the trustee or the 90 day time limit had not passed from the date of complaint to the trustee, (last quarter 64.1%).

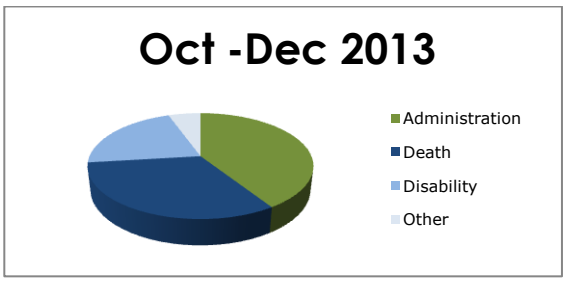


Complaints within jurisdiction

Nature of written complaints within jurisdiction

Complaints fall into four major categories – 'death', 'disability', 'administration' and the catch-all category of 'other'.

Administration complaints comprised the largest category of all written complaints received within jurisdiction – 40.9% (last quarter – 42.3%). Death benefit complaints made up the second-largest category at 32.2% (last quarter – 33.9%), followed by disability at 21.4% (last quarter – 20.2%). Other complaints made up 5.5% (last quarter – 3.6%).



Nature of written complaints within jurisdiction

Performance

Complaints finalised

The Tribunal finalised 657 written complaints this quarter, an increase of 1.0% compared to the previous quarter.

Of the 657 finalised complaints, 7.9% were finalised at review (last quarter 9.5%), 48.1% were finalised at the inquiry and conciliation stage (i.e., prior to a review hearing) (last quarter – 47.3%) and 44.0% were outside jurisdiction (last quarter 43.2%).

Conciliation conferences

The Tribunal conciliated 206 cases in the quarter, an increase of 35.5% on last quarter's 152.

Of the 151 cases concluded, settlement was achieved in 74, resulting in a settlement rate of 49% (last quarter – 45.7%). 55 cases (26.7%) were adjourned in the quarter (last quarter – 23).

Nature of conciliation cases

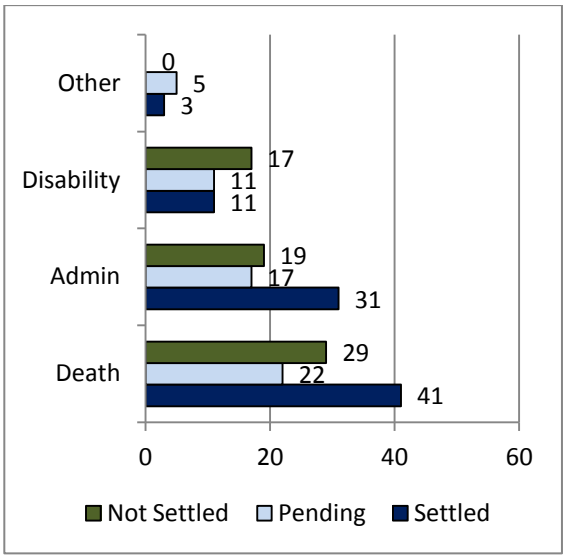
The categories of note in the quarter are as follows:

Death benefits – Of the 70 concluded cases, 41 (58.5%) were settled.

Administration – Of the 50 concluded cases, 19 (38%) were settled.

Disability – Of the 28 concluded cases, 11 (39.2%) were settled.

Other – Of the 3 concluded cases, all were settled.



Settlement by conciliation

Review determination outcomes for the quarter

The Tribunal determined 52 cases this quarter (last quarter – 62 cases).

The largest category of complaints determined at review was administration complaints: 23 (44.2%)

Admin	Qtr	YTD
Affirmed	17	41
Remitted	2	2
Varied	0	0
Set aside	4	10
Total	23	53

Death Benefit complaints made up the second largest category: 21 (40.4%)

Death	Qtr	YTD
Affirmed	16	29
Remitted	0	0
Varied	0	1
Set aside	5	7
Total	21	37

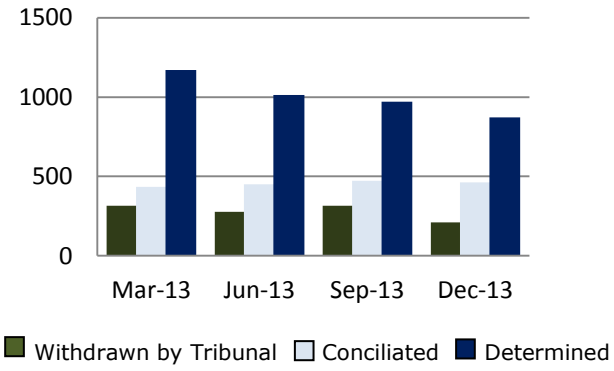
Followed by disability complaints: 8 (15.4%)

Disability	Qtr	YTD
Affirmed	8	17
Remitted	0	1
Varied	0	1
Set aside	0	5
Total	8	24

78.8% of trustee decisions were affirmed during the quarter, compared with 74.2% last quarter.

Efficiency

Median number of days from receipt of complaint to date closed.



Recent determinations of interest

D13-14\090. Death Benefit

The Complainant argued that the Trustee and the Insurers' decisions to deny payment of the insured component of the Deceased Member's death benefit was unfair or unreasonable because the provisions of the insurance policy were not drawn to the attention of the Deceased Member. The Tribunal determined to set aside the decision under review and substitute its own decision that the Trustee pay the Deceased Member's insured death benefit.

On 31 August 2011 the Complainant (the Deceased Member's mother) lodged a complaint with the Tribunal that the decision of the Trustee and the Insurer to deny payment of the insured component of the Deceased Member's death benefit due to an "exclusion clause" contained in the insurance policy was unfair or unreasonable. The Insurer and Trustee declined the Complainant's claim for the insured part of the death benefit on the basis that the Deceased Member was not a permanent Australian resident and was not therefore covered by the Worldwide cover provided by the Insurer. The resolution sought by the Complainant, was the payment of the insured death benefit.

The Deceased Member was born in New Zealand and moved to Australia in 2006, where he worked as a long haul truck driver with the Employer. He was enrolled in the fund by the Employer on 24 July 2006 was provided with automatic life insurance cover of $250,000. The Deceased Member continued to work for the Employer from May 2006 until November 2008, following which he returned to New Zealand, where he commenced renting an apartment from 3 November 2008. The Deceased Member died a little over 2 months later on 6 January 2009 while still in New Zealand. The Insurer and Trustee declined the Complainant's claim on the basis that the Deceased Member was not a permanent Australian Resident and was not therefore covered by the worldwide cover provided by the Insurer.

While the Trustee originally supported the Complainant's claim and attempted to persuade the Insurer to reconsider its decision, the Trustee in correspondence to the Tribunal noted that a welcome pack was provided to the Deceased Member upon joining the Fund, which included a Product Disclosure Statement ('PDS') covering the product including insurance. The Trustee further stated that it "had no reasonable basis to believe that the member needed to be made aware of the specific exclusion in question".

The Insurer declined the claim relying upon the terms of the Policy and the fact that the Deceased Member was a New Zealand citizen, who died in New Zealand and there was no evidence that he had obtained permanent residency status in Australia. The Insurer also argued that the notion of "permanent Australian resident" is at odds with and inconsistent with the national who holds a Special Category Visa as was held by the Deceased Member at the time of his death. There was also no evidence to suggest that either the Insurer or Trustee knew that the Deceased Member was a New Zealand citizen.

The Complainant's lawyers argued that there was no definition of "permanent Australian Resident" contained in the Policy, and that the provisions of the policy regarding overseas residency was not drawn to the attention of the

Deceased Member. The Complainant's lawyers also argued that the policy was sold to the Deceased Member by the Trustee which had the obligation to point out the effects of the exclusion clause.

The Trustee in responding to the Complainant's lawyers' submission stated that the Trustee did inform the Deceased Member "when required by law, in the documentation which the law requires to be provided" of the need to obtain approval in writing before proceeding overseas in order for his insurance cover to continue. The Trustee also stated that the cover was not "Sold" to the Deceased Member but rather it was automatically provided as an additional benefit once the member commenced employment with a participating employer.

The Tribunal considered the insurance policy in force on the date of the Deceased Members death. The Policy contained a clause under the heading "Worldwide Cover" (the "exclusion clause") which provides that the cover is not available to persons who are not permanent Australian residents unless it is agreed in writing before the insured leaves Australia.

The Tribunal considered what the definition of "permanent Australian resident" is, and whether the Deceased member fell within the definition. It also considered whether adequate disclosure of the exclusion provisions of the policy was sufficiently clear.

It noted that in 2007 the Insurer waivered the exclusion provisions for 950 members with overseas addresses.

The Tribunal found that the Complainant was unable to provide any evidence that the Deceased Member had been granted permanent residency and on the balance of probabilities it was unlikely that he had sought it as he was already able to reside and work in Australian under a Special Category Visa.

While the Trustee suggested it had provided adequate disclosure, the Tribunal found this contention difficult to agree with given the Deceased Member's employment was categorised as manual or heavy label (unskilled) and he would have had little experience in reading and understanding large complex documents. Given the importance of the exclusion clause in the Policy and likelihood of members being affected by its provisions the Tribunal believed that there was inadequate disclosure.

In 2007 it appeared that the Trustee requested the Insurer to provide cover to some 950 Fund members who had overseas addresses. On 27 September 2007 an agreement was reached between the Trustee and Insurer that these members would be covered notwithstanding the provisions of the exclusion clause but that going forward a policy upgrade would prevent non – permanent Australian residents from retaining cover when transferring to the personal division of the Fund. The Insurer argued that the 2007 waiver agreement was not precedent but rather an express agreement in writing as contemplated by the exclusion clause. To that extent the Tribunal noted that the clause required the Insurer to agree in writing before the life insured left Australia. Clearly these 950 or so members had already left Australian when the waiver was granted.

The Tribunal concluded that the 2007 waiver was more than a simple agreement reached with the Trustee for all non-resident members residing overseas at that time pursuant to the exclusion clause of the Policy. It was retrospective and wide in its application and reflected a view that the drafting of the clause was insufficiently clear (indeed the Trustee and Insurer agreed

that the clause should be redrafted). The Tribunal therefore formed the view that is was unfair and unreasonable not to extend that waiver to the Deceased Member given that he was a member at the time of the agreement.

The Tribunal considered that the decisions of the insurer and the Trustee to reject the Complainant's claim for payment of the insured component of the Deceased Member's death benefit were not fair and reasonable in their operation in the circumstances.

The Tribunal determined to set aside the decision under review and substitute its own decision that the Insurer pay the insured amount to the Trustee together with interest.

D 13-14\077. Death benefit

The Complainant argued that the decision of The Trustee not to pay the insured component of a death benefit, arising from the death of the Deceased Member, was unfair and unreasonable. The Complainant sought compensation from the Trustee, due to his reliance on incorrect information provided to his legal representative by an officer of the Fund. The Tribunal affirmed the Trustee's decision not to pay compensation.

The Complainant (the father of the Deceased Member) and his wife were partially financially dependent upon the Deceased Member. Following the Deceased Member's death, the Complainant's solicitor contacted an officer of the Fund (Mr B), who advised that a death benefit of $106,854 was payable. Armed with that information the Complainant dispersed monies to his family, contracted some renovations to their residence and paid associated funeral expenses.

On 4 February 2011 the Trustee paid a death benefit of $7,411.35 to the Complainant and $7,411.35 to the Complainant's wife being the Deceased Member's account balance. According to the Trustee there was nothing else payable, as there was no valid policy of insurance for death and TPD in place for the Deceased Member as at the date of her death.

The Complainant stated that their solicitor contacted the Fund and spoke with the Fund officer, Mr B, who stated that the insurance cover payable would be $106,854, which was also confirmed again on 15 November 2010. It then took nearly three months before the superannuation payment was made and this was when they were told no insurance was payable. When these sums were disputed, they were advised there had been a mistake by the claims assessor Mr. B.

The Trustee stated that prior to July 2003, an employer contribution would have been required to activate insurance cover. The Deceased Member's last contribution received by the Fund was 29 November 1994. In accordance with the Group Life insurance policy at the time, insurance cover ceased 90 days after the last contribution by the employer was received. Therefore when the Deceased Member died on 28 September 2010 there was no death or TPD cover and only her account balance was payable. The member statements issued to the Deceased Member stated that the Deceased Member was not entitled to any death or TPD sum insured.

On July 2003 the insurance changed from employer contribution to account based. As such it was not longer a requirement to receive contributions from an employer to maintain cover, and, provided there were sufficient funds in the account, insurance cover would remain. This was communicated to all

members in the member annual report for the financial year ending June 2003.

In response to this submission from the Trustee, the Complainant additionally stated that the Deceased Member would not have realised from the six month statement that the death benefit had disappeared.

The Tribunal noted that prior to 1 July 2003 an employer contribution would have been necessary to activate and maintain insurance cover for and TPD. Based on the relevant policy wording, the Tribunal was satisfied that the insurance cover for death and TPD ceased 90 days after the last contribution was received from the Deceased Member's employer, namely 29 November 1994. This was many years prior to the Deceased Member's date of death.

The Tribunal also noted member statements provided to the Deceased Member from 20 June 1998 to 30 June 2003 and statements dated 30 June up to and including 30 June 2010, all stated there was no death and TPD cover.

On July 2003, the Fund changed insurer and the nature of insurance changed to account-based. The Deceased Member did not make an application for insurance under the new policy and no insurance premiums were paid by the Deceased Member from the financial year ending 30 June 1996 onwards. Accordingly the Tribunal was satisfied that there was no valid policy of insurance as at the date of death of the Deceased Member.

It was not in dispute however that the Fund officer made an error, when he verbally informed the legal representative of the Complainant in early November 2012 that a benefit of $106, 854 for death insurance would be payable.

The Tribunal noted that the Complainant entered into contracts for works on the house before he received any confirmation of entitlements from the Fund. The Tribunal also considered whether the Complainant could reasonably claim that he relied on the information provided by the Fund to his solicitor. Until the Trustee had exercised discretion the Tribunal did not believe it was open to any person to assume that a benefit will be received and certainly not rely on the assumption as a basis for incurring expenditure.

There was also the issue of whether the Complainant had suffered any loss, as it was unknown whether the work on the Complainants' home had actually started, and whether the capital improvements to a home could reasonably be categorised as a loss.

The Tribunal therefore affirmed the decision of the Trustee to reject the Complainant's claim for payment of compensation.

D13-14\060. Administration

The Complainant lodged a complaint with the Tribunal about the Trustee's decision to refuse to waive or reduce the exit fee payable if he rolled his superannuation into another fund. The request for waiver was made due to the Complainant having been given a medical prognosis that will likely see him enter early retirement. The Tribunal affirmed the decision of the Trustee as the request was to transfer the balance of the funds onto another Fund, and did not appear to impact his well being because the funds would remain in the superannuation environment but invested with a different fund.

The Complainant initially joined the Fund in 1984 by purchase of a policy which

required monthly contributions until maturity of the policy in November 2026. In the event of early surrender of the policy, an exit fee is applied to recover costs insured with set up and administration.

In January 2009 the Complainant underwent genetic testing for a disease from which his mother suffers. The test indicated that the Complainant has inherited the gene and will develop the disease.

In 2011 the Complainant applied to roll over the policy to another fund. In June 2011 he requested that the exit fee of approximately $7,000 be waived.

In submissions from the Complainant he made the point that due to his personal circumstances he needed to access his funds prior to maturity, and that as a result of the prognosis of a serious genetic illness, he was making adjustments and planning for early retirement. He wished to consolidate his superannuation to make it work as effectively as possible with the view that he would need to access these funds sooner.

He also noted that the exit fee of $7,000 would negate any gain from consolidation of his superannuation over the short term. The Complainant also noted that the withdrawal fee was not disclosed to him by the adviser at the time he acquired the policy, and is not in the spirit of current disclosure requirements.

The Trustee expressed its sympathy for the Complainant, however in correspondence with the Complainant, stated that the fee had been disclosed, and was shown on Annual statements sent to the Complainant between 1999 and 2011.

The Trustee also noted that the exit fees are part of the terms and conditions of the policy, and are applied to this type of policy in order to recoup costs spread through the entire term. The request from the Complainant to rollover the funds was, to the Trustee, inconsistent with his claim that he wished to have his funds accessible to him now, and to waive his exit fee would be inconsistent with the treatment of other members of the Fund.

The Trustee also confirmed that if the Complainant's circumstances changes such that he actually develops symptoms of the disease, it would consider waiving the withdrawal fee.

In the Tribunal's deliberations, it noted that the Complainant was not asking for access to his funds, he had requested that he be able to roll them over into another fund without the exit fee applying. He was not able to withdraw his superannuation because he does not meet a condition for early release of his superannuation. A medical report was provided to the Tribunal that indicated the Complainant had tested positive to the genetic marker for the disease but had not yet become symptomatic. The Tribunal therefore noted that from the time he becomes symptomatic, the Complainant is likely to have some time to apply for early release of his funds and arrange his affairs. The Trustee had undertaken to review its position at the time he becomes symptomatic.

The Tribunal also addressed the issue of fair and reasonable disclosure of the fee upon joining the Fund. The Complainant argued that had he been aware of the fee he would not have acquired the policy. The Tribunal carefully considered this aspect of the Complainant's complaint, but could find no definitive evidence to indicate either way whether or not he was aware of the exit fee. The timing of the request for the waiver and

the reason for it appears to have risen solely because of the results of the medical test and his prognosis and not because of any non disclosure or misrepresentation at the time the Complainant acquired the policy.

In addition, the Complainant appeared to be assuming that the investment performance of the Fund into which he wished to roll over his policy would be better in the future than that of the policy in the Fund. There was no evidence of this. Therefore it was the view of the Tribunal that the transfer of his funds did not appear to impact his wellbeing as the funds would remain in the superannuation environment albeit with a different fund.

The Trustee was under no obligation to waive the fees in the Complainant's current circumstances. The Tribunal affirmed the Trustee's decision, and did not regard it as unfair that the Trustee declined to waive the exit fees in the Complainant's circumstances.

D13-14\057. Total and permanent disability

The Complainant lodged a complaint with the Tribunal that the Trustee and Insurer's decisions to refuse to remove a full back exclusion from her total and permanent disablement (TPD) cover as well as to reduce the level of the cover approved in relation to her application for additional death and TPD cover. The Tribunal affirmed the decision of the Trustee to reduce the level of additional cover, but varied the decision to exclude any disease or disorder of or injury to the spine, to a decision to exclude any claim relating to the Complainant's pre-existing conditions.

On 19 July 2011, the Complainant, a member of the Fund, applied for additional death and TPD cover. In the application she disclosed her medical conditions, including occasional back pain, managed with manipulative therapies by an osteopath. The Insurer determined to accept the application, but limit the cover to 6 units, and apply an exclusion for any disability caused by any disease or disorder of or injury to the spine. The exclusion applied to only to cover above the automatic acceptance level.

The Complainant objected to the limit on the amount of cover and the imposition of the exclusion. The Complainant submitted that the exclusion was an 'over reaction' and the exclusion from injury to her spine completely unreasonable. The Complainant argued that the special conditions were in response to her declarations of occasional back soreness, (relieved with stretching and massage) however, the exclusion seemed to exclude every single muscle or spine injury which could conceivably occur. She also argued that experiencing soreness did not make her any more prone to accident, and did not accept that this should remove her from being entitled to coverage.

The Trustee submitted that it acted in accordance with the Trust Deed and Policy and that any loadings, exclusions or reductions applied by the Insurer are not matters over which they had any discretion. The Complainant had received treatment in the last 12 months before the application.

The Insurer provided a page from the reinsurance manual which indicated that if a person had received treatment for mild back or neck pain within this time, the exclusion applies. And that this applied to all of the Complainant's 6 units of cover.

The Tribunal agreed that the effect of the Trust Deed was that a member must satisfy the requirements of the Insurer in relation to the purchase of death and

TPD cover. The Trustee had no capacity to provide cover on different terms. The Trustee acted in accordance with the Trust Deed and the Tribunal could not find unfairness or unreasonableness in this decision.

The Tribunal also agreed with the Insurer's decision to reduce the Complainants cover from the 10 units applied for to a total of 6 units. The Tribunal's view was that limiting the Complainant's cover to 6 units, which exceeded 15 times the Complainants annual income and the amount of her mortgage at the time, was in accordance with the underwriting guidelines and was fair and reasonable.

The final issue considered by the Tribunal was the decision of the Insurer to impose the exclusion to the Complainants cover. In Tribunals view, it was acceptable to impose an exclusion, again in accordance with its underwriting guidelines. However the effect of the exclusion drafted could be as described by the Complainant, i.e. she could be involved in an event and suffer injuries to her back which unrelated to her current back conditions, and she would be excluded from receiving a benefit.

The view of the Tribunal was that the exclusion should be limited to events that were related to the medical conditions from which the Complainant already suffered, and further that it should not apply to automatically accepted 1 unit of cover held by the Complainant prior to the date of the application for additional cover.

The Tribunal determined to vary that decision to a decision to exclude any claim in relation to the Complainant's back that was related to, associated with, or aggravated or exacerbated by her pre-existing muscle tightness and/or soreness. The Tribunal also determined that the one unit of automatic acceptance cover should not be affected by any exclusion.

D13-14\102. Administration

The Complainant argued that the Trustee was unfair in its decision to refuse to compensate him for the additional tax payable as a result of his superannuation contribution not being deductible for income tax purposes. The Tribunal found that it was the responsibility of the Complainant, the taxpayer, and not the Trustee to comply with section 290-170 of the Tax Act. The Tribunal therefore affirmed the decision of the Trustee.

On 26 June 2008 the Fund received a cheque from the Complainant for a superannuation contribution of $100,000, together with a completed personal contribution slip. To claim a tax deduction however, the Complainant was required by the Tax Act, to complete a Notice of Intent to claim a deduction for personal super contributions form, the 290-170 form. The Fund did not send a 290-170 form to the Complainant, and the Complainant did not complete and send such a form to the Fund.

Upon application by the Complainant to claim a tax deduction for the contribution in his 2008 income tax return, the ATO wrote to him advising that it was proposing to disallow the claim because he had not notified the Fund of his intention to claim a tax deduction nor had he received a written acknowledgement from the Fund of the amount of deductible contributions.

The Complainant lodged a complaint with the Trustee, and sought reimbursement of the tax payable, to the amount of $46,500. The Trustee declined to reimburse the Complainant.

In the Complainant's complaint to the Tribunal, he argued that the Fund had given him incorrect information and did

not assist or attempt to mitigate the financial loss suffered by him, to which the Fund contributed. This was the first substantial contribution he had made to the Fund, and he did not have a full understanding of the processes and procedures regarding the superannuation fund contributions and was relying on the expertise of the Fund to ensure all the tax commitments were met. The Complainant also added that he was not made aware that his contribution was not deductible until he received the ATO assessment of 18 August 2010.

In response, the Trustee argued that it did not receive a 290-170 form from the Complainant. As no notice was received there was no reporting to the ATO of his intention to claim a deduction. The Trustee further noted that under the Tax Act, the burden of responsibility to lodge the relevant notice falls upon the taxpayer. The Fund was not obliged to give personal taxation advice to members. The Trustee stated that that they 'do however, take the initiative to notify our members that they may be able to claim a deduction for personal contributions in our PDS'.

The Trustee also stated that the Complainant was a 'public offer' member, and the Fund automatically issued a 290-170 form to public offer members. In this instance a 290-170 notice was not issued to the Complainant due to a systematic issue. However again the Trustee reiterated that is was the Complainant's responsibility to complete and return it to the Fund, within the relevant time frame.

The Tribunal in its deliberations noted that there was no evidence that the Complainant was advised of the Fund's procedure of issuing the 290-170 forms at the time he made his contribution. The PDS provided to the Complainant when he joined the Fund, referred to notices, but pre-dated s290-170 of the Tax Act, which came into force in 2007. The welcome letter to the Complainant containing the contribution slips also pre dated s 290-170 and made no mention of the Fund providing any forms. Accordingly the Tribunal was unable to conclude that the Complainant was advised by the Trustee that the Fund would forward a 290-170 form to him.

The Tribunal also noted that the form accompanying the Complainant's contribution gave no indication to the Trustee of the exact nature of the contribution and therefore did not put the Trustee on notice that a form should be sent to the complainant.

On the Complainant's member statement, it also noted the contribution of $100,000 and no corresponding contributions tax deduction. This statement might have been a prompt to the Complainant to lodge the relevant forms prior to lodging his 2008 income tax return.

In this instance and in the unfortunate circumstances that the forms were not sent by the Fund to the Complainant, the Tribunal was in the view that the Complainant and/or his accountant were provided with sufficient information such that they ought to have been aware that the Fund had treated his contribution as undeducted. Therefore the Tribunal affirmed the decision of the Trustee to reject the Complainant's claim for compensation.

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