



## Chairperson's Report

### Appointment of New Chairperson

The Government is pleased to announce the appointment of Ms Helen Davis as the fulltime Chairperson of the Superannuation Complaints Tribunal for a five year period, commencing May 2015.

Ms Davis is a superannuation consultant having established her own consultancy firm in 2013. Prior to this Ms Davis held a range of senior roles at QSuper, including Chief Officer, Member Outcomes.

The Government would also like to thank the outgoing Chairperson, Ms Jocelyn Furlan, for her contribution to the Tribunal since her appointment in 2009.

### The Quarterly Bulletin is going digital-only

To help reduce our carbon footprint, from 1 July 2015, the Quarterly Bulletin will only be available in electronic format. If you currently receive a hardcopy version and would like to continue to receive the bulletin, please email: [subscriptions@sct.gov.au](mailto:subscriptions@sct.gov.au), or call us on 03 8635 5500. You can access the latest Quarterly Bulletin (as well as back issues) via our website at [www.sct.gov.au](http://www.sct.gov.au).

# Statistical overview

## Quarterly statistics: Jan – Mar 2015

### Telephone inquiries

The Tribunal received 2,724 telephone calls this quarter (last quarter – 2,921), which is a decrease of 6.7% compared with the previous quarter.

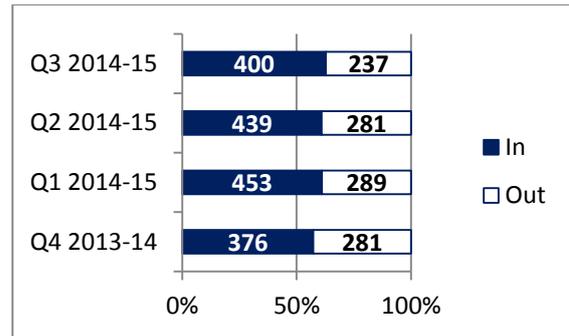
The Tribunal dealt with a wide range of inquiries, the most popular were queries about the Tribunal itself (77.4%), followed by complaint related inquiries (17.1%).

### Written complaints

This quarter the Tribunal received 637 written complaints (last quarter - 720), which is a decrease of 11.5% compared with the previous quarter.

### Jurisdiction

Of the 237 (37.2%) complaints closed as outside jurisdiction, 164 (69.2%) were closed pursuant to s.19 of the Complaints Act compared with 191 (68%) last quarter. Under s.19 a complaint is outside jurisdiction if 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.

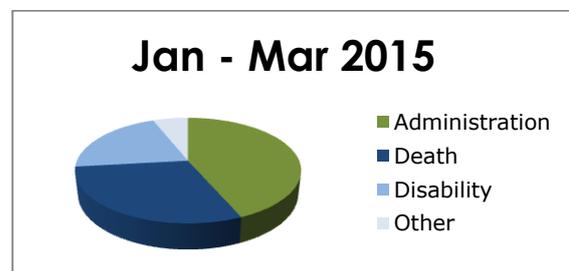


Complaints within jurisdiction

### 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 – 43.5% (last quarter – 44.2%). Death benefit complaints made up the second-largest category at 29.7% (last quarter – 33%), followed by disability at 20.8% (last quarter – 17.8%). Other complaints made up 6% (last quarter – 5%).



Nature of written complaints within jurisdiction

## Performance

### Complaints finalised

The Tribunal finalised 640 written complaints this quarter, a decrease of 16% compared to the previous quarter.

Of the 640 finalised complaints, 11.2% were finalised at review (last quarter 9.8%), 47.8% were finalised at the inquiry and conciliation stage (i.e., prior to a review hearing) (last quarter – 48.1%) and 41% were outside jurisdiction (last quarter 42.1%).

Two matters were suspended in the period pending further investigation.

### Conciliation conferences

The Tribunal conciliated 148 cases in the quarter (last quarter 194), a decrease of 23.7% compared to the previous quarter.

Of the 126 cases concluded, settlement was achieved in 65, resulting in a settlement rate of 51.6% (last quarter – 53.8%). 22 cases (14.8%) were adjourned in the quarter (last quarter – 38).

### Nature of conciliation cases

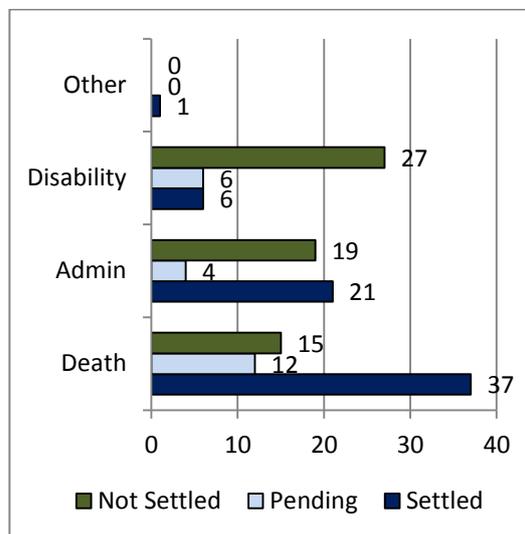
The categories of note in the quarter are as follows:

Death benefits – Of the 52 concluded cases, 37 (71.1%) were settled.

Administration – Of the 40 concluded cases, 21 (52.5%) were settled.

Disability – Of the 33 concluded cases, 6 (18.2%) were settled.

Other – 1 concluded case was settled (100%).



Settlement by conciliation

### Review determination outcomes for the quarter

The Tribunal determined 72 cases at review this quarter (last quarter – 75).

The largest category of complaints determined at review was death benefit complaints: 33 (45.8%)

Death	Qtr	YTD
Affirmed	19	83
Remitted	0	0
Varied	0	1
Set aside	14	29
<b>Total</b>	<b>33</b>	<b>113</b>

The second largest category of complaints determined at review was disability complaints: 20 (27.8%)

<b>Disability</b>	Qtr	YTD
Affirmed	18	47
Remitted	0	0
Varied	0	0
Set aside	2	6
<b>Total</b>	20	53

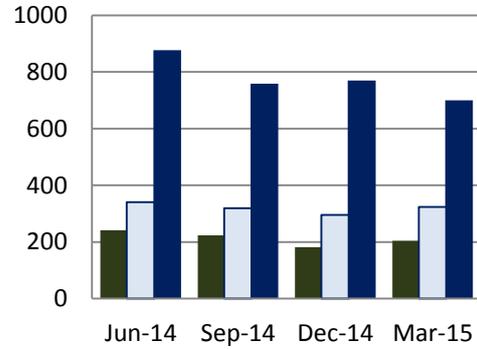
The third largest category of complaint determined at review was administration complaints: 19 (26.4%)

<b>Admin</b>	Qtr	YTD
Affirmed	14	59
Remitted	0	0
Varied	0	1
Set aside	5	17
<b>Total</b>	19	77

During the quarter 70.8% of trustee decisions were affirmed, compared with 80% last quarter.

## Efficiency

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



■ Withdrawn by Tribunal □ Conciliated ■ Determined

# Recent determinations of interest

## **D14-15\156, Administration**

*The Complainant lodged a complaint with the Tribunal regarding the Trustee's refusal to reclassify contributions of \$9,299.51 made by the Complainant as salary sacrifice contributions, or to compensate him for the excess contributions tax levied against him of \$4,163.90. The Tribunal found that both parties contributed to the tax being levied, and therefore determined that the Trustee compromise the Complainant's claim by payment to the Complainant of an amount equivalent to 50% of the excess contributions tax.*

The Complainant made salary sacrifice contributions during 2007-08. Of those, contributions totaling \$9,299.51 were treated as member voluntary rather than salary sacrifice contributions in error.

After receiving his member statement and ascertaining that the contributions had been incorrectly categorised, the Complainant requested the Employer to advise the Fund of the error. The Employer wrote to the Fund asking it to recategorise the contributions. The contribution figures provided by the Employer did not match the Fund's contribution figures, and the Fund telephoned the Employer requesting further information and closed its file pending receipt of further information. The Employer did not provide any further information and the Fund took no further

action in relation to the categorisation of the contributions.

As a consequence of the categorisation of the contributions as non-concessional, the Complainant's non-concessional contributions in 2008-09 were above the allowable amount. On 11 February 2011 the Australian Taxation Office (ATO) issued a notice of excess contributions assessment showing an amount payable of \$4,163.90.

The Complainant requested the ATO to disregard the excess contributions, however the ATO refused, advising the Complainant that if the contributions had been misreported by the Fund, he should request the Fund to re-report the contributions.

The Complainant then contacted the Fund and asked the Fund to re-report the contributions. The Fund offered to re-report the contributions if the Complainant paid the cost of doing so, estimated to be \$4,000.

It was clear that the Complainant's request had not been actioned and that the contributions had remained incorrectly categorised. In the Tribunal's view the Trustee had an obligation to either keep the file open and follow up the request for information from the Employer or alternatively advise the Complainant that his request had not been actioned and the file closed pending receipt of the correct information from the Employer.

However, the Tribunal also noted that the Complainant did not contact the Fund between 2008 and October 2011 in relation to his request.

The Complainant stated that he was alerted to the incorrect classification of the contributions by his benefit statement as at 31 December 2007. He made large contributions to his self managed superannuation fund in both the 2007-08 and 2008-09 financial years.

He would have received a benefit statement from the Fund as at 30 June 2008 and on at least two occasions thereafter, which would have indicated that the contributions had not been recategorised as he had requested. He might also have expected some correspondence from the Fund confirming the reclassification of the contributions and an amended benefit statement, but, in the absence of receipt of such correspondence, no follow up was made by him or the Accountant to enquire as to whether the reclassification had occurred.

The ATO wrote to the Complainant indicating that he might have to pay excess contributions tax, but he did not correspond with the Fund for a further year thereafter.

The Tribunal was therefore of the view that the Complainant (or the Accountant) contributed to the excess contributions tax assessment by apparently not

checking benefit statements after 31 December 2007 (which would have indicated that the recategorisation had not occurred) or contacting the Fund to confirm the recategorisation when no correspondence was received in relation to the request.

On balance, the Tribunal was of the view that the conduct of both the Trustee and the Complainant contributed to the excess contribution tax levied against the Complainant.

The resolution sought by the Complainant was the re-reporting of the contributions or compensation for the excess contributions tax levied. In light of the passage of time, the Tribunal was of the view that it was impractical to re-report the contributions. Rather, the Tribunal's view was that an appropriate remedy, for the unfairness and unreasonableness that the Tribunal has found in the Trustee's conduct in the circumstances, was for the Trustee to compromise the Complainant's claim by contribution to the excess contributions tax.

Given the Tribunal's finding that both Parties contributed to the tax being levied, it was the Tribunal's view that a trustee, acting fairly and reasonably, would have compromised the Complainant's complaint by offering to pay an amount equivalent to 50% of the tax levied.

## **D14-15\172. Death Benefit**

*The Complainant argued that the decision of the Trustee to pay the entire benefit arising on the death of the Deceased Member to the Spouse on the basis that it held a valid binding nomination in her favour, was unfair or unreasonable. The Tribunal found that on the basis of the evidence provided, the Spouse and the Deceased Member were in an interdependency relationship at the time of his death. Consequently the Trustee acted fairly and reasonably in regarding the binding nomination as valid, and was required to comply with it.*

The Complainant and the Deceased Member were de facto husband and wife between February 2005 and September 2010 and a daughter (the Youngest Daughter) was born of this relationship. On 22 September 2010 the Complainant and the Deceased Member separated. A Family and Domestic Violence Protection Order was taken out against the Deceased Member for the protection of the Complainant and her daughter during October 2010.

The Complainant also had five children of a previous marriage, between 1993 and 2002.

At the date of the Deceased Member's death, October 2011, he was in a third de facto relationship with the Spouse.

In April 2011 the Deceased Member executed a binding death benefit nomination, nominating the Spouse as his beneficiary. The Deceased Member also executed a will dated September 2008 in which he bequeathed his estate

to the Complainant and his four youngest children.

The Trust Deed of the Fund provided that a member's binding nomination ceases to have effect if on the day of the member's death the nominated beneficiary is neither a dependant or the legal personal representative of the member. In her complaint, the Complainant disputed that the Spouse was a dependant of the Deceased Member on the day he died.

The Tribunal was provided a copy of the Death Benefit Nomination. Under the heading: '1. Full name of Beneficiary', appears the name and date of birth of the Spouse. In a box under the heading 'Proportion of total benefit' appears: '100.00%'. The document was dated 15 April 2011. The names and signatures of two witnesses also appeared on the document.

The Tribunal found that the binding nomination was given in a manner and form approved by the Trustee. The Complainant, however, claimed the Deceased Member lacked the capacity to make the binding nomination because of his failing mental state.

The Complainant did not point to any direct evidence regarding the Deceased Member's mental state in April 2011. Rather, she suggested that his mental state could have been inferred from the evidence submitted.

The Tribunal found that the evidence did not establish that the Deceased Member lacked the capacity to make the binding nomination on the day it was made. No medical evidence was submitted to the Tribunal regarding the Deceased Member's state of mind at the relevant time. The only evidence of an expert nature was the medical certificate of the psychologist, which was dated June 2011 (over two months after he signed the nomination) and simply states that he was unable to attend court because of his mental state. Even if a certificate in that form had been issued in April 2011, it would not of itself have established that he did not understand the effect of making the binding nomination or the nature of the funds being nominated in the Spouse's favour.

Under the Trust Deed of the Fund at the date of the Deceased Member's death the Trustee must pay the death benefit in accordance with a binding nomination. However, it further provides that the Trustee was not required to comply if 'at the date of the Member's death, a nominated beneficiary was neither a Dependant nor the Legal Personal Representative of the Member'.

The Spouse submitted that they lived on a genuine domestic basis between two premises. She was responsible for the indoor activities including meal preparation, washing and ironing and he attended the maintenance of the yard and gardens and cleaning the swimming

pool. They were involved in regular sexual contact from 20 October 2010. She bore the costs of their shared life together, including the cost of weekly groceries, household supplies and the purchase of replacement clothing and shoes. She also covered the cost of the Youngest Daughter's travel to their premises. On 20 April 2011 they entered into a motor vehicle insurance policy for a car in their joint names (a copy of which was submitted to the Tribunal). On 8 June 2011 the Deceased Member signed an authority authorising the Spouse to communicate with and to provide instructions on his behalf to his lawyer in relation to all matters relating to his family law action (a copy of which was submitted to the Tribunal). They did not acquire property together. Both had family court proceedings in train.

The Tribunal was satisfied on the basis of all the evidence presented to it that at the time of the Deceased Member's death: both he and the Spouse had a close personal relationship; the Spouse provided him with financial support; and each of them provided the other domestic support and personal care.

A more contentious issue was whether the Deceased Member and the Spouse were living together at the time of his death.

In their submissions, the parties referred to three properties. Premise 1, which was owned by the Deceased Member. Premise 2, which was owned by the

Spouse; and Premise 3 which was rented by the Deceased Member for a relatively short time before his death.

The Complainant submitted that the Deceased Member and the Spouse were not living together at the time of his death. In support of her submission, she referred to the statutory declarations of a husband and wife who were living in premises opposite Premises 1. The wife stated that they lived in their premises from April 2008 to April 2011. She says the Deceased Member was residing in Premises 1 when they left in April 2011. She recalls that the Spouse would visit the Deceased Member on an off and on basis. She formed the impression they were boyfriend and girlfriend and would stay one night at his place and then spend a few nights 'back there', which appears to be a reference to Premises 2. She says that they appeared to be sharing residences between each other's houses.

The Complainant also pointed to the Deceased Member's affidavit dated 10 October 2011, which was lodged with the Federal Magistrates Court for the purposes of the family law proceedings. In the affidavit he states at paragraph 9f that: 'I am living in a very modest studio apartment at [provides the address for Premises 3] in order to cut my expenses. My weekly rent for basic 1 bedroom apartment is \$235.00'. In an unsigned statutory declaration a witness mentioned she met with the Deceased

Member at Premises 3 about two weeks before he died. The Complainant submitted that this was evidence that the parties were not living together and were maintaining two separate households.

Against this evidence the Spouse pointed to a statutory declaration of another neighbour to Premises 1. He stated that he was introduced to the Spouse by the Deceased Member in November 2010. He stated that the Deceased Member referred to the Spouse as his partner. He formed the view based on various sightings and meetings with the two of them that the Spouse was living with the Deceased Member at Premises 1. He also formed the view that the two of them were in a relationship.

The Spouse further submitted that the Deceased Member and her commenced living together in a de facto relationship in mid-December 2010. She had a set of keys for Premises 1 and he had a set of keys and security clearances at Premises 2. The Deceased Member then decided to rent Premises 1 out in late July 2011, when they both moved into Premises 2.

In an affidavit dated 21 July 2014 the Spouse deposed that about two weeks before the Family Court application on 10 October 2011 the Deceased Member was quite desperate and despairing of what orders the Court would make and was distressed that he would be ordered to make payments that he could not meet. She further deposed that:

...in order to try to convince the Court that he was actually broke, he had rented a temporary one bedroom unit in a holiday village [at Premises 3]. He told me that he thought that a more modest address would 'look better' and make it look as though he was not 'living it up in luxury' at the expense of his ex-partner's maintenance application.

Whilst I did not really approve of the idea, or think that this was necessary, I did understand [the Deceased Member's] thinking on this issue and I did not voice my objections to him about it.

Although [the Deceased Member] may have visited the unit, he never actually stayed there, did not move any of his property from our place to there, and never took his daughter [the Youngest Daughter] there.

The Spouse submitted to the Tribunal copies of text messages between herself and the Deceased Member. In his final text message, which the parties referred to as the 'suicide note' he said amongst other things that he loved the Spouse and the Mother, that the Twin Younger Son 2 had always stood by him, and that he left everything to the Spouse to give to his children, not to the Complainant or the Mother.

On the basis of the submissions of the parties and the evidence provided to the Tribunal, the Tribunal found that the

Spouse and the Deceased Member were living together at the time of his death. The Tribunal further found that the Spouse was the Deceased Member's spouse at the time of his death, and the Spouse and the Deceased Member were in an interdependency relationship at the time of his death. The Tribunal therefore determined that the Trustee acted fairly and reasonably in regarding the binding nomination as valid, and was required to comply with it, and pay the death benefit to the Spouse.

#### **D14-15\175, Administration**

*The Complainant lodged a complaint with the Tribunal in relation to the Trustee's decision to debit his account balance in the Fund \$13,000, the amount that was not debited from the Complainant's account in the Former Fund due to error. The Tribunal determined that it was not satisfied that the Trustee's decision was fair and reasonable, and determined to set aside the Trustee's decision.*

The Complainant was previously a member of the Former Fund. It appeared that, on 29 May 2006, a partial benefit payment was paid to the Complainant from the Former Fund but that his account balance in the Former Fund may not have been debited the \$13,000 partial benefit payment.

On 30 June 2011, the Complainant's benefit in the Former Fund was transferred to the Fund by successor fund transfer, without the consent of the Complainant. The amount transferred was \$111,607.35. Subsequently, the Trustee was advised by the Former Fund

administrator that the \$13,000 partial benefit payment had not been debited to the Complainant's account in the Former Fund. The Trustee then proposed to reduce the Complainant's benefit in the Fund by the \$13,000 that was not debited to his account in the Former Fund.

It was the Tribunal's view that the issue in determining if the Trustee's decision was fair and reasonable, was whether the Trustee was able to deduct from the Complainant's account balance in the Fund an amount that an administrator of a Former Fund alleged resulted from an administrative error in that fund. The Tribunal was not able to make a finding on the basis of the materials provided to it whether or not \$13,000 was debited to the Complainant's account in the Former Fund when a partial benefit payment was made to him from that fund.

The Trustee acknowledged that a sum of \$111,607.35 was transferred to the Fund by the trustee of the Former Fund on 1 July 2011 and became recorded as the Complainant's accrued benefit in the Fund.

The position was that the Trustee received that amount from the Former Fund and it sought to reduce the product of that amount, not as a result of something that has happened in the Fund, but as a result of something that allegedly occurred in the Former Fund.

The Fund was not a continuation of the Former Fund. It was a separate trust fund, the trustee of which was required to administer it in accordance with what was transpired in that trust fund, not in a former fund.

If the Complainant had received payment of a sum of \$111,607.35 from the Former Fund and had then paid that amount as a contribution to the Fund, the Trustee would not have been able to deduct from it an amount that was said to be the result of an error that occurred in the Former Fund.

In the view of the Tribunal, the position was no different as a result of the transfer from the Former Fund to the Fund.

The Trustee received \$111,607.35 from the Former Fund in respect of the Complainant and it was that amount on which his benefit must be based in the Fund. It was, therefore, the view of the Tribunal that the decision of the Trustee was not fair and reasonable. The Tribunal determined that the \$13,000 was not to be debited to the account balance of the Complainant in the Fund.

#### **D14-15\179, Death Benefit**

*The Complainant (the Mother of the Deceased Member) argued that the decision of the Trustee to pay the benefit arising on the death of the Deceased Member to the De facto Spouse on trust for the Minor Daughter was not fair and reasonable. The resolution sought by the Complainant was that all or a substantial share be paid to her as an*

*interdependent. The Tribunal found no unfairness or unreasonableness in the Trustee's decision, and therefore affirmed the decision to pay the benefit to the De facto Spouse on trust for the Minor Daughter.*

The Deceased Member did not leave a Will, and no application for letters of administration in respect of his estate has been made. He did not nominate a preferred beneficiary for his death benefit.

The Trustee determined that at the date of death, the Deceased Member was survived by two dependants, namely the De facto Spouse and the Minor Daughter.

In relation to the Minor Daughter, the De facto Spouse stated that the Deceased Member assisted with the purchase of furniture for her and the Minor Daughter, and financially provided for the Minor Daughter.

In the Complainant's statement of financial circumstances prepared for the Tribunal she indicated that she and her sister paid for the Deceased Member's funeral and that he had occasionally paid rent and shared living expenses, noting that he paid rent when he was working and occasionally paid for other expenses but not in any fixed amounts. She claimed to be a dependant through interdependency.

The Trustee did not regard the Complainant as being in an interdependency relationship with the

Deceased Member at the time of his death because they were not living together.

In the circumstances of this complaint, the Tribunal was of the view that the Trustee's decision that the Complainant and the Deceased Member were not in an interdependency relationship was fair and reasonable in the circumstances because the Deceased Member and the Complainant were not living together at the date of death. The Tribunal's view of the material before it was that the Complainant and the Deceased Member had a close personal relationship, and they provided each other with personal and financial support. However, they were not living together at the time of the Deceased Member's death and the Complainant stated that their intention was that he live by himself and to that end he had rented a house with the financial assistance of the Complainant. There was no commitment to a shared life, rather the Complainant was providing the maternal support that a caring mother would.

The Complainant disputed that the Minor Daughter was the Deceased Member's child. In support, she referred to the correspondence from Centrelink indicating that the parentage of the Deceased Member of the Minor Daughter was not established.

In the circumstances, the Tribunal's view was that it was fair and reasonable for the Trustee to decide that the Minor

Daughter was the Deceased Member's child. It was not disputed that the Complainant was at the birth of the Minor Daughter. The Tribunal was provided with a photograph of the Complainant with the Deceased Member and the Minor Daughter. The Minor Daughter also referred to the Complainant as her grandmother.

It was also not disputed that the De facto Spouse and the Minor Daughter lived with the Complainant in a house owned by the Complainant's sister for a time after the Deceased Member's death.

The Minor Daughter's birth certificate shows the Deceased Member as her father. Both the De facto Spouse and the Deceased Member were informants on the birth certificate. The Deceased Member's death certificate shows the Minor Daughter as his child, and the De facto Spouse was named as the Deceased Member's de facto partner.

The correspondence to the Deceased Member from the Child Support Agency dated 2 February 2009 stated that the application from the De facto Spouse had not been accepted because it did not meet their requirements.

Correspondence to the estate of the Deceased Member from the Agency dated 17 May 2010 stated that no proof of parentage was supplied to show that the Deceased Member was the father of the Minor Daughter. In the Tribunal's view, this did not mean that no proof

was available, merely that it was not supplied to the Agency.

Further, it appeared that no-one disputed that the Minor Daughter was the Deceased Member's child until the dispute in relation to payment of the death benefits commenced.

The Trustee also determined that the De facto Spouse was a dependant of the Deceased Member at the date of his death. The De facto Spouse submitted that she was the de facto spouse. She acknowledged that they did not live together permanently but stated that he stayed at her house on weekends and on Wednesdays. The Tribunal noted that she initially did not claim any part of the benefit for herself, although she later claimed 10% of the benefit. On balance and in light of the material, the Tribunal was of the view that it was fair and reasonable for the Trustee to determine that the De facto Spouse was a dependant of the Deceased Member at the date of his death as defined in the Trust Deed because he financially contributed to her household when he could.

Having determined that it was fair and reasonable for the Trustee to determine that the potential beneficiaries of the Deceased Member's death benefit were the Minor Daughter and the De facto Spouse, the next issue for determination by the Tribunal was the fairness and reasonableness of the Trustee's decision

to the benefit to the De facto Spouse on trust for the Minor Daughter.

In the Tribunal's view the decision was fair and reasonable as the Minor Daughter had a right to look to the Deceased Member for financial support had he not died. She was eighteen months old at the date of his death and therefore had right to expect financial support for a further sixteen years at least.

The Tribunal also accepted the De facto Spouse's submission that the Deceased Member financially supported the Minor Daughter when he could. Had the Deceased Member made contributions to the De facto Spouse, these would most likely have been made to assist the Minor Daughter, and, in this regard, the Tribunal does not regard that the Trustee's decision to pay all of the benefit to the Minor Daughter and none to the De facto Spouse operated unfairly or unreasonably in the circumstances.

The Tribunal also noted that the Complainant, as a dependant of the Deceased Member because of partial financial dependency, had received a small benefit from another superannuation fund.

The Tribunal's role is to assess the fairness and reasonableness of the Trustee's decision, not to decide for itself the distribution of the death benefit. In the circumstances of this complaint, the Tribunal could not find unfairness and

unreasonableness in the Trustee's decision to pay the benefit to the De facto Spouse in trust for the Minor Daughter and not to pay any part of the benefit to the Complainant or the De facto Spouse. It therefore affirmed the decision of the Trustee.

### **D14-15\185, Death Benefit**

*The Complainant (the Mother of the Deceased Member) complained to the Tribunal about the Trustee's decision to pay the death benefit to the Husband. The Tribunal determined that the Complainant and the Deceased Member's Father were in an interdependency relationship with the Deceased Member and set aside the Trustee's decision and determined that 60% be paid to the Husband and 40% paid jointly to the Complainant and the Deceased Member's Father.*

The Complainant lodged a complaint with the Tribunal that the decision of the Trustee to pay the death benefit to the Husband of the Deceased Member was unfair or unreasonable.

The Complainant submitted to the Tribunal that, when the Deceased Member was diagnosed with cancer and it was decided that she would have an operation interstate in an attempt to save her life, the Deceased Member, the Husband and the Complainant all travelled interstate where the Deceased Member remained for some two and a half months, most of that time in hospital. The Complainant submitted that she stayed interstate for the whole time her daughter was there and that the Husband returned to his home state and

was, therefore, with them for part of the time.

The evidence before the Tribunal indicated that when the Deceased Member and the Complainant returned to her home state, the Deceased Member went to live with her parents but, at some point, she lived with the Husband prior to being hospitalised again prior to her death in hospital.

There was also evidence before the Tribunal that the Complainant and the Father provided extensive support, both emotionally and financially, to the Deceased Member during her illness. Evidence was also provided to the Tribunal that the Deceased Member wanted her parents to look after her affairs and that, in the event of her death, her ashes were to go to her parents.

The Husband submitted that the Deceased Member lived with him for part of the time during her illness and that he had incurred significant financial expenses in relation to her hospitalisation.

The Complainant provided evidence of the financial support that she and her husband provided to the Deceased Member and the Complainant and the Father submitted to the Tribunal that the Deceased Member predominantly lived with them during the last nine months of her life.

Under the trust deed governing the Fund, the benefit payable in the event of the death of a member of the Fund was required to be paid to one or more of the member's dependants or legal personal representative in the proportions determined by the Trustee. The word 'dependant' was defined in the trust deed as including a member's spouse and any other person who, in the opinion of the Trustee was, at the time of death, in an interdependency relationship with the member within the meaning of that expression under the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

The Husband, as the Deceased Member's spouse, clearly comes within the definition of 'dependant' in the trust deed. The Complainant and the Father did not appear to be dependent on the Deceased Member and, therefore, whether they come within the definition of 'dependant' in the trust deed depends on whether they had an interdependency relationship with the Deceased Member within the meaning of the SIS Act.

It was the finding of the Tribunal that the requirements of the SIS Act were satisfied in the relationship that existed between the Deceased Member and her parents in the latter part of her life as they had a close personal relationship, the parents provided her with financial support and domestic support and personal care and, for much of the time, they lived together.

Other factors to be taken in to account in determining whether there was a interdependency relationship include all of the circumstances of the relationship including, the duration of it, the degree of mutual commitment to a shared life, the reputation and public aspects of the relationship, the degree of emotional support, the extent to which the relationship was one of mere convenience, and any evidence suggesting that the parties intended the relationship to be permanent.

The Tribunal accepted the evidence of the Complainant and the Father, that there was a mutual commitment to a shared life because of the Deceased Member being dependent on others for support because of her ongoing illness and that the emotional support provided by the parents was extensive, their relationship was not one of mere convenience but was one of necessity and it appeared to the Tribunal that the relationship was permanent because the Deceased Member was going to be in need of support for the rest of her life.

Statutory declarations signed by any of the persons involved to the effect that the Deceased Member was in an interdependency relationship with the other person were also to be taken into account. The Complainant and the Father had both sworn statutory declarations referring to factors which indicated the presence of an interdependency

relationship between their daughter and themselves prior to her death.

In the view of the Tribunal, the Complainant and the Father provided the Deceased Member, over the latter part of her life, with support and care of a type normally provided in a close personal relationship, including providing care to her when she was unwell, and when she was suffering emotionally as a result of her tragic illness.

For these reasons, the finding of the Tribunal was that the relationship between the Deceased Member and her parents was an interdependency relationship in the period prior to her death, within the meaning of the SIS Act and regulation 1.04AAAA of the SIS regulations.

It was, therefore, the conclusion of the Tribunal that the Husband and the Complainant and the Father all came within the definition of 'Dependant' in the trust deed, the Husband, because he was the Deceased Member's spouse, and the parents because they had an interdependency relationship with the Deceased Member prior to her death.

The Trustee, in making its decision, was of the view that an interdependency relationship did not exist between the parents and the Deceased Member. In view of the decision of the Tribunal that there was an interdependency relationship between the parents and the Deceased Member, the issue for the

Tribunal was whether the Trustee's decision to pay the entire death benefit to the Husband was fair and reasonable.

Had the Trustee determined that there was an interdependency relationship between the Deceased Member and her parents, the decision of the Trustee may well have been different. The evidence was that considerable financial and emotional support was provided to the Deceased Member by the parents when the Deceased Member was ill in the months before her death and it was the view of the Tribunal, in standing in the shoes of the Trustee, that those circumstances required that the parents be considered in the decision as to who the death benefit should be distributed to.

The Husband, as the Deceased Member's spouse, was, of course, also entitled to be considered in relation to the distribution of the benefit and, in the opinion of the Tribunal, was entitled to be paid a majority of the benefit because of his relationship as the spouse.

The parents were also entitled to be paid part of the benefit because of the substantial emotional and financial benefit they provided to the Deceased Member when she was in need of that support because she could not look after herself and was unable to meet her own expenses because of her illness. It was the view of the Tribunal that the Complainant and the Father should be paid a minor part of the benefit because

of their interdependency relationship and the support they provided.

It was, therefore, the view of the Tribunal that 60% of the benefit was to be paid to the Husband and that 40% to be paid to the Complainant and the Father jointly.

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