

---

## CHAPTER 1: INTRODUCTION

The object of this report is to examine the exclusion of medical complaints from the jurisdiction of the Superannuation Complaints Tribunal.

### Background

1.1 In its First Report, entitled *Safeguarding Super*, the Senate Select Committee on Superannuation recommended 'the establishment by legislation of an external disputes resolution mechanism, at the earliest practicable date'.<sup>1</sup>

1.2 Included in the package of legislation, that has become known as the SIS package of legislation,<sup>2</sup> is the *Superannuation (Resolution of Complaints) Act 1993*. This Act establishes the Superannuation Complaints Tribunal (the Tribunal). The Tribunal was established on 1 July 1994.

---

<sup>1</sup> Recommendation 11.4, *Safeguarding Super*, Senate Select Committee on Superannuation, June 1992

<sup>2</sup> Superannuation Industry (Supervision) legislation which comprises the following Acts:

*Occupational Superannuation Standards Amendments Act 1993*

*Superannuation (Financial Assistance Funding) Levy Act 1993*

*Superannuation Industry (Supervision) Act 1993*

*Superannuation Industry (Supervision) Consequential Amendments Act 1993*

*Superannuation (Resolution of Complaints) Act 1993*

*Superannuation (Rolled-Over Benefits) Levy Act 1993*

*Superannuation Supervisory Levy Amendment Act 1993*

1.3 The objective of the Tribunal is:

to provide mechanisms for:

- (a) the conciliation of complaints; and
- (b) if complaints cannot be resolved by conciliation - the review of the decisions of the trustees to which the complaints relate; that are informal, economical and quick.<sup>3</sup>

1.4 Pursuant to *the Superannuation (Resolution of Complaints) Act 1993* (the Act), are the Superannuation (Resolution of Complaints) Regulations, Statutory Rules No. 56 (the Regulations). These regulations were made on 4 March 1994, gazetted 11 March 1994, and tabled in the Senate and House of Representatives on 17 and 22 March, respectively. The Regulations were referred to the Senate Select Committee on Superannuation on 16 March 1994. The terms of reference for this inquiry appear at Appendix A.

1.5 Two substantive issues are dealt with by the Superannuation (Resolution of Complaints) Regulations. Regulation 4 defines 'excluded subject matter' and is the subject of this report. Regulation 5 defines the prescribed period for the purposes of paragraph 14(3)(b) and subparagraph 15(2)(a)(ii) of the Act. The definition in regulation 5 of the abovementioned prescribed period is in accordance with Recommendation 2.3 of the Tenth Report of the committee and requires no further examination by this committee.

### **The issues**

1.6 The issues that have emerged from the examination of the regulations, and in particular regulation 4, are:

- (i) the appropriate jurisdiction of the Superannuation Complaints Tribunal; and

---

<sup>3</sup> Section 11, *Superannuation (Resolution of Complaints) Act 1993*

- 
- (ii) the appropriate legislative instrument in which to define the Tribunal's jurisdiction.

### **The jurisdiction of the Superannuation Complaints Tribunal**

1.7 The jurisdiction of the Superannuation Complaints Tribunal is outlined in Part 4 of the Act. The jurisdiction is legislated in terms of:

- (i) the complaints that may be brought;<sup>4</sup>
- (ii) the persons who may bring a complaint;<sup>5</sup>
- (iii) the processes that must be undertaken between an applicant and a trustee prior to the Tribunal hearing a complaint;<sup>6</sup>
- (iv) the time frames within which a complaint must be made;<sup>7</sup> and
- (v) the exclusions made by way of regulation.<sup>8</sup>

1.8 The Tribunal's jurisdiction is also examined in the Ninth and Tenth Reports of the Senate Select Committee on Superannuation.

#### *The legislative structure of the exclusions*

1.9 Subsection 14(5) of the Act provides:

The Tribunal cannot deal with a complaint to the extent that it relates to excluded subject matter.

---

<sup>4</sup> Section 14, *Superannuation (Resolution of Complaints) Act 1993*  
Regulation 4, *Superannuation (Resolution of Complaints) Regulations*

<sup>5</sup> Section 15, *Superannuation (Resolution of Complaints) Act 1993*

<sup>6</sup> Section 19, *Superannuation (Resolution of Complaints) Act 1993*  
Section 101, *Superannuation Industry (Supervision) Act 1993*

<sup>7</sup> Subsections 14(4), 15(2), 22(3), *Superannuation (Resolution of Complaints) Act 1993*

<sup>8</sup> Subsections 14(2) and 14(5), *Superannuation (Resolution of Complaints) Act 1993*

1.10 Section 3 of the Act is an interpretation section that defines ‘excluded subject matter’ as:

subject matter that is **declared by the regulations** to be excluded subject matter for the purposes of this Act [emphasis added].

1.11 Regulation 4 provides:

4. For the purposes of the definition of "excluded subject matter" in section 3 of the Act, excluded subject matter is matter in relation to which the Tribunal, in dealing with the matter:

- (a) would have to undertake the assessment or evaluation of medical evidence, opinion or reports; or
- (b) would have to consider, having regard to medical evidence, opinion or reports, the question of a person's incapacity; or
- (c) would be likely to have to perform a function mentioned in paragraph (a) or (b).

Throughout this report, complaints involving this excluded subject matter are referred to as ‘medical complaints’.

1.12 The jurisdiction of the Tribunal can also be limited under the ‘excluded complaint’ provision. Section 14 provides:

- (2) ... a person may make a complaint (**other than an excluded complaint**) to the Tribunal, that the decision...[emphasis added]

1.13 ‘Excluded complaint’ is defined in section 3 to be a complaint about a decision of a trustee of a fund or a matter **declared by the regulations** to be a fund or a matter about which complaints may not be made under the Act. There are currently no regulations declaring ‘excluded complaints’.

### **Conduct of the inquiry**

1.14 On 24 March 1994, the committee wrote to approximately 400 previous submitters, interest groups, state and federal politicians and others on its mailing list. Twenty four written submissions were received. The list of written submissions appears at Appendix C.

1.15 The committee conducted public hearings on 20 and 23 June 1994 in Canberra. A list of witnesses who gave evidence at these hearings appears at Appendix D. In addition to the oral evidence taken on these dates, the Trades and Labour Council of Western Australia gave evidence in relation to this inquiry to the committee in Perth on 14 July 1994.

### **Acknowledgments**

1.16 The committee records its appreciation of the written submissions and oral evidence to this inquiry.