

CHAPTER 15:

THE SUPERANNUATION COMPLAINTS TRIBUNAL

The Complaints Mechanism

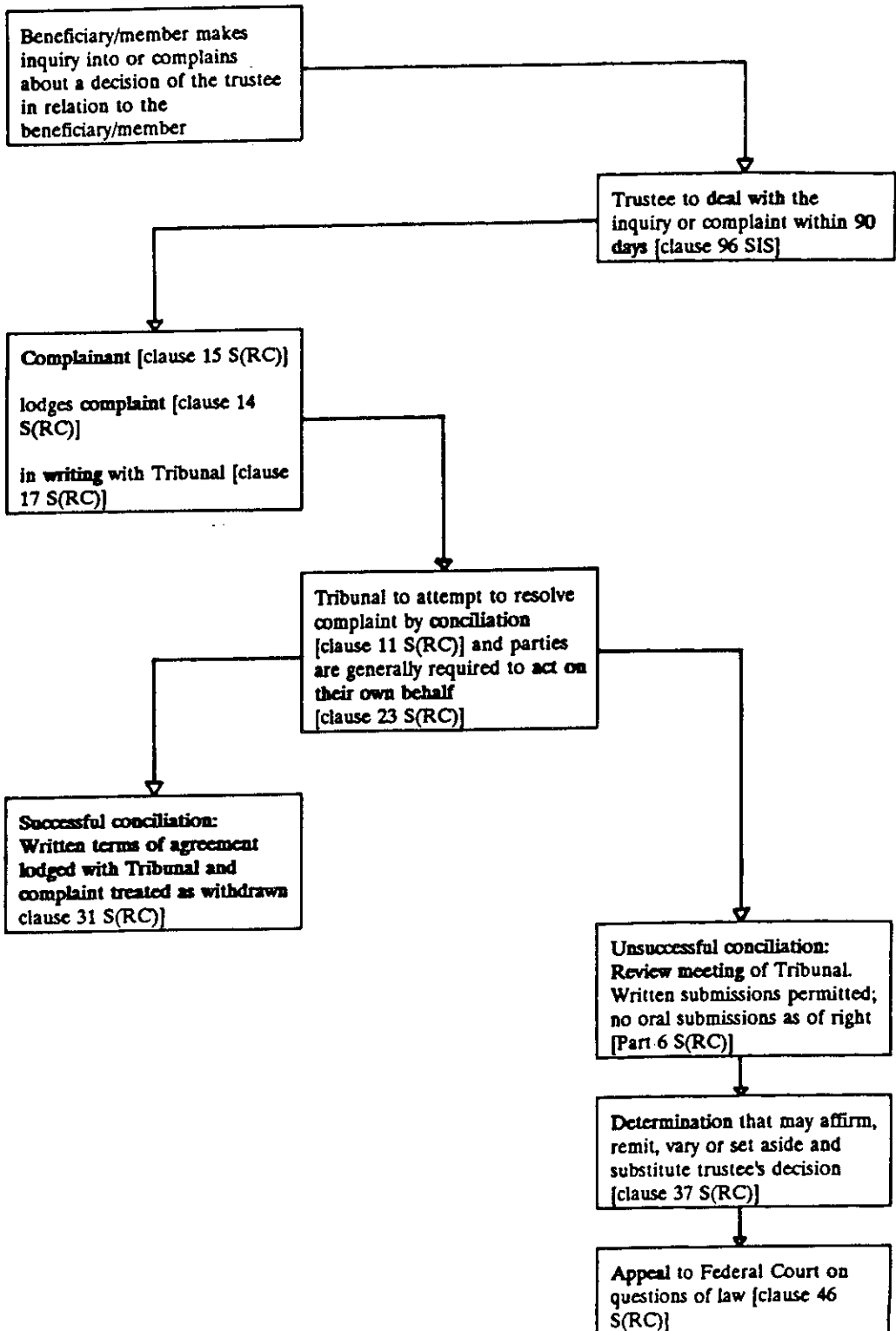
15.1 The Superannuation (Resolution of Complaints) Bill (hereafter 'the Bill') establishes a Tribunal, which is to be known as the Superannuation Complaints Tribunal (hereafter 'the Tribunal'). The objective of this Tribunal is to provide mechanisms for the conciliation of complaints between trustees and members of superannuation funds and, where conciliation is unsuccessful, for the review of decisions of the trustees to which the complaints relate. The review mechanism is to be fair, economical, informal and quick.⁸⁹ Figure 15.1 shows the proposed mechanism.

The Complaint

15.2 The Tribunal cannot deal with a complaint unless the complainant has attempted to have the dispute settled by way of the trustee's internal dispute resolution mechanism established in compliance with clause 96 of the Superannuation Industry (Supervision) legislation. A trustee is required by that clause to establish arrangements for dealing with complaints and inquiries within 90 days.

⁸⁹ Superannuation (Resolution Of Complaints) Bill 1993, clause 11

Figure 15.1:

**COMPLAINTS MECHANISM UNDER SIS BILL AND SUPERANNUATION
(RESOLUTION OF COMPLAINTS) BILL**

15.3 Where the trustee's internal dispute resolution mechanism is unsuccessful a complainant may lodge a complaint with the Tribunal. Clause 16 of the Bill provides that the Tribunal must help a complainant where they need help in making their complaint.

Reviewable Decisions

15.4 Clause 14(1) of the Bill provides that a decision of a trustee of a fund, made either before or after the commencement of the Superannuation (Resolution of Complaints) Act, in relation to a particular member or former member of a regulated superannuation fund or a particular beneficiary or former beneficiary of an approved deposit fund, is a decision that the Tribunal has the jurisdiction to review. A decision of a trustee is defined in clause 4 of the Bill as the making or failure to make a decision by a trustee or by a person acting for a trustee.

Non-reviewable decisions

15.5 Clauses 14(2) and 14(5) provide that certain complaints are outside the jurisdiction of the Tribunal. Certain funds will be excluded from the jurisdiction of the Tribunal and decisions of trustees of those funds will not be reviewable by the Tribunal. Complaints relating to certain matters will also be excluded. These excluded funds and excluded matters will be prescribed by regulation.

The Grounds

15.6 Clause 14 provides that a complaint may be made about a trustee's decision on three grounds. The grounds of review are that the decision was in excess of the powers of the trustee, that the decision was an improper exercise of the powers of the trustee or that the decision is unfair or unreasonable.

The Complainant

15.7 Clause 15 is exhaustive in answering the question of 'who may make a complaint?'.

15.8 In relation to a trustee's decision regarding the payment of a benefit, clause 15(1)(a) provides that a person who has an interest in the benefit, or a person who claims to be entitled to benefits through such a person, or such persons' agents may make a complaint. Clause 15(2) sets out the circumstances when a person does not have an interest in a benefit for the purposes of clause 15(1)(a). Essentially, where a person who satisfies the criteria of clause 15(1)(a) has been notified by the trustee of the proposal to pay a benefit, and of the correct prescribed period of time in which to object, and that person has not objected, that person does not have an interest and therefore is not able to make a complaint.

15.9 In relation to a decision of a trustee that does not concern the payment of a benefit, clause 15(1)(b) provides that a member or former member of a regulated superannuation fund or a beneficiary or former beneficiary of an approved deposit fund or such persons' agents or personal legal representatives may make a complaint.

The Conciliation Process⁹⁰

15.10 In the first instance, the Tribunal is required to attempt to settle a dispute by way of conciliation. The Tribunal may arrange conciliation conferences if it thinks it is desirable. These conferences may be conducted by telephone or by other means of communication and statements at conferences are privileged. Where a conciliation is successful and terms of agreement are put in writing and lodged with the Tribunal, the complaint is treated as withdrawn.

The Review Process⁹¹

15.11 Where a dispute is not resolved by way of conciliation, the Tribunal is to convene a review meeting. Parties to the dispute may make written submissions but may not make oral submissions unless the Tribunal so orders. The Tribunal may inform itself of any matter relevant to the review of a decision in any way it thinks appropriate. In its review of decisions, the Tribunal has all the powers, obligations and discretions of the trustee.

⁹⁰ Part 5 of the Bill

⁹¹ Part 6 of the Bill

The Determination⁹²

15.12 The Tribunal is to make a determination in writing that affirms, remits, varies, or sets aside and substitutes the trustee's decision. The Tribunal must affirm the trustee's decision if it is satisfied that the decision was fair and reasonable in all the circumstances.

Appeals⁹³

15.13 A determination of the Tribunal is appealable to the Federal Court on a question of law. Where a complainant does not defend an appeal instituted by another party, the Federal Court may not order costs against the complainant.

⁹² Clause 37

⁹³ Clause 46