

CHAIRPERSON'S GUIDELINES AND PROCEDURAL RULES

1. Interpretation and application

- (1) In this document:
 - (a) a reference to "the Act" is a reference to the *Superannuation (Resolution of Complaints) Act 1993*;
 - (b) a reference to "presiding member" is a reference to the person identified in s.9(3), s.9(3A) or s.9(3B) of the Act and, where the context requires for the purposes of the procedural rules, is also a reference to a single Tribunal member constituting the Tribunal.
- (2) Clause 2 is made for the purposes of s.7A(3), s.9(1), s.9(2) and s.9(2A) of the Act. The guidelines in clause 2 will also apply in relation to any reconstitution of the Tribunal under s.9(1A) and s.10(4) of the Act.
- (3) Clauses 3 to 7 are made for the purposes of establishing procedural rules for the conduct of review meetings for the purposes of s.9(4) of the Act.

2. Guidelines for the constitution of the Tribunal for a review meeting

- (1) For the purposes of dealing with a complaint about a decision that relates to the payment of a death benefit and which primarily concerns the distribution of the death benefit, the Tribunal will usually be constituted:
 - (a) where the sum involved is below \$100,000 – by a single Tribunal member;
 - (b) where the sum involved is not less than \$100,000 – by 2 Tribunal members.
- (2) For the purposes of dealing with a complaint about a decision relating to the payment of a disability benefit where it would be likely that the Tribunal would be required to undertake the evaluation or assessment of medical evidence or reports, the Tribunal will, if possible, usually be constituted by 2 Tribunal members, one of whom will be a member of the medical profession.

- (3) For the purposes of dealing with a complaint, other than a complaint referred to in paragraphs (1) or (2), the Tribunal will usually be constituted:
 - (a) where the complaint involves a sum of less than \$50,000 – by a single Tribunal Member; or
 - (b) where the complaint involves a sum of not less than \$50,000 – by 2 Tribunal Members.
- (4) Where:
 - (a) a party to a complaint notifies the Tribunal in advance of any Tribunal being constituted in relation to that complaint that there is an issue of principle to be determined, or
 - (b) where the Tribunal identifies such an issue or there is some unusual difficulty associated with the complaint the Tribunal Chairperson may, where the Tribunal under paragraphs (1) or (3) may otherwise be constituted by a single Tribunal member, constitute the Tribunal by 2 Tribunal members.
- (5) The Tribunal Chairperson will select the Tribunal members and constitute the Tribunal in relation to a particular complaint:
 - (a) in writing signed and dated by the Tribunal Chairperson; and
 - (b) at a reasonable time before the scheduled time of commencement of the review meeting.

3. Commencement, adjournment and conclusion of review meetings

- (1) The review meeting commences at the date and time fixed under s.32(l) of the Act in relation to the complaint.
- (2) The presiding member may exercise the power to adjourn a review meeting under s.42 of the Act and to re-convene the meeting for further deliberations. If a review meeting is adjourned the presiding member must inform the Tribunal secretariat.

- (3) If a review meeting is adjourned because the Tribunal considers that further information is required, the presiding member must direct the Tribunal secretariat to request the further information from the parties.
- (4) The review meeting concludes when the presiding member signs and dates the determination and reasons.

4. The review meeting

- (1) If a question as to the Tribunal's jurisdiction in relation to the complaint arises the Tribunal is to consider the question at the review meeting. If:
 - (a) the Tribunal's view is that the complaint appears to be outside the Tribunal's jurisdiction; or
 - (b) the Tribunal members constituting the Tribunal do not agree with the Tribunal secretariat that the complaint appears to be within the Tribunal's jurisdiction.

The presiding member must adjourn the review meeting and refer the question to the Tribunal Chairperson or, where the presiding member is the Tribunal Chairperson, to the Tribunal Deputy Chairperson for guidance.
- (2) If the guidance of the Tribunal Chairperson or the Tribunal Deputy Chairperson is that the complaint is:
 - (a) within the Tribunal's jurisdiction, the presiding member will reconvene and complete the review meeting consistent with that guidance; or
 - (b) outside the Tribunal's jurisdiction, the review meeting in relation to that complaint will be abandoned and taken not to have commenced.
- (3) Where, after the receipt by the Tribunal member or members constituting the Tribunal of material in relation to a complaint under the Tribunal's submissions processes for the purposes of s 32 and s 33 of the Act, a party provides further material, the presiding

member may direct the Tribunal secretariat that, in his or her opinion, it is necessary on the grounds of procedural fairness that the other parties be invited to make comments in relation to the further material.

- (4) The presiding member must consult with the Tribunal Chairperson or, where the presiding member is the Tribunal Chairperson, with the Tribunal Deputy Chairperson before the Tribunal refers a question of law to the Federal Court for decision under s.39 of the Act.

5. Oral submissions

- (1) The Tribunal Chairperson or the Tribunal Deputy Chairperson will generally only make an order under s.34(2) of the Act to allow the parties to make oral submissions in exceptional circumstances.
- (2) An order to allow oral submissions will only be made where the parties also present written submissions prior to the review meeting.
- (3) Any oral submissions allowed shall be presented in an order determined by the presiding member, who shall provide the opportunity for reply as procedural fairness requires.
- (4) At a review meeting, the presiding member shall allow parties to raise questions of another party through the presiding member and shall also allow questioning of any party by any Tribunal member.
- (5) No determination shall be made at the review meeting. Part 6 of the Act specifies that a determination and the reasons shall be in writing.

6. Preparation and making of determinations

- (1) The Tribunal Chairperson will, for each Tribunal constituted to deal with a complaint, nominate the Tribunal member or members who are to draft the wording of a determination.
- (2) All determinations and reasons should basically follow the outline in the pro-formas approved from time to time by the Tribunal Chairperson. Such pro-formas will include a layout for the cover pages and final signature. The pro-formas may include standard sub-headings which may assist both Tribunal members and staff of the Tribunal undertaking word processing. The pro-formas will not include standard form paragraphs because each Tribunal must turn its mind to the particular requirements and circumstances of each individual complaint.
- (3) Consistent with the secrecy provisions under s.63 of the Act, the Tribunal's determination and reasons must be worded in such a way that, after substituting an alternative cover page, the document may be made available to the public without enabling the identification of the parties.

Descriptive terms like Complainant, Trustee, Member, Deceased Member, Insurer, Employer, Infant Son, Daughter, Spouse, De facto Spouse etc should be used.

- (4) The reasons for the determination should generally not include:
 - (a) observations as to whether a contravention of any law, the governing rules of a fund or the terms and conditions of retirement savings account or an annuity policy has or may have occurred;
 - or

- (b) comments with respect to the design of a product relevant to the complaint or the actions of persons in the operation or administration of that product outside the context of providing adequate reasons for the determination in relation to the decision under review for the purposes of s.40 of the Act.

- (5) The reasons for the Tribunal's determination must not include or discuss a direction under s.44(2), s.44(2A) or s.44(2B) of the Act. The presiding member must inform the Tribunal Chairperson if the Tribunal intends to give such a direction.
- (6) The presiding member shall seek to ensure that a draft determination is prepared within 4 weeks of the conclusion of a Tribunal's deliberations at the scheduled or re-convened review meeting, for signing off within a further 4 weeks.
- (7) The date of signing is to be indicated at the end of the determination. The date on which the scheduled review meeting was held, and any date(s) on which the review meeting was re-convened for further deliberations shall be listed on the cover page of the determination.
- (8) The date on which the determination is signed is the date on which the determination is made.

7. Disagreement between Tribunal members

- (1) The presiding member shall ensure that the views of all Tribunal members that constitute the Tribunal in relation to the complaint are heard and considered at the review meeting, and that all reasonable steps are taken to achieve agreement to the determination and reasons.

- (2) Where a Tribunal is constituted by 2 Tribunal members, disagreement as to some of the reasoning but not as to the determination, may, by agreement of the Tribunal members constituting a Tribunal, be acknowledged from time to time within the wording of the reasons.
- (3) Where a Tribunal is constituted by 2 Tribunal members and they disagree as to the determination, the decision of the presiding member is taken to be the decision of both of them.
- (4) A Tribunal member who is not the presiding member of a Tribunal constituted by 2 Tribunal members and who does not agree with the presiding member as to the determination to be made by the Tribunal may prepare, to the extent necessary, a separate statement of reasons which will be attached to and distributed with the determination and reasons of the presiding member.

Helen Davis

Chairperson

25 May 2015