The Law Handbook

YOUR PRACTICAL GUIDE TO THE LAW IN NEW SOUTH WALES

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Superannuation

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Contents

[37.10] Superannuation is a long-term savings and investment product that provides tax-advantaged retirement benefits for superannuation fund members and their dependents in the form of lump sums, pensions or both.

There are many ways in which Australians save for their retirement including buying a house, investing in shares and bank savings. Superannuation has rapidly grown as a long-term savings vehicle since the introduction of compulsory superannuation in 1992. Nearly 15 million Australian workers are now in superannuation funds with assets of over $2.2 trillion.

The importance of superannuation as a retirement incomes vehicle was acknowledged by successive federal governments with the realisation that the baby boomer generation would put pressure on the aged pension system as they moved to retirement.

As a result, superannuation has become the central pillar of the retirement incomes framework in Australia in the third millennium.

Public awareness of superannuation is steadily increasing and Australians are becoming more engaged as superannuation accounts increase in size. Nevertheless, superannuation is not well understood, particularly in the compulsory employment superannuation environment, where many workers are somewhat disengaged with a product they may otherwise not have chosen. It is important for consumers and their advocates to seek expert legal advice about superannuation, disability and death claims, early access applications and information about rights and entitlements generally.

Superannuation in Australia

Superannuation has existed in Australia since the 19th century. State and federal governments have long offered statutory benefits to public servants, although for many years membership was limited to full-time employees and some government schemes had restrictions on access for women, particularly married women.

Similarly, large corporations have offered their employees loyalty superannuation schemes for decades. Many such employer-sponsored schemes were heavily weighted towards long-term employees by the use of benefit vesting rules under which the benefits increased exponentially, dependent upon the years of membership or upon members reaching retirement age. The vesting rules of many superannuation schemes had the effect of discriminating against women and people with disabilities who often had broken work patterns.

Life insurance companies have been selling agent-driven personal superannuation policies for many years. Life insurance policies with investment components such as whole of life and endowment assurance policies were also marketed and sold to Australians not otherwise covered by workplace superannuation until the 1990s.

Award superannuation

The first of two major developments in superannuation in Australia occurred in the mid-1980s when the federal government negotiated a 3% occupational superannuation contribution with the trade union movement to be paid by employers on behalf of their employees as a trade-off for a national wage increase. The superannuation contributions were delivered through the award system and supported by a federal regulatory regime under the *Occupational Superannuation Standards Act 1987* and Regulations.

By the late 1980s occupational superannuation covered a substantial proportion of the workforce. Employers were obliged to pay minimum levels of contributions into superannuation funds on behalf of their employees. Most awards nominated newly created industry funds set up by unions and industry associations as the vehicle into which award superannuation contributions were to be paid.

Workers who were already covered by corporate-sponsored superannuation schemes either had the occupational superannuation contributions paid into those schemes or separately into industry superannuation funds.

However, not all workers were covered by awards and not all employers complied with their award superannuation obligations.

Retirement incomes policy

In 1989, the Hawke Labor government set up an inquiry into the adequacy of the retirement incomes of Australians. The inquiry found that the ageing of the baby boomer generation would compromise the ability of future governments to fund the age pension.

In response, the federal government developed a retirement incomes policy which had three components:

- compulsory superannuation
- voluntary superannuation
- means-tested age pensions.

Compulsory superannuation was thought to be necessary to impose on Australians the discipline to save and the most appropriate target group was the employed workforce. Voluntary superannuation was to be encouraged by tax incentives whilst reliance on the age pension as the main provider of retirement incomes was to be phased down.

Superannuation Guarantee (Administration) Act

The centrepiece of the policy was the introduction of compulsory employment-based superannuation under the *Superannuation Guarantee (Administration) Act 1992* (Cth), pursuant to which employers were required to provide minimum levels of superannuation support (superannuation guarantee contributions) for most of their employees. The contribution rate progressively increased to 9% of salary by 2002/03 but remained at that level.

In 2011, the Act was amended to increase the contribution rate gradually from July 2013 to 12% by 2019–2020. In 2014, the Abbott Coalition government introduced a pause to the increase in contribution rates between 2015-2021, such that the compulsory contribution rate would not reach 12% until 2025. The current contribution rate is 9.5% of salary.

The design of superannuation funds

[37.20] The two methods for calculating superannuation benefits in Australia are those used in:

- accumulated contributions funds
- defined benefit funds.

[37.30] Accumulated contributions funds

Accumulated contributions funds are the most common type of superannuation fund.

How they work

Superannuation contributions are paid into members' individual accounts set up in the fund. The fund's assets are then pooled and invested and the investment earnings (or losses) are credited to (or deducted from) members' accounts.

Accumulated contributions funds are relatively easy to understand. Basically, they operate like bank accounts.

However, they have the disadvantage that the benefits are usually not capital guaranteed. Accordingly, members' accrued benefits can be eroded by negative investment returns.

The members bear the investment risks which will be reflected in the adequacy or otherwise of their retirement benefits.

Fees and charges

Administration charges, policy fees, insurance premiums and taxes are deducted from members' accounts. In some employer-sponsored funds the employer pays some or all of the fees and charges but not the taxes.

Contribution rates

Employers' contribution rates are determined in accordance with the compulsory superannuation contributions provisions of the *Superannuation Guarantee (Administration) Act* (Cth).

Some accumulated contributions funds are divided into employer or employee divisions and personal divisions. In the latter, members may pay personal contributions and may also have compulsory employer contributions paid into the fund.

Most funds allow members to make additional voluntary contributions.

Benefits

When members retire they are entitled to their account balances paid as lump sums, although some funds offer allocated pensions calculated on the account balances.

Insurance

Superannuation funds usually include insurance benefits for death and disability provided under group insurance policies. The death benefits are lump sums and the disability benefits may either be lump sums or monthly payments or both.

Insurance premiums are deducted from contributions paid into the funds (called contribution-based cover), or from the account balances (called account-based cover), and remitted to the relevant group life insurer on a periodic basis to fund the death and disability benefits.

Most superannuation funds are able to purchase death and disability insurance cover for their members at wholesale premium rates which has historically meant that the insurance cover is cheaper than that offered through individual retail policies.

These group policies also provide default insurance cover on an automatic acceptance basis, ie with no individual underwriting or perhaps with limited general underwriting such as an "at work" test.

Group insurance policies in superannuation are usually under three-year contracts, following which the terms and conditions or the provider may change.

Additional cover

If members want insurance cover above the default cover limits offered by a fund, they usually have to meet underwriting requirements such as the completion of health declarations. If accepted, the additional cover will be funded by additional insurance premiums deducted from superannuation contributions or accounts.

Additional cover may be offered with restrictions or premium loadings.

Some funds limit the default insurance arrangements to members of employer or employee divisions and members of personal divisions are subject to more rigorous underwriting.

Continuation of insurance

Many accumulated contributions funds include insurance continuation options. Members leaving a superannuation fund may continue with death and, sometimes, disability insurance cover without any evidence of health or with limited underwriting requirements, as long the option is taken up within a specified time after leaving employment with a participating employer (usually up to one or two months). The cover is thereafter provided under a personal insurance policy with premiums paid directly by the former fund member, although often at retail rather than wholesale rates.

Some superannuation funds have personal divisions which will accept account balance transfers from members leaving participating employers and continue insurance cover.

The underwriting restrictions may exclude continuing cover for those members leaving because of incapacity to work or may exclude certain existing health problems, eg HIV/AIDS.

When cover expires

Under contribution-based cover, insurance cover expires when superannuation contributions cease to be paid into the fund, perhaps with a short extension period for some cover, eg 30 days for TPD disability cover and 60 days for death cover.

However, some funds have continuing account-based cover whereby insurance cover continues beyond the cessation of contributions as long as there are sufficient monies in the account balance to fund insurance premiums being deducted and paid to the relevant insurer. Some funds have minimum account balance requirements for continuing account-based cover eg $1000 or perhaps up to $10,000. If the account balance falls below the minimum, the cover lapses.

Cessation of Insurance Premium Deductions

When insurance cover expires, insurance premiums should no longer be deducted from a member's account. However, in practice some funds have been less disciplined in ceasing premium deductions. This can create confusion as to whether a member continues to be covered.

[37.40] Defined benefit funds

In defined benefit funds the benefits are determined by a formula set out in the governing document, called the *trust deed*.

The benefits are usually based on:

- a member's final salary (or average salary over a specified number of years)
- a member's years of membership
- a multiplier linked to the rate of member contributions.

Member and employer contributions

Many defined benefit funds mandate member contributions, although the rate may vary at the election of members.

While members may have to pay regular contributions into defined benefit funds, employers often only pay after a periodic actuarial assessment is carried out to determine what amount (if any) is necessary to finance members' projected benefits after taking into account the fund's existing assets. Such a call on a sponsoring employer may be carried out every one, two or three years.

Additional contributions

Some defined benefit funds include accumulated contributions sections into which member contributions and additional voluntary contributions are paid, invested and accrue account balances.

Fees and charges

The fees and charges associated with the running of the fund are usually paid out of the fund's reserves or by sponsoring employers and not borne by individual members. The same does not apply to taxes – they are borne by the members.

Payments to members

Members of defined benefit funds are paid the defined amount regardless of the fund's investment performance. The investment risk is effectively borne by the sponsoring employer who must fund any shortfall. This may or may not also apply to the accumulated contributions section of a defined benefit fund.

Under some defined benefit funds, if members leave before retirement they may be entitled to benefits based on a reduced formula or based on accumulation-style benefits.

Other benefits

Defined benefits funds usually provide other benefits which are often, but not always, underwritten under group life insurance policies.

Death and disability benefits

Defined benefit funds usually include death and disability benefits. The benefits are usually insurance benefits offered under group insurance policies. Some defined benefits funds "self-insure" death and disability benefits although such arrangements are being phased out. The benefits may be lump sums or monthly pensions or both.

These benefits are usually offered without evidence of good health, although they are occasionally subject to exclusions for some pre-existing conditions.

Continuation of death and disability benefits

Like accumulated contributions funds, many defined benefit funds include continuation options for death and/or disability cover if the relevant fund benefits are underwritten by an insurer. The terms and conditions of such continuation options are similar to those under accumulated contributions funds.

Regulation of superannuation funds

[37.50] The superannuation industry was regulated by the Insurance and Superannuation Commission until the early 1990s when the federal government introduced legislation to strengthen the regulation of the industry as part of the compulsory superannuation regime.

[37.60] Legislation

The most important parts of the legislation are the *Superannuation Industry (Supervision) Act 1993* (Cth) (the Act) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (the Regulations), which cover private sector funds.

Regulated funds

Funds that come under the provisions of the Act and Regulations are called *regulated funds*. They are regulated by the Australian Prudential Regulation Authority (APRA).

Self- Managed Super Funds (SMSF's)

Funds with less than five members are exempt from the operation of the Act. They are instead regulated by the Australian Taxation Office (ATO).

Public sector schemes

Commonwealth and state public sector schemes are also generally exempt from the operation of the Act, although the states signed an agreement with the federal government to protect members' accrued benefits and to conform with the principles of the federal government's retirement incomes policy.

What the Act does

The Act:

- controls the way in which the trustees of superannuation funds exercise their powers, and
- promotes security of investments and benefits.

The main operating standards set by the Act cover:

- trustee appointments
- reporting requirements
- insurance rules
- investment rules, and
- benefit payment rules.

[37.70] Who oversees the superannuation industry?

Prudential requirements

The federal government agency responsible for the prudential supervision of the superannuation industry is APRA. The exception is the ATO which supervises SMSF's.

Consumer protection

The Australian Securities and Investments Commission (ASIC) is the agency responsible for consumer protection and disclosure.

Powers

The two supervising agencies have wide powers of investigation and review of the operation of superannuation funds as well as enforcement powers.

[37.80] Trusts

The vast majority of superannuation funds are set up under trusts. The exceptions are federal and state government statutory schemes and Retirement Savings Accounts (see Retirement Savings Accounts at [37.140]).

A trust is a legal arrangement pursuant to which a person or company (called the *trustee*) holds assets (the *trust property*) for the exclusive benefit of others (the *beneficiaries*).

The law of trusts

The law of trusts developed centuries ago in England in relation to charitable trusts and it has progressively applied to other trust arrangements. Superannuation funds have been set up under trust arrangements despite concerns that centuries-old trusts principles are a poor fit for schemes that provide benefits in a commercial or employment context.

Trust deeds

The rights and obligations of trustees and fund members of private regulated superannuation funds are set out in documents called *trust deeds*, which can be long and detailed. They specify:

- who can be a trustee or director
- procedures for appointing and removing trustees or directors
- employer and member contribution rates
- investment rules
- formulas for calculating benefits
- when payments can be made
- death and disability benefit payment standards, and
- procedures for winding up funds and distributing assets.

Death and disability benefits

If death and disability benefits are underwritten by an insurance company under a group life insurance policy, the benefits payable and the circumstances in which they are paid may depend on the terms of the insurance contract. The definition of disability may vary between the trust deed and the insurance contract, in which case the trust deed definition usually (but not always) defers to the insurance contract definition.

Public sector schemes

Most public sector schemes were established under Acts of parliament, with rules contained in legislation rather than trust deeds. However, some state superannuation schemes have been privatised. Their governing rules have changed from statutory provisions to trust deeds and they are subject to the Act and Regulations.

Trustees

Trustees are responsible for operating superannuation funds in accordance with the terms of trust deeds, the federal prudential regulations and other statutes.

Trustees of superannuation funds can be one or more persons or a corporate trustee with a board of directors.

Regulated funds (with five or more members) must have equal numbers of employer and member trustees or equal numbers of employer and member directors of a corporate trustee. In 2015, the Coalition Government introduced legislation to mandate that a minimum of one-third of directors must be "independent" of the relevant participating employer and employee organisations and so must the Chairperson.

Large funds sometimes have independent or professional trustees approved by APRA.

Appointing trustees

Superannuation funds must have procedures for electing and replacing member representatives. In practice, member representatives are either elected by a ballot of members or appointed by related unions or representative organisations or a combination of both. Employer representatives are usually appointed by participating employers or industry associations.

The Act requires that trustees or directors must be replaced in the same way as they are appointed. Beyond that, it is a matter for the trust deed to specify the appointment and replacement procedures for trustees or directors.

Independent directors are also appointed and replaced in accordance with the fund rules.

Duties of trustees

Superannuation fund trustees must act in accordance with the provisions of the relevant trust deeds and the Act. The Act imports a number of covenants into trust deeds, including to:

- act honestly
- act in the best interests of beneficiaries
- act with the due care, skill and diligence of an ordinary prudent person
- act impartially
- not make a profit from the fund unless the trust deed specifically provides for this
- keep their personal investment interests separate from those of the fund
- keep proper records and formulate appropriate investment and insurance strategies
- give reasons for decisions on certain complaints and when requested to do so
- do everything reasonable to pursue an insurance claim, if the claim has reasonable prospects of success.

A breach of any of the covenants may give rise to an action for damages for any loss suffered.

Trustees also have prescribed reporting obligations to members, including:

- providing annual statements with specific information, and
- notifying exiting members of any death insurance benefits at the date of termination and any continuation options for insurance.

Professional advice and indemnity

Trustees may seek legal, auditing, actuarial and investment advice from appropriate independent and qualified people. However, trustees remain ultimately responsible and accountable for the management of funds.

Superannuation funds must carry professional indemnity insurance for their trustees.

Types of superannuation funds

[37.90] There are a number of different types of superannuation funds which workers may be eligible to join.

The terms and conditions vary and fees, charges, insurance and benefit structures differ dramatically.

[37.100] Industry funds

Industry funds arose out of occupational award superannuation from the mid-1980s. Most awards specified that superannuation contributions were to be paid to employer-sponsored funds or nominated industry funds. Industry funds were created under arrangements between unions and industry associations and membership was open to Australians working in particular industries.

Many industry funds have become *public offer funds* in which membership is open to people outside the industry where they originated.

This trend has increased with the introduction of superannuation choice legislation in 2005 (see Choice of fund at [37.160]).

Board structure

Industry funds have equal member and employer representation on their trustee boards.

Member representatives are usually drawn from relevant unions or elected from among members. Employer representatives are usually drawn from relevant industry associations or among participating employers.

Many industry funds have moved to appoint independent directors ahead of the flagged mandatory independent directors.

Fund type

Industry funds are invariably accumulated contributions funds with:

- low levels of fees and charges
- disability and death insurance benefits provided at discounted wholesale premium rates and with automatic acceptance cover up to prescribed Automatic Acceptance Limits. The disability benefits may be total and permanent disability lump sums, terminal illness lump sums and/or salary continuance payments
- nil or minimal entry and exit fees, and
- no commissions paid to agents.

Most industry funds also offer members investment choices that can be altered periodically.

What they offer

The size of industry funds has provided economies of scale in administration and investment and in insurance benefits offered at wholesale rates with generous Automatic Acceptance Limits (AALs).

Some funds also offer access to other fringe benefits such as discounted home loans, health and travel insurance and financial advice. Many are moving towards offering post-retirement advice.

Major industry funds

Most industry funds have earned comparatively good investment returns for their members over the years. As a result, many have become very large, with hundreds of thousands of members and growing asset bases. These include:

- the Retail Employees' Superannuation Trust (REST)
- the Construction Building Unions Superannuation Scheme (CBUS)
- AustralianSuper (formerly STA and ARF)
- the Labour Union Co-Operative Retirement Fund (LUCRF)
- Host Plus
- the Health Employees' Superannuation Trust of Australia (HESTA).

Dispute resolution

Industry funds have internal dispute resolution complaint mechanisms and external complaints can be lodged with the Superannuation Complaints Tribunal (see The Superannuation Complaints Tribunal at [37.370]). There is also a right of action against trustees' decisions to the civil courts.

[37.110] Corporate funds

Employer-sponsored corporate superannuation funds have traditionally been generous defined benefit funds, with compulsory member contributions and death and disability benefits often calculated in the same way as full retirement benefits. The disability benefits may include total and permanent disability lump sums, terminal illness lump sums and/or salary continuance payments.

Some funds also have accumulation subdivisions to hold and invest member contributions.

Fees, charges and insurance benefits are often subsidised by the sponsoring employer or through fund surpluses.

The death and disability benefits are usually provided on an automatic acceptance basis although under some corporate funds death and disability cover is subject to health testing or limitations for pre-existing conditions.

Board structure

Corporate funds have equal member and employer representatives. Member representatives are usually drawn from fund members or unions with coverage in the workplaces and employer representatives are usually selected by the sponsoring employers.

Changes to corporate funds

The *vesting* rules of traditional employer-sponsored funds which limited benefits for early retirees have gradually disappeared from corporate superannuation funds and there has been a shift towards accumulated contributions funds or the outsourcing of fund management as prudential requirements and taxation rules have become more and more complex.

Dispute resolution

Corporate funds have the same internal and external complaint mechanisms as industry funds and there is also a right of action to the civil courts.

[37.120] Public sector funds

Commonwealth

The federal government set up statutory superannuation funds for its public servants in the early 20th century.

Fund type

Commonwealth superannuation funds such as the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) and the Military Superannuation and Benefits Scheme (MSBS) are generous defined benefit funds with compulsory member contributions and pensions or lump sum benefits based on:

- years of membership
- salary rates
- a multiplier linked to the rate of member contributions, and
- employment status on termination, eg retirement, retrenchment, disability or resignation

Additional benefits

The schemes provide generous death and invalidity benefits, although under the MSBS the rate of an invalidity pension depends upon the classification of the seriousness of the invalidity.

Death and invalidity benefits may also be subject to benefit limitations for pre-existing conditions.

The Public Sector Superannuation Accumulation Plan

The CSS and PSS were closed to most new Australian government employees and replaced with an accumulation fund, the Public Sector Superannuation Accumulation Plan (PSSAP), with effect from 1 July 2005. The PSSAP pays accumulated contributions and interest on termination, and also includes automatic death and total and permanent disability insurance cover, as well as salary continuance cover for permanent and ongoing employees and terminal illness insurance cover.

The Australian Government Employees Superannuation Trust (Australian Super)

Many non-permanent federal government employees were members of an accumulated contributions fund, the Australian Government Employees Superannuation Trust (AGEST), which paid accumulated contributions and interest on termination and also included death and total and permanent disability lump sum insurance cover. It was also possible to obtain salary continuance insurance cover.

From January 2013, AGEST was transferred to an industry fund, Australian Super, which has a similar benefit structure.

Dispute resolution

The dispute resolution mechanisms for federal public sector funds are the same as for private regulated funds, with internal complaints to the funds and external complaints to the Superannuation Complaints Tribunal.

However, generally there is no right of action in the civil courts in relation to a decision of most Commonwealth superannuation schemes, except for PSSAP and AGEST (now Australian Super).

New South Wales

Various branches of the NSW state public service have been covered by superannuation schemes for many years.

Fund type

NSW state superannuation schemes include the State Superannuation Scheme (SSS), the State Authorities Superannuation Scheme (SASS) and the Police Superannuation Scheme (PSS). The schemes were set up under NSW state legislation.

The SSS was closed to new members in 1985, SASS was closed to new members in 1992, and PSS was closed to new members in 1998.

The schemes are defined benefit funds with compulsory member contributions and generous pensions or lump sum benefits payable on resignation, retirement, disability or death.

Dispute resolution

Complaints about decisions or conduct of a NSW state superannuation scheme can be lodged with the scheme's administrators. If still not satisfied with the resolution of the matter, a person may complain directly to the scheme's trustee within two years of being notified of the decision.

There is an external right of complaint to the NSW Industrial Relations Commission (in Court Session) within six months of being notified of the trustee's decision or such further period as the trustee allows. This court is attached to the NSW Supreme Court.

First State Super

After the introduction of compulsory employment-based superannuation in 1992, the NSW state government set up an accumulated contributions fund called First State Super. It is now one of Australia's largest superannuation funds, with over 750,000 members. It covers most new NSW state public servants as well as those transferring from other NSW state schemes. It merged with Health Super in 2011 to include public health workers.

First State Super offers:

- lump-sum benefits payable on resignation or retirement
- death, terminal illness, total and permanent disability and salary continuance insurance benefits.

Dispute resolution

First State Super has an internal complaints resolution mechanism and since 2005, the external complaints mechanism has been to the Superannuation Complaints Tribunal. There is also a right of action to the civil courts.

[37.130] Master trusts

Master trust superannuation funds are offered to the public by:

- life insurance companies
- trustee companies, and
- other financial services providers.

They have single corporate trustees and trust deeds that allow many individuals and companies to participate, although employers sometimes have their own sub-plans to a master trust.

How they work

Master trusts pool accounts for investment with returns (or losses) credited to (or deducted from) members' accounts after the deduction of fees, charges and taxes.

Other benefits

Many master trusts offer death, terminal illness, total and permanent disability and salary continuance benefits, often provided by related life insurance companies.

Regulation

Master trusts are regulated superannuation funds and are subject to the federal prudential requirements, including preservation, member protection and dispute resolution standards.

[37.140] Retirement Savings Accounts

Retirement Savings Accounts (RSAs) commenced in 1997 as an initiative of the federal Coalition government. Mainly offered by banks, they provide a simplified superannuation product without the complicated trust structures of private regulated superannuation funds.

Retirement Savings Accounts must be capital guaranteed and each account is credited with interest each year. They are low-risk products with low rates of return and many have low levels of fees and charges. They may also include death and disability insurance benefits.

Purpose

RSAs are designed to be short-term investments for people in casual or short-term employment.

An account provider is required to notify account holders of alternative products once their account balances reach $10,000.

Regulation

RSAs are subject to the same preservation, member protection and dispute resolution rules as other regulated superannuation funds.

[37.150] Self-managed funds

Self-managed or do-it-yourself (DIY) funds must usually:

- have fewer than five members
- involve a family and/or business relationship between members
- have all members as trustees or directors, and
- not provide any trustees or directors remuneration for their services.

They have a different prudential regime from regulated funds in relation to such matters as reporting, investment and dispute resolution. They are also regulated by the ATO.

SMSFs' popularity has increased over the years, although APRA has cautioned against the value of SMSFs for those with less than $250,000 to invest.

[37.160] Rollover funds

Rollover funds were set up in the early 1980s to accept superannuation benefits from people changing jobs or retiring early.

Examples are:

- complying superannuation funds
- RSAs
- approved deposit funds where a member's benefit is cashed in as a lump sum or used to purchase an annuity or pension
- deferred annuities or immediate annuities where a superannuation benefit is converted to regular periodic payments to the member.

Rollover funds do not include disability or death insurance benefits, but they are regulated funds and they are bound by prudential requirements similar to those of other regulated funds.

Choice of fund

Under the compulsory superannuation regime an employer is required to pay contributions into a regulated superannuation fund for the benefit of employees.

Until 2005, the choice of fund into which employee contributions were to be paid was substantially a matter for the employer, subject to:

- any agreement between the parties, or
- an industrial award, which usually specified that employees could elect to have contributions paid into a fund nominated under the award.

Most awards nominated a relevant industry fund as the fund of choice.

However, from 1 July 2005 most of the employed workforce has been empowered to choose the superannuation fund into which compulsory superannuation contributions would be paid.

Employers are obliged to give new employees a standard choice form and to pay compulsory superannuation contributions to the funds nominated by their employees. Existing employees had to be provided choice forms before 29 July 2005 and upon request thereafter, although no more frequently than on an annual basis.

If an employee does not nominate a fund, the compulsory superannuation contributions can be paid into the default superannuation fund nominated by the employer. A default fund must satisfy certain minimum requirements, including prescribed modest minimum levels of life insurance cover.

From January 2014, a nominated fund must be a MySuper Fund (see below).

However, the choice of fund provisions don't apply to some employees including:

- those covered by Australian Workplace Agreements (AWAs) and certified agreements which specify the superannuation funds into which compulsory employer superannuation contributions are to be paid, and
- certain defined benefit fund members.

Employees covered by state awards and Commonwealth public servants in Commonwealth public service superannuation schemes must be offered a choice of funds.

A fund chosen by an employee must be:

- a complying superannuation fund
- a self-managed superannuation fund
- an RSA, or
- a complying defined benefit fund.

The number of employees who have exercised choice and altered superannuation funds into which compulsory superannuation contributions are paid is still relatively modest. However, more and more superannuation fund members are changing their investment strategies as offered by their funds.

A consequence of the introduction of choice of fund legislation was a substantial increase in the amount of death and disability insurance cover offered by funds in the late 2000's and early 2010's.

[37.165] MySuper Funds

From January 2014, most new employees must be offered a MySuper fund as the default fund into which compulsory employment superannuation contributions are to be paid.

Existing employees who haven't chosen a super fund in the past will have their superannuation transferred to a MySuper fund by 1 July 2017.

These rules don't apply to members of defined benefit funds and certain legacy funds.

A MySuper fund is a type of regulated superannuation fund with certain minimum design features:

– lower levels of fees
– default death and total and permanent disability insurance - with optional salary continuance insurance
– a single diversified investment strategy - or a lifecycle investment option under which members are moved from growth investments when they are younger to more conservative investments when they reach certain age bracket(s).

If a member wishes to make different investment choices, they must exit a MySuper fund.

MySuper funds arose out of the Cooper Review of superannuation in 2010.

The Review recognised the disengagement of many workers from the superannuation system and recommended the introduction of a vanilla superannuation product with minimum features, designed to drive down fees and provide steady growth.

It is too early to tell whether MySuper will achieve these goals. In 2014, the Financial System Inquiry raised concerns about superannuation fees and charges and they are to be reviewed by 2020.

Superannuation benefits

[37.170] Resignation benefits

Members who resign from a superannuation fund are entitled to resignation benefits, some or all of which may be subject to preservation rules (see Preservation at [37.210]).

How benefits are paid

Under most superannuation schemes resignation benefits are paid as a lump sum although under some defined benefit funds the component that represents the employer's contribution may be paid as a deferred lump sum or pension on retirement.

[37.175] Redundancy or retrenchment benefits

Some employer-sponsored and public sector defined benefit funds pay enhanced benefits if the termination of fund membership is due to redundancy or retrenchment from employment. Some funds require sponsoring employers to certify a redundancy or retirement before the benefits are payable and some require employers to underwrite some or all of the enhanced benefits.

[37.180] Retirement benefits

Members who reach retirement age under a scheme (which may be defined as age 55 or beyond) are entitled to retirement benefits, subject to possible preservation rules (see Preservation at [37.210]).

How benefits are paid

Most superannuation schemes pay retirement benefits as lump sums or offer a retirement pension with an opportunity to convert some or all of the pension into a lump sum.

Some schemes offer retirees the opportunity to purchase allocated pensions with their retirement lump sums.

[37.190] Disability benefits

There are usually two types of disability benefits in superannuation funds:

- total and permanent disability benefits, and
- salary continuance benefits.

Superannuation disability claims can be long and complicated.

What is Total and Permanent Disability (TPD)?

Total and Permanent Disability (TPD) will be defined in the fund's trust deed, although the definition may be varied by the definition in any relevant group insurance contract.

Under the most common definition:

- a member must have been incapacitated for work due to an injury or illness for at least six months, and
- the trustee and/or the insurance company must then determine that the member is permanently unfit for any occupation for which they are reasonably suited by education, training or experience.

Variations may require a permanent incapacity for any gainful employment or any occupation that the member could be retrained to undertake.

Some definitions deem a member to be totally and permanently disabled if he or she suffers the total loss of use of two limbs and/or the total loss of sight. Others may limit eligibility to those who are unable to undertake basic daily living activities such as cleaning, feeding and toileting or employment activities such as lifting, walking etc.

Permanent Incapacity (PI)

From July 2014, trustees are only able to offer insurance benefits to new members that are consistent with the early release provisions under the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

This means that a TPD insurance benefit must have a definition that is consistent with a condition of early release in reg 1.03C which includes "permanent incapacity". This is in turn defined as the trustee being reasonably satisfied that the member's physical or mental ill-health makes it unlikely that he/she will engage in gainful employment for which the member is reasonably qualified by education, training or experience.

A number of recent group insurance offerings in employment superannuation have narrowed the eligibility for TPD benefits by mandating rehabilitation and active medical treatment and prescribing dates of disablement and time limits for claims to be lodged.

Total and Permanent Disability benefits

In accumulation funds

A TPD benefit in an accumulation fund usually consists of:

- the member's account balance, and
- any insurance benefit provided through a group insurance policy taken out by the trustee.

In defined benefit funds

In defined benefit funds, TPD benefits are often calculated in the same way as retirement benefits, which can result in a substantial additional payment over and above the resignation benefit that would otherwise be payable; that is, the member's TPD benefit is calculated as if he or she had worked and remained a contributory member until retirement age.

These extra benefits may be insured or underwritten in whole or in part by a life insurance company.

Many trust deeds specify that the benefits will be reduced to the extent to which the trustee is unable to obtain insurance or if insurance cover or a claim is denied by an insurer.

How benefits are paid

Most TPD benefits are paid as lump sums, although under some funds they may be payable as lifetime pensions or periodic payments over a number of years.

Salary continuance payments

Salary continuance benefits are usually paid monthly for up to two years if a member is unfit for his or her usual occupation because of an injury or illness. Sometimes called income protection or total and temporary disability (TTD) benefits, the benefits may be payable beyond two years – perhaps up to age 65 or beyond.

Under some funds, the benefits may only be payable beyond two years if a member is unfit for his or her usual occupation or any other suitable work given his or her education, training or experience.

Most, although not all, salary continuance benefits are insurance benefits provided under a group insurance policy and are in addition to a member's superannuation account balance which is payable subject to the preservation rules (see Preservation at [37.210]).

Waiting periods

There will be a waiting period before salary continuance benefits commence. The waiting period will usually be between one month and three months.

Effect of other payments

Salary continuance benefits are invariably offset against statutory workers' compensation weekly payments and, sometimes, compensation lump sums, Centrelink payments, Department of Veterans' Affairs pensions and other disability insurance benefits.

However, this is not always the situation, dependent upon the wording of a relevant offset clause.

Termination of employment or membership

Under some superannuation funds, the termination of employment or fund membership or payment of a TPD benefit may cease salary continuance payments.

Again, this will depend on the wording in the trust deed or insurance contract.

Other benefits

Some salary continuance insurance policies include additional benefits in the form of monthly or weekly payments for specific injuries or sicknesses, hospitalisation, nursing care or rehabilitation.

Death of a claimant

Salary continuance payments will cease on the death of the claimant. However, under some policies a lump sum equivalent to monthly payments for a set period (eg up to three months) will be payable to the deceased's estate.

[37.200] Death benefits

When a member dies, a death benefit is payable to their dependents or legal personal representative.

Death benefit claims are sometimes emotionally charged and complicated.

What the benefit consists of

The death benefits payable under accumulated contributions funds are lump sums and usually consist of:

- the accumulated employer and member accounts, and
- any death insurance benefit payable if the member dies while an active member of the fund or within a specified period after ceasing work, which may be up to six months or even longer.

An insurance benefit may still be payable if a member dies outside the insurance cover period, where the member:

- ceased work because of a disability, and
- is assessed after death as having been totally and permanently disabled.

Under defined benefit funds some pay the equivalent of a full retirement benefit on the death of a fund member. Others pay pensions to surviving spouses or children of deceased members.

Salary continuance and death

As specified above salary continuance payments cease upon the death of the claimant but under some policies, payments may continue to be made to the deceased's estate for a few months after the death of the member.

See Death benefits distribution at [37.260] for more about death benefits.

Terminal Illness Benefits

The group insurance offerings of many superannuation funds now include terminal illness benefits. If a member is diagnosed as having less than 12 months (or perhaps 24 months) to live, he or she may be entitled to an insurance benefit which may be up to the equivalent of the death insurance benefit, in addition to the account balance.

The diagnosis must be made by two doctors, one of whom must be a consultant specialist in the relevant medical field.

[37.205] Eligibility for disability and death cover

Under many group superannuation funds, disability and death insurance benefits are offered on an automatic acceptance basis – that is, new members need not complete health declarations and are eligible for benefits up to certain limits regardless of pre-existing injuries or sicknesses.

However, many group insurance policies apply a general "at work" or "active employment" test under which members must be capable of performing their usual employment at the date insurance cover commences.

If an existing member applies for insurance cover after a certain period of time, or applies to vary existing cover, evidence of good health may be required before the cover will be granted.

Some funds allow extra insurance cover to be taken out. Usually, evidence of good health will be required, although the extent of the underwriting varies from fund to fund. If extra cover is refused, this will not affect the automatic cover.

Changing the Insurer

Most group insurance contracts are entered into by trustees for limited periods – usually three years – so the insurance benefits for disability and death and the insurers providing those benefits may change periodically. This makes the question of eligibility for cover complex and often difficult to determine. For example, automatic acceptance insurance cover may not continue from one insurer to another and ongoing cover may be subject to some underwriting.

However, some protection may be provided by a life insurance industry guideline (IFSA Guideline Note 1100) which specifies that in some circumstances, members whose cover is transferred from one insurer to another must be accepted on terms that are no less favourable than the existing group policy.

Benefit payment issues

[37.210] Preservation

The main purpose of the compulsory superannuation regime is to provide retirement benefits to members and their dependants. The Act and Regulations therefore require most superannuation benefits to be *preserved* until members retire from the workforce.

When can preserved benefits be paid?

The preserved benefits are usually paid only when a member retires from the workforce on or after reaching the preservation age.

The preservation age

For members born before 1 July 1960, the preservation age is 55.

For members born after 30 June 1960, the preservation age rises by one year to age 60 on an annual basis to 30 June 1964.

Benefits that must be preserved

Under the preservation rules, the following must be preserved:

- all contributions made from 1 July 1999
- investment earnings accruing in a regulated superannuation fund

- compulsory employer contributions and related investment earnings paid into a superannuation fund after 1 July 1992, and
- some award superannuation contributions paid into a fund for the benefit of employees, at least until the termination of their employment with a contributing employer.

Benefits that need not be preserved

Most undeducted employee contributions (ie, voluntary contributions by the employee on which no tax deduction has been claimed) paid into a fund before 1 July 1999 need not be preserved.

Early access to superannuation benefits

Members can access some or all of their preserved benefits before they reach their preservation age in limited circumstances.

The criteria, which are set out in the Act and Regulations, have changed a number of times, particularly in the early years.

Currently, early access may be possible if:

- the member is suffering severe financial hardship
- a payment is warranted on compassionate grounds
- the member is permanently incapacitated, in which case all preserved benefits are payable
- the member is temporarily incapacitated, in which case payments may be available under some conditions for the period of incapacity
- the member dies, in which case all preserved benefits are payable
- the preserved benefit account balance is under $200
- the member is a temporary resident of Australia and permanently leaves Australia, or
- the member has a terminal illness.

Severe financial hardship grounds

Superannuation fund members may be paid up to $10,000 a year from their preserved benefits if they:

- have received Commonwealth income support for at least 26 consecutive weeks, and
- cannot meet their reasonable and immediate family living expenses.

Superannuation fund members who are over the minimum preservation age (55-60) and who have not retired from the workforce may be paid all their preserved benefits whether or not they can meet their living expenses if they:

- have received Commonwealth income support for at least 39 weeks since reaching that age, and
- are not working at the date of an application.

Compassionate grounds

Preserved superannuation benefits can be released early on compassionate grounds if the money is required for:

- the cost of medical or dental treatment that is not ordinarily available in the public health system or for medical transportation costs for the member or a dependant of the member
- loan repayments to prevent a mortgagee sale or foreclosure, limited to three months of mortgage repayments plus 12 months interest on the outstanding mortgage in any 12-month period
- the cost of modifications to the home or motor vehicle of a severely disabled member or dependant to accommodate their special needs
- palliative care expenses of a member, or
- palliative care or funeral expenses of a dependant.

Temporary residents who leave Australia

When a temporary resident of Australia leaves the country permanently, all preserved benefits are payable, but the concessional tax rate for superannuation payments will not apply.

Transition to retirement

After 1 July 2007, people who have reached their preservation age have been able to access their superannuation without having to retire or leave their jobs by drawing down non-commutable superannuation income streams called transition to retirement income streams.

Permanent incapacity

If a member is unlikely to engage in gainful employment for which the member is reasonably qualified by education, training or experience because of ill-health he or she may get early access to all preserved benefits. To be eligible for concessional invalidity tax treatment of the benefits, the permanent incapacity must be certified by two doctors.

Terminal illness

After 1 July 2007, members with terminal medical conditions have been able to access all their superannuation, regardless of their age or whether or not they are still working.

The superannuation benefits are payable to members who are certified by two medical practitioners, one of whom must be a specialist in the relevant field of expertise, as suffering from an illness or injury that is likely to result in death within 24 months.

However, it is important to note that accessing all of the account balance may result in the lapsing of valuable death or disability cover.

Fund rules

Any early access to preserved benefits is subject to the rules of the relevant superannuation fund which may restrict such access. For example, some superannuation funds do not allow access on grounds of financial hardship.

How to apply

With the exception of compassionate grounds applications, all early release applications must be made to the relevant superannuation fund and are subject to the fund's evidentiary requirements.

Financial hardship applications should be accompanied by a statement from Centrelink (called a Q230) that the member has been receiving income support for the requisite period.

Temporary resident applications are made with superannuation funds on an ATO application for Departing Australia Superannuation Payment (DASP) and must be accompanied by a Department of Immigration and Border Protection Form 1194 or, if the amount is less than $5,000, a copy of the expired visa and the person's passport.

Applications on compassionate grounds

Compassionate ground applications must be made to the Department of Human Services by lodging a standard application form with prescribed documentation. The application form can be downloaded from the Department of Human Services website.

The Department of Human Services must be satisfied that the applicant does not have the financial resources to meet the expenses claimed.

The member will be notified in writing of the decision.

Taxation

Depending on what basis early access to superannuation is granted, the tax treatment of a payout will vary (see Taxation at [37.250]). Generally speaking, the most tax effective ways of getting early access to superannuation are through terminal illness or permanent incapacity.

[37.220] Fees and charges

Superannuation fund accounts may be debited with a variety of fees and charges, including:

- management and administration fees
- policy fees
- entry and exit fees
- early surrender charges
- insurance premiums, and
- taxes.

Calculating fees and charges

Public offer funds

Some public offer funds have complex formulas for the calculation of fees and charges.

Commissions may be payable to agents who sell policies and this may result in substantial up-front fees or early surrender charges.

Industry funds

Industry funds, which are not-for-profit funds, are characterised by lower levels of fees and charges. They do not usually pay commissions to agents or dividends to shareholders, and have either nil or minimal entry and exit fees.

Small accounts protection

Under Pt 5 of the Regulations, the employer and employee financed benefits of fund members with balances under $1,000 were protected from being eroded by fees and charges.

The rules required that administration costs must not exceed the interest credited to an account in any reporting period (usually six or 12 months).

What were administration costs?

Administration costs include:

- administration fees
- entry fees, and
- exit fees, except for any exit fee applicable as at 30 June 1995.

What were not administration costs?

Death and disability insurance premiums and taxes were not defined as administration costs and were deductible from the account balance.

Which funds had small accounts protection?

The rules applied to most regulated accumulation contributions funds that receive superannuation guarantee contributions or shortfall payments.

They did not apply to most defined benefit funds, unit-linked funds or traditional life insurance policies.

Removal of small account protection

However, with effect from July 2013, the statutory small account protections were abolished. This followed a recommendation from the Cooper Review of superannuation in 2010 and was part of changes to the lost superannuation rules.

[37.230] Lost and inactive members

The benefits of lost or inactive members are protected by:

- the Regulations, and
- the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth).

Who is a lost member?

Members are considered lost if:

- a fund has never had an address for them, or
- at least one or two pieces of written communication have been returned unclaimed.

Who is an inactive member?

Members are inactive if no contributions or rollovers have been received in the last 12 months.

Finding lost superannuation

Reporting lost members to the Taxation Office

Superannuation funds (including eligible roll-over funds) must report lost members to the Commissioner for Taxation and provide details, including the members' withdrawal benefits.

The register of lost members

The Australian Taxation Office (ATO) maintains a register of lost members, called Super Seeker, with a view to reuniting people with their superannuation benefits.

Super Seeker is a tool that will look for lost super and provide possible matches. A member must provide his or her Tax File Number, family name, given name and date of birth. The register will not necessarily include all a person's superannuation funds.

Private companies

A number of companies have sprung up offering to recover lost superannuation on a fee-for-service basis.

It is important to check what fees will be charged before engaging their services and compare these with the free Super Seeker register.

Small accounts

Small inactive accounts with balances of less than $4,000 and accounts of lost members must be transferred to the Commissioner of Taxation. This figure is due to rise to $6,000 on 31 December 2016.

Interest on unclaimed superannuation

The Commissioner holds the unclaimed superannuation and pays interest on those monies.

Once a member has been identified, the account balance (plus interest) may be paid to that person in accordance with the preservation rules or to a superannuation fund nominated by the person.

[37.240] Small superannuation accounts

The Superannuation Holding Accounts Reserve

The Superannuation Holding Accounts Reserve (SHAR) was established under the *Small Superannuation Accounts Act 1995* to receive superannuation guarantee shortfalls and contributions from employers. It was designed to be a holding account and a last resort for receiving small superannuation contributions when a superannuation provider cannot otherwise be found, and does not include death or disability cover.

SHAR is administered by the Australian Taxation Office.

If no money is credited to a SHAR account for ten years, the money in the account is transferred to the federal government's consolidated revenue fund.

SHAR was closed for employer deposits on 30 June 2006.

[37.250] Taxation

Generally speaking, superannuation is taxed at concessional rates in line with the federal government's policy of encouraging retirement savings. However, there are restrictions on how much can be saved on a concessional basis and superannuation must be provided through a regulated fund or Retirement Savings Account.

The tax treatment of superannuation has changed many times over the years. Significant further tax changes were proposed in the 2016 Federal budget but at the time of printing have not yet been passed into law.

It would be important to check with a qualified financial advisor about the current tax treatment of any superannuation before making any decisions with respect to superannuation or before providing clients with any related advice.

Tax on contributions

Most superannuation is taxed at concessional rates. However, superannuation is taxed on:

- employer contributions when paid into a fund
- earnings while in a fund, and
- benefits paid on exiting a fund (although see below).

Tax on benefits

Tax is payable on superannuation benefits received in most cases. Taxation rates depend on:

- when the benefit accrues
- when it is paid out
- whether it is paid as a lump sum, pension or annuity
- whether it is paid on resignation, retirement, disablement or death, and
- to whom it is paid.

Superannuation taxation rules

Some of the superannuation taxation rules are discussed below.

Personal contributions

Personal contributions (ie, voluntary contributions for which no tax deduction has been claimed) are tax free.

Limits on contributions

From 1 July 2007, a limit was placed on contributions which attract concessional tax treatment. The limit is currently $30,000 per annum for those under 50 years of age and $35,000 per annum for those aged 50 or more. Any contributions beyond the cap would be taxed at 30% plus the Medicare levy.

Co-contributions

A person who makes personal (not salary sacrifice) superannuation contributions into a compulsory superannuation fund or RSA before 1 July in any particular year will be eligible for a matching government co-contribution up to $500 subject to, *inter alia*, a means test.

Low income contributions

If a person earns $37,000 or less a year, he/she may be eligible for a government superannuation contribution of up to $500 to help low income earners save for retirement.

The Coalition government announced that this would be finished in 2017.

Tax-free and taxable components

Since 1 July 2007, due to changes in superannuation rules, withdrawals are comprised of two components:

- the tax-free component, which includes undeducted contributions, any pre-July 1983 component, any post-June 1994 invalidity component, government co-contributions, non-concessional contributions and personal contributions, and
- the taxable component, which is the balance of the account. The taxable component is subject to tax if withdrawn before age 60, but is currently tax free once the member reaches age 60.

Tax on superannuation taxable components

Generally speaking tax is payable on the taxable component at the rate of 20% plus the 2% Medicare levy up to preservation age and at 15% plus the Medicare levy between the preservation age and age 60.

Death benefits to dependants

A death benefit paid to the dependant(s) of a deceased member is tax free.

Death benefits to non-dependants

A death benefit paid to non-dependant(s) of a deceased member is taxed in the same way as a resignation benefit paid to a member under 55 years of age.

Terminal illness benefits

From 1 July 2007 moneys withdrawn from a superannuation fund on the ground that the member has a terminal illness are tax free.

Benefits paid as income

Benefits paid as income, such as pensions or annuities, are treated as income and taxed at the member's marginal tax rate plus the Medicare levy. Tax relief is provided in the form of the deductible amount, which is tax free, and there is a tax rebate on the remaining part of the pension or annuity.

[37.260] Death benefits distribution

The distribution of death benefits under a regulated superannuation fund is generally at the discretion of the trustee, applied in accordance with the terms of the trust deed and subject to the Act and Regulations.

The general principle is that benefits from a regulated superannuation fund are paid to a deceased member's legal personal representative and/or one or more dependants or interdependants. If no such persons can be found after reasonable enquiries, the trustee may distribute the benefits to other persons in accordance with the trust deed.

Who is a dependant?

Dependants of a fund member include:

- a legally married spouse
- a de facto partner (heterosexual and same-sex)
- the member's children
- anyone who was financially dependent on the member at the time of death, and
- any person with whom the member has an interdependency relationship.

Children

The children of a deceased superannuation fund member include his or her biological, step, adopted and ex-nuptial children. Some superannuation funds restrict the definition of children to those under the age of 18 as at the deceased's date of death.

What is financial dependency?

Financial dependency includes total and partial financial dependency and is assessed at the date of the death of the fund member.

Although a trustee must be satisfied that the financial dependency is reasonable and not illusory, relatively small financial support has been found to constitute partial financial dependency for the purpose of superannuation death benefit distributions, eg board of $30 per week (see *Faull v Superannuation Complaints Tribunal* [1999] NSWSC 1137).

Same-sex partners

With effect from 1 July 2009, same-sex partners can qualify as de facto partners and share the same rights as opposite sex de factos. However, as at 2016, same-sex partners cannot marry and cannot qualify as dependants on that basis alone.

Interdependency relationship

From 30 June 2004, the definition of *dependant* for the purpose of the distribution of superannuation death benefits was extended to include persons in interdependency relationships with deceased members at the date of death.

The Act defines persons as having an interdependency relationship if:

- they have a close personal relationship
- they live together
- one or each of them provides the other with financial support, and
- one or each of them provides the other with domestic support and personal care.

The persons need not be related by family and, if they have a close personal relationship but do not satisfy the other requirements because of a disability, they may still qualify as dependents. Same sex partners may qualify as interdependents.

Eligibility

When distributing superannuation death benefits, a trustee usually takes into account a range of factors including:

- the extent to which a claimant would have looked to the deceased for financial support had he or she not died
- the claimant's financial needs
- the strength of the claimant's relationship with the member
- the claimant's other entitlements to the member's estate
- the claimant's age, health, employment and financial circumstances
- the terms of the member's will, and
- any non-binding nominations.

No eligible dependant has an absolute right to a superannuation death benefit.

A trustee properly exercising a discretion may distribute the whole of the death benefit to one dependant over others (see *Pope v Lawler* [1996] WAG 84).

Binding death benefit nominations

The *Superannuation Legislation Amendment Act 1999* allows superannuation funds to offer members the opportunity to make binding death benefit nominations in favour of dependants and/or legal representatives. If a member completes a binding death benefit nomination in the correct form, the trustee *must* distribute the death benefits to the nominated beneficiary or beneficiaries in the proportions specified and has no discretion to vary or override the allocation.

Witnessing, renewal and reporting requirements must be met for the nomination to be valid. The requirements are similar to those for a valid will.

A binding death benefit nomination can be varied at least annually and must be renewed or changed at least every three years.

Funds are not obliged to offer binding nominations. Whilst the majority now do, only a minority of superannuation members hold binding nominations.

If a binding nomination is not valid, the trustee will exercise their discretion in distributing a death benefit.

A nominated beneficiary under a binding nomination must be the member's legal personal representative or must have been dependent on the deceased member at least at the time of death. There is some doubt as to whether this extends to the date of nomination.

If members want to distribute some or all of their superannuation to a non-dependant (eg a charity), they can make a binding nomination in favour of their legal personal representatives and have an up-to-date will gifting the superannuation to the non-dependants.

Non-binding nominations

Most superannuation funds offer their members the opportunity to nominate their *preferred* beneficiaries. Contrary to general perception, trustees are not bound by such nominations, although they will take them into account.

Most superannuation fund members have non-binding death benefit nominations.

The rules of a small number of funds mandate the payment of death benefits to a deceased member's estate ie, not directly to any dependents.

Is there a valid binding nomination?

Anyone intending to make a claim for a superannuation death benefit should find out whether there is a binding nomination and, if there is, whether the strict preconditions for a valid nomination have been met.

[37.270] Superannuation and Centrelink

Superannuation benefits paid to a fund member may affect an entitlement to Centrelink payments, depending on whether the benefits are paid as a lump sum or a pension.

Income test

Superannuation pensions are usually treated as income and are subject to the Centrelink income test for the purposes of assessment for payments.

Superannuation lump sums are generally exempt from the Centrelink income test but may be included in the assets test.

Assets test

A superannuation lump sum will be included in the Centrelink assets test when the benefit is received. While the benefits are retained in a superannuation fund, they will not be included in the Centrelink assets test until the member reaches the pension age.

See Chapter 36, Social Security Entitlements, for more about superannuation and Centrelink.

[37.280] Family law and superannuation

In the past, the Family Court had considerable difficulties in dividing matrimonial property because of the lack of flexibility in the superannuation preservation rules ie. how to divide up superannuation benefits which cannot yet be distributed?

The court previously dealt with the problem by either offsetting accrued superannuation benefits against other assets of the marriage or by deferring property distribution until superannuation benefits were paid out.

However, after the *Family Law Legislation Amendment (Superannuation) Act 2001* (Cth) was enacted, the superannuation interests of parties to a marriage (both preserved and non-preserved) can be split by agreement or court decision. Once split the benefits are subject to the rules of the fund and the preservation rules for each of the parties.

For further details, see Chapter 24, Family Law.

[37.290] Fund surpluses

A superannuation fund has a surplus when its assets exceed its accrued liabilities. In defined benefit funds, allowance usually needs to be made for projected liabilities. Many defined benefit funds have surpluses whose distribution may be the subject of competing claims between members and participating employers.

Identifying a fund surplus

Superannuation funds usually conduct actuarial assessments every few years. If a surplus is identified, an actuary may issue a certificate to that effect to the trustee and make recommendations as to whether the surplus should be maintained or distributed.

The trustee then decides in accordance with the rules of the fund if, and how, the surplus is to be distributed.

A trustee's discretion

Most trust deeds give trustees a broad discretion as to how (or whether) to distribute surpluses. It is common for trustees to give employers or members contributions holidays, increase members' benefits and/or return surpluses to participating employers.

Under legislation

Under s 117 of the *Superannuation Industry (Supervision) Act*, surpluses distributed from an employer-sponsored fund to an employer must be reasonable having regard to the interests of both the employer and beneficiaries. This provision has been used effectively to enhance the position of fund members in the distribution of surpluses and has often resulted in at least part of a surplus being returned to the fund members.

Superannuation guarantee contributions

[37.300] Pursuant to the *Superannuation Guarantee (Administration) Act 1992* (the SGAA), employers are required to provide minimum levels of superannuation support for most of their employees. These payments are called *superannuation guarantee contributions*. The contribution rate is currently 9.5% of salary. This rate is currently frozen until 2021 when it will progressively rise to 12% by 2025.

[37.310] Who is an employee?

At common law, an employment relationship is based on the right of an employer to control when, where and how work is to be performed and by whom (the control test), and whether a person providing services does so as an integral part of the other's business organisation (the integration test). Under the SGAA, the common law definition of *employee* is extended to include:

- contractors for labour where more than 50% of the value of the contract is for the person's own labour
- directors of bodies corporate who receive payment for the performance of their duties
- certain artists and sportspeople, and
- certain people paid to do domestic or private work for more than 30 hours per week.

The Australian Taxation Office has issued a ruling (SGR 2005/1) to clarify and define the meaning of *employee* for the purposes of the Act.

The classification of many sub-contractors for compulsory superannuation purposes is a major problem. Some workers who may be employees under the SGAA are not treated as such by employers, some of whom set up contracts which try to artificially avoid paying compulsory superannuation.

[37.320] The basis of contributions

Superannuation guarantee contributions are based on what is called the employee's *notional earnings base*.

What is in the notional earnings base?

The notional earnings base usually includes:

- wages
- salary
- commissions
- shift loadings, and
- bonuses.

What is not in the notional earnings base

The notional earnings base does not include:

- overtime
- leave loadings, and
- workers' compensation payments.

Who is not covered?

Employers are not required to pay contributions on behalf of workers who are:

- paid less than $450 per month
- under 18 years of age and working less than 30 hours per week.

As from July 2013, workers of any age are eligible to have superannuation contributions paid on their behalf by employers.

When are contributions made?

Before 1 July 2003, the SGAA required employers to meet their superannuation guarantee obligations at least annually. The SGAA was amended from that date to require quarterly contributions payable into regulated superannuation funds, commencing in October 2003.

In fact, many employers pay superannuation contributions on a monthly basis, often under contracts with superannuation fund trustees.

Non-payment and late payment of superannuation guarantee contributions is a major problem. Workers are often not paid their full entitlements in the non-unionised work force, the casual work force and in small businesses with high failure rates.

[37.330] Enforcement through the Taxation Office

If the employer doesn't pay superannuation contributions

Where employers fail to provide the minimum level of superannuation support, the Australian Taxation Office (ATO) is responsible for collecting the shortfall (the *superannuation guarantee shortfall*) and distributing the money in the form of superannuation contributions to the employees' nominated superannuation funds.

The superannuation guarantee charge

Employers who do not pay full superannuation guarantee contributions on behalf of their employees by the required date must lodge:

- a superannuation guarantee statement, and
- payment of the shortfall plus fees and charges (the superannuation guarantee charge).

If the employer does not lodge the statement

If an employer fails to lodge a superannuation guarantee assessment, the Commissioner for Taxation can issue a default assessment.

Notifying the Taxation Office

An employee who believes that superannuation guarantee contributions have not been paid can notify the ATO by contacting the superannuation helpline and providing basic information.

What the Taxation Office may do

The ATO may investigate the matter and, if appropriate, identify a superannuation guarantee shortfall, issue a superannuation guarantee charge and seek to recover the charge from the employer.

However, there is no guarantee that the ATO will investigate any particular notification.

If an employer fails to pay the superannuation guarantee charge, the Commissioner for Taxation can sue for recovery, although in practice this rarely (if ever) happens, and the Commissioner never seeks to recover any death or disability benefits lost because of non-payment of superannuation contributions.

As from 1 July 2007, an employee who has notified the ATO is entitled to contact the ATO and receive information about the progress of investigations.

Other charges

The superannuation guarantee charge includes a 10% interest component and an administration component. There may also be a late penalty if the charge is not paid by the due date.

An employer cannot claim a tax deduction for superannuation contributions paid as a charge.

Disability and death payments

The payment and enforcement of superannuation contributions is particularly relevant to disability and death insurance benefits. Insurance cover for these benefits lapses if superannuation contributions are not paid by an employer. To remedy this, many superannuation funds have moved to account-based premium deductions so that insurance cover will continue as long as there is a sufficient account balance to fund the insurance premiums. Most such funds impose minimum account balances for the continued deduction of insurance premiums.

Other recovery mechanisms

Under an industrial agreement

If superannuation contributions are payable by an employer under an industrial award, employment contract or enterprise agreement, employees may be able to pursue their employer directly through the industrial relations system or the civil courts for unpaid contributions and any death or disability benefits forgone.

Whether this is possible will depend on the terms of the relevant instrument. It will usually have to specify that superannuation contributions are payable, at what intervals and to what nominated fund.

Remedies under legislation

In NSW, action may be taken to recover unpaid superannuation contributions and any death or disability benefits by employees of non-corporations and state public sector employees under the unfair contracts provisions (s 106 of the *Industrial Relations Act 1996* (NSW) (see, for example, *Connelly v Tilley* [2002] NSW IR Comm 326)).

There are significant limitations on such actions, including monetary limitations and time limits. The number of employees covered by the legislation is also limited.

Action by funds

Superannuation fund trustees may take legal action against participating employers who default on contractual obligations to pay contributions on behalf of their employees. Many industry funds have such contractual arrangements.

Dispute resolution

[37.340] Superannuation fund members and other beneficiaries unhappy with the decisions or the conduct of fund trustees or insurance companies have avenues of redress, including:

- internal dispute resolution procedures
- external dispute resolution schemes, and
- the civil courts.

[37.350] Internal review

Under s 101 of the *Superannuation Industry (Supervision) Act*, regulated superannuation funds must establish internal dispute resolution mechanisms to deal with enquiries and complaints by members and other beneficiaries.

Regulated superannuation funds are required to inform their members of their internal dispute resolution procedures.

How to complain

A superannuation fund member or beneficiary who wants to complain about a decision or the conduct of a superannuation fund trustee should write to the trustee requesting a reconsideration under s 101 of the Act.

The person should:

- explain in detail why he or she believes the decision or conduct was wrong, and
- enclose copies of relevant documents, such as medical reports for disability benefit claims or documents showing financial dependency for death benefit claims.

Get advice

It is very important to get expert advice and to make sure that submissions and documentation support the complaint being made and deal with the relevant issues.

[37.360] External review

If a complaint to a regulated superannuation fund is not satisfactorily resolved within 90 days, the person can lodge a complaint with an external dispute resolution scheme, the Superannuation Complaints Tribunal.

Regulated funds must inform members of the right to take a complaint to the Tribunal.

[37.370] The Superannuation Complaints Tribunal

The Superannuation Complaints Tribunal was set up under the *Superannuation (Resolution of Complaints) Act 1993* to resolve complaints against regulated superannuation funds.

The Tribunal's aim is to be fair, economical, informal and quick in dealing with complaints. There are no filing fees or charges. No costs can be awarded against an unsuccessful complainant and successful complainants cannot usually recover costs against other parties to the complaint.

The Tribunal deals with thousands of enquiries and hundreds of complaints each year.

What can be complained about?

A complaint must be about a decision or conduct that a fund member or beneficiary alleges was unfair or unreasonable in its operation to the complainant.

Who can be complained about?

Complaints can be lodged against trustees of regulated superannuation funds.

Other parties relevant to the complaint, such as insurance companies, claims assessors and other potential beneficiaries, can be joined to the complaint by the Tribunal.

What the Tribunal cannot consider

The Tribunal cannot consider some types of complaints, including:

- complaints about the management of a fund as a whole, such as investment performance
- complaints about non-regulated superannuation funds, such as those with less than five members and some public sector funds
- complaints with respect to which a s 101 complaint has not first been made to the trustee
- complaints that have been or are being dealt with elsewhere, such as in a civil court
- complaints that the Tribunal finds are trivial, vexatious, misconceived or lacking in substance, and
- complaints about decisions relating to the payment of a TPD benefit when the member permanently ceased work because of a physical or mental condition if;
  - a claim was not made within two years of the member permanently ceasing work and
  - the complaint to the Tribunal was not made within four years of the first decision of the trustee to refuse payment.
- complaints about decisions relating to the payment of a TPD benefit when the member did not permanently cease work because of a physical or mental condition, if the complaint to the Tribunal is not made within six years of the trustee's first decision.

Common complaints

The most common types of complaints to the Tribunal are:

- decisions on the distribution of superannuation death benefits
- the rejection of superannuation disability benefit claims
- the miscalculation of benefits
- failure to provide information or documentation, and
- poor service generally.

Complaints outside the Tribunal's jurisdiction

Nearly half the complaints the Tribunal receives are outside its jurisdiction, primarily because:

- complainants have not been through the internal review process of the superannuation fund, or
- complaints about decisions on total and permanent disability claims are lodged outside the above time limits.

If the Tribunal determines that a complaint is outside its jurisdiction, it will notify the parties in writing, usually after giving the complainant the opportunity to make submissions as to why the complaint should be found to be within its jurisdiction.

Time limits

In addition to the time limits on total and permanent disability claims, complaints generally must be lodged with the Tribunal within 12 months of the relevant decision the subject of the complaint.

Extensions of time

The Tribunal can extend the 12-month time limit if it thinks it is reasonable in the circumstances, although it currently has no discretion to extend the above time limits on TPD claim decisions.

Complaints about death benefits

A complaint about the payment of a superannuation death benefit cannot be made to the Tribunal if the person claiming the benefit:

- was notified in writing that any complaint against the trustee's decision must be lodged within 28 days, and
- did not lodge the complaint within that time.

The complaints process

A complaint to the Superannuation Complaints Tribunal must be in writing and accompanied by copies of all relevant documents. Complaint forms, which must be completed and signed by the complainant, are available from the Tribunal.

Tribunal staff can assist with completing the form and provide information about how the process works, but the Tribunal does not provide legal advice on how complainants should pursue or present their complaints.

Once a complaint is received the Tribunal will decide whether it is within it's jurisdiction. This process may take a number of months.

Documentation

If the Tribunal is satisfied that it can deal with a complaint, a case officer will require the respondent(s) to provide all relevant information and documentation, including:

- trust deeds
- insurance contracts
- internal memoranda
- correspondence
- minutes of trustee meetings
- medical reports, and
- surveillance material.

Copies of all documentation sent to the Tribunal are forwarded to the other parties.

If the Tribunal believes that any parties should provide further documentation, it can require them to do so.

Third parties

If the Tribunal determines that third parties should be joined to the complaint, it may do so and notify the parties. If a third party is invited to join, they may choose to do so or not.

In complaints about disability claims with respect to which a life insurance company has been involved in the decision-making, the Tribunal will usually join the life insurance company as a third party to the complaint.

Legal representation

Complainants are not entitled to legal representation unless the Tribunal agrees that legal representation is appropriate, because:

- the complainant is suffering from a disability
- the complaint is complex
- other parties will be represented, or
- for other reasons.

In fact, many complainants are represented. Complainants often need to be represented or assisted by a lawyer with relevant expertise such as in disability or death benefit claims.

Some lawyers will act for complainants on a "no-win, no-charge" basis.

Superannuation funds and insurance companies are often represented by in-house or external lawyers.

Conciliation

Once relevant information and documentation has been exchanged, the Tribunal will attempt to resolve the complaint by conciliation. This will usually involve a telephone conference between all parties conducted by a Tribunal conciliation officer. The Tribunal has the power to compel the parties to participate in conciliation although, in practice, conciliation conferences are usually only ordered or effective if all parties are willing to participate.

The review meeting

If conciliation fails to resolve a complaint, the Tribunal will conduct a *review meeting* to consider the complaint and determine the matter.

The Tribunal generally only considers written evidence, although it can (but very rarely does) hold oral hearings. All parties are invited to lodge written submissions before the meeting. The submissions are exchanged and each party can file written replies.

It is very important to make detailed submissions and replies that identify and deal concisely with the issues in dispute and interpret relevant trust deed and insurance policy wording. Supporting documentation, such as medical evidence in disability benefit complaints, should address the trust deed and policy requirements and support the entitlement claimed. It is also important that submissions address the unfair or unreasonable threshold for complaints to be upheld (see What can be complained about? above).

The Tribunal decision

The Tribunal must produce a written decision with reasons and send a copy to all parties. The decision will also be published on the Tribunal's website, but the parties and other persons or organisations will not be identified by name.

If a complaint is upheld, the Tribunal will specify the remedy.

If the decision was not unfair or unreasonable

If the Tribunal determines that the decision complained of was not unfair or unreasonable in its operation to the complainant in all the circumstances, it must affirm the decision.

If the decision was unfair or unreasonable

If the Tribunal determines that the decision complained of was unfair or unreasonable, it may:

- require the trustee or insurer to reconsider the matter
- vary the decision, or
- set aside the decision and substitute its own decision.

If a matter is to be sent back to the trustee to reconsider, the matter may return to the Tribunal as a new or existing complaint if it is still not resolved.

Interest

If the decision is to pay money to a party, the Tribunal will often order interest to be paid at the superannuation fund's relevant crediting rate.

In superannuation disability and death benefit claims the Tribunal may determine to pay the benefit together with interest, which may be calculated under the superannuation fund's relevant crediting rate or under s 57 of the *Insurance Contracts Act 1984* if the benefit is a life insurance benefit.

Limits on the Tribunal's powers

The Federal Court has consistently found that the Tribunal's role is not to decide for itself the correct or preferable decision but whether a decision is unfair or unreasonable in its operation to the complainant in the circumstances (see *National Mutual Life Association of Australia Ltd v Campbell* (2000) 99 FCR 562).

This is particularly relevant to disability benefit complaints which usually involve a contest between competing medical opinions.

In such complaints it can be problematic to establish that the decision to reject a claim was unfair or unreasonable.

Appeals

Appeals against Superannuation Complaints Tribunal decisions can be lodged with the Federal Court but only on a question of law.

The Tribunal may also refer questions of law directly to the Federal Court although it hasn't yet done so.

In practice there are few appeals. While the Tribunal does not award costs against an unsuccessful complainant, the Federal Court usually orders costs against unsuccessful parties. However, if a trustee or insurer appeals a Tribunal decision, no order for costs can be made against the superannuation fund member or joined third party if he or she does not actively participate in the appeal. Of course, if a member does not participate in the appeal, the court will only hear from one party, which may impact adversely on the outcome.

Time limits

Appeals must be lodged within 28 days of receiving written notice of the decision, although the Federal Court has a discretion to extend this time.

The Financial Ombudsman Service

If a superannuation dispute is about the payment of a disability or death benefit that includes an insurance benefit under a group life insurance policy, it may be possible to lodge a complaint to the Financial Ombudsman Service (FOS) which can deal with complaints from persons claiming a beneficial interest under a life insurance policy.

FOS is an industry-based alternative dispute resolution scheme of which Australian life insurance companies are members. FOS commenced on 1 July 2008. Previously, life insurance companies were members of the industry-based alternative dispute resolution scheme, the Financial Industry Complaints Service (FICS).

Accordingly, FOS has the power to deal with complaints about superannuation disability and death insurance benefit claims even though the complainant is not the policy holder. However, FOS has the power to exclude complaints which may be better dealt with in another forum. It may, for example, determine that an insurance disability or death benefit complaint in which the benefit is provided under a group insurance policy attached to a superannuation fund would be better dealt with by the Superannuation Complaints Tribunal because the Tribunal can deal with the trustee, unless the complaint would be outside the Tribunal's time limits. Recent practice of FOS is to refer all superannuation-related insurance benefit disputes to the SCT and to refuse to deal with them.

Monetary limitations

FOS can only review the decisions or conduct of a life insurance company which is a member of FOS and has no power to review the decisions or conduct of superannuation fund trustees.

There are limits on FOS review powers, including monetary limits of (currently):

- $309,000 for insurance lump sums*, and
- $8300 per month for insurance income protection policies**.

*FOS can deal with complaints where the amount in dispute is up to $500,000 but can only make non-binding recommendations for amounts in excess of the above lump sum limits.

**FOS can deal with complaints where the monthly amount in dispute is more than $8300 if the total amount in dispute is less than the lump sum limit (currently $309,000).

Time limits

FOS does not have the time limit restrictions on reviewing Total and Permanent Disability claim decisions that apply to the Superannuation Complaints Tribunal. However, there is a general limitation period for lodging complaints of six years from the date the complainant knew or should reasonably have known of all the relevant facts or two years from the date of notification of a decision on an internal complaint, whichever is the earlier. FOS does have a discretion to accept late complaints in exceptional circumstances.

The powers and procedures of FOS are dealt with in Chapter 29, Insurance.

[37.380] Court action

A significant number of superannuation disputes are outside the jurisdiction of the Superannuation Complaints Tribunal and the Financial Ombudsman Service. In such cases, it may be necessary to consider civil court action.

For other superannuation claims, civil court action may be preferred for other reasons. For example, dispute resolution schemes have lower settlement rates compared with most civil courts and the complaints to schemes are taking longer to resolve.

Court review powers

Most superannuation trust deeds give trustees broad discretionary powers and the courts have traditionally been reluctant to interfere with the exercise of trustee discretions. A court will not set aside a trustee's decision simply because it would have reached a different decision on the evidence.

When the court will review a trustee's decision

Generally speaking, the courts will only review a trustee's exercise of a discretion if the trustee:

- acted in bad faith
- acted for an improper purpose
- failed to afford the member what is akin to procedural fairness in assessing a superannuation claim
- did not give real and genuine consideration to the exercise of the discretion
- failed to consider the correct trust deed or insurance policy wording
- gave reasons for a decision and the reasons were not sound, or
- acted in a manner or made a decision that no reasonable trustee would have done.

Even if a civil court does overturn a trustee's decision, it will not always substitute its own decision. Instead, it may refer the matter back to the trustee for reconsideration.

Reasons for decisions

Following an amendment to the Act, from July 2013 trustees must provide written reasons for decisions in death benefit complaints and when requested to do so.

Other defendants

For superannuation disability claims that include an insurance benefit, it may be possible to join the relevant life insurance company as a defendant to any civil court proceedings. However, the courts' powers of review of any insurance company decisions may also be limited.

Which court?

Currently the only court in NSW that has equitable jurisdiction is the Supreme Court. An action against a trustee for breach of trust seeks an equitable remedy and therefore must be lodged in the Supreme Court. This can be problematic if the claim is for a modest monetary amount.

An action against an insurer alone for breach of contract in a disability claim could be lodged in the Local or District Court but there may be privity of contract issues and the remedies sought cannot include equitable remedies.

Time limits

The *Limitation Act 1969* (NSW) imposes six-year time limits on civil court actions for a breach of trust against superannuation fund trustees and a breach of contract against insurance companies. The time starts to run from the date of the alleged breach of trust or contract.

However, in many superannuation matters, such as disability claims, it can be complex to determine when the cause of action arises. As against the trustee, the breach of trust complained about may only arise when the trustee makes a decision (or fails to make a decision).

If the decision complained about includes a decision of an insurer in a disability or death claim, the cause of action against the insurer may commence from when the definition of disability or death may be satisfied – unless it is a subjective test requiring the insurer to form an opinion.

A further complication can be what state or territory law may apply to any particular trust deed or insurance policy. The limitation periods applicable to trusts and insurance contracts vary from state to state.

Some trust deeds and insurance policies also seek to impose time limits for the lodging of disability and death benefit claims. Insurance policy time limits are subject to a prejudice test under the *Insurance Contracts Act 1984* (Cth).

Accordingly, the assessment of time limits relevant to superannuation is fraught with difficulties.

Legal Advice

Superannuation can be very complex and there is a significant knowledge gap with Australian workers with respect to what is a compulsory product.

Accordingly, there can be an important role for lawyers to play in providing advice and advocacy for consumers.

Contact points

[37.390] If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number). For more information, see www.relayservice.gov.au.

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online see www.tisnational.gov.au.

Association of Superannuation Funds of Australia (ASFA)
www.superannuation.asn.au
ph: 1800 812 798 or 9264 9300

Australian Prudential Regulation Authority (APRA)
www.apra.gov.au
ph: 1300 55 88 49 or 8037 9015

Australian Securities and Investments Commission (ASIC)
www.asic.gov.au
ph: 1300 300 630 or 9911 2000

Australian Taxation Office
www.ato.gov.au
enquiries: 13 28 61
superannuation help line: 13 10 20
Branches
See website for further details.

Combined Pensioners and Superannuants Association (CPSA)
www.cpsa.org.au
ph: 9281 3588 or 1800 451 488 (outside Sydney)

Department of Human Services
www.humanservices.gov.au
ph: 132 468

Financial Ombudsman Service Australia
www.fos.org.au
ph: 1800 367 287

HIV/AIDS Legal Centre
www.halc.org.au
ph: 9206 2060

Legal Aid NSW
www.legalaid.nsw.gov.au
ph: 1300 888 529
For information on specialist services and regional offices, see Contact points for Chapter 4, Assistance with Legal Problems.

Lost Members Register (Australian Taxation Office)
www.ato.gov.au/super/apra-regulated-funds/reporting-and-administrative-obligations/lost-members

Superannuation Complaints Tribunal
www.sct.gov.au
ph: 1300 884 114