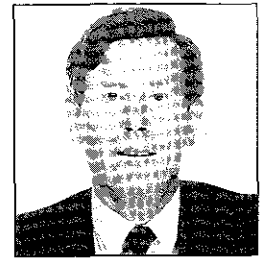


## Canberra Rules: With Super Complaints



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Has Canberra got a pearler for all you law librarians this time! There is a new Commonwealth tribunal on the scene! No, it's not the Native Title Tribunal, which seems responsible for about four fifths of the nation's land mass, although this new one could become even bigger over time. It's the Superannuation Complaints Tribunal!

Did I hear you yawn? Wait until you finish reading this. Then you will see that this could end up one of the biggest generators of legal work (if not income) in the land and, unless you can point your lawyers in the right direction, promptly and firmly, you are going to find yourself doing much of the initial legwork.

Where did this monster come from, how does it work and why should a tribunal "required by legislation to be fair, economical and informal and to deal with complaints as quickly as possible" (as its literature says) generate work for lawyers?

### *In the Beginning*

The establishment of the Superannuation Complaints Tribunal is part of a package of measures in the *Superannuation Industry (Supervision) Act* (SI(S)). The Tribunal came into being on 1 July 1994, and is located in Melbourne.

The Tribunal is funded from a levy paid by the superannuation funds to the Insurance and Superannuation Commission (ISC). (Stop complaining. I am writing from Canberra; you have to let me use a few initials. It's the law here.) The Tribunal's funding arrangements ensure its arms-length independence from the superannuation funds. It reports directly to the Treasurer, which ensures its relative policy independence from the ISC as well.

The Tribunal can adjudicate on matters involving funds which are regulated under the (SI(S)) Act. Some Commonwealth public service funds will not be so regulated until 1 July 1995, and some State government funds may never be. Similarly, "excluded funds", with fewer than five members, are not covered. However, on the bright side, there are between 8 and 9 million potentially-litigious little fund members who have access to the Tribunal.

As indicated, the Tribunal "is required by legislation to be fair, economical and informal and to deal with complaints as quickly as possible". It operates mainly in writing or by telephone

Complaints can range from errors in annual statements, or alleged misrepresentation by the fund's agent or salesperson, to miscalculation of a benefit. Complaints have to be from individuals, and relate to matters affecting only the individual

Thus, you will not find the Tribunal dealing with a single, let alone a joint, complaint by fund members that, for example, the fund did not achieve an adequate rate of return, or about the general management of the fund as it affects all fund members. Those kinds of problems would have affected all members of the fund and, hence, be outside the responsibilities of the Tribunal. How on earth, then, can lawyers get involved?

Well, although the Tribunal's processes are simple and accessible to people without much knowledge of the bureaucracy, complainants may seek legal advice and, by leave, may be represented. Furthermore, appeals on points of law from the Tribunal go to the Federal Court, so wise participants in any arguable tribunal proceedings, particularly fund managers, would, presumably, take care to present their case with an eye to possible subsequent legal action. But that's not the half of it, for lawyers!

### *The Complaints Process*

A complainant has first to take their complaint to their fund, which should have a formal, internal complaints process. In addition to probably requiring legal advice to advise on setting up each fund's internal complaints procedures, many funds would probably want to involve a lawyer in the initial assessment of every complaint, especially where the fund is minded to reject the complaint

If the complainant is not satisfied with the fund's response, he or she should be provided, by the fund, with the necessary information and forms to lodge a complaint with the Tribunal. If necessary, however, the Tribunal will supply them.

A complaint should normally be lodged with the Tribunal within 12 months of the fund's decision. However, in the case of payment of a superannuation benefit, such as a death benefit, there is a reduced timescale to permit prompt distribution of the money/estate, and here's where, with death benefits, it gets hairy.

Where death benefits are concerned, it is the fund's responsibility to contact

all potentially interested parties (not just the beneficiaries), giving details of the proposed payments and calling for objections. Those parties then have 28 days to object. If the fund rejects the objection, the complainant has a further 28 days in which to lodge a complaint with the Tribunal. The Tribunal will then advise the fund of the complaint and start dealing with the complaint.

The most obvious point is the difficulty for a fund of assuring itself that it has communicated its intentions to all potentially interested parties in the first stage. Note that de facto arrangements can give rise to claims on the estate in the fund.

Funds will need to bear in mind that, if they fail to contact an interested party in the first instance, the 28 day special time limits do not apply. The party can make a complaint, and possibly be judged to be entitled to a payment, up to a year or even later. Guess where that money will come from?

Contemplate the probable difficulty of recovering money already paid out to beneficiaries six to ten months earlier, should the Tribunal decide to change the fund's initial proposal.

If Aunt Flo takes off for the south of France with the late Uncle Jack's super, to grieve in private, before Uncle Jack's fancy woman hears about the money, a year later, and the Tribunal then decides that the fancy woman was entitled to fifty big ones, the fund was at fault and has to cough up from its own funds.

That suggests that it might be imprudent for funds to make any payouts until completion of, at least, the 28 day period allowed for interested parties to object, after the funds have written to what they hope are all interested parties. One can visualise many cautious souls advising funds to retain the money until all possible time limits for appeal have expired. That would probably be grounds for further complaints!

Anyone see wonderful job prospects for gum-shoes? Can anyone not see the fund managers handing over all this due diligence stuff to squads, nay, battalions of lawyers?

***What's New? Why Has This Become a Problem Now?***

Superannuation has been around for decades and messy matrimonial arrangements for at least a few thousand years more. The risk of double jeopardy for superannuation funds has also existed for many years. What has changed to make this a potentially major new problem is the explosion in numbers of people with superannuation assets, starting with the passage of the *Occupational Superannuation Standards Act 1987*.

There may be another factor, too, multiplying that multiplier. At the risk of starting a sociological furore, outside the normal scope of a librarians' magazine, would it be too priggish and politically incorrect to suggest that most people who had assets in superannuation funds twenty years ago generally had their financial affairs in some sort of order or, at least, had a valid will? (Readers may also recall the recent comments of Lady Clark on the need to keep one's sexual affairs within one's social class, which might have helped, too.) Some current fund members, particularly itinerant workers, may not even know what or where their assets are, these days.

### Conclusion

So, when the first lawyer walks into your library and asks you what you know about the the Superannuation Complaints Tribunal, just give them your name, title and the Tribunal's telephone number: 13 14 34

If they insist on something to read, NOW!, keep a pack of material readily at hand. It should include the *(SI(S)) Act and Regulations*, the *Superannuation (Resolution of Complaints) Act and Regulations* and the pamphlets put out by the Tribunal (call them on their 13 14 34 number for copies)

Hand it over without a word, then go back to repairing the binding on the book you were working on, and pretend you are not interested. In time, this is going to blow *Mabo* into the sea; if you value your Friday evenings and weekends, you do not want to be part of this scene

