



Superannuation (Resolution of Complaints) Act 1993

Act No. 80 of 1993 as amended

This compilation was prepared on 28 March 2012
taking into account amendments up to Act No. 46 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

| | |
|--|-----------|
| Part 1—Preliminary | 1 |
| 1 Short title [see Note 1]..... | 1 |
| 2 Commencement [see Note 1]..... | 1 |
| 3 Interpretation | 1 |
| 4 Definition of decision made by a trustee, insurer, RSA provider or another decision-maker | 7 |
| 4AA Application of the <i>Criminal Code</i> | 7 |
| 4A Act applies to certain exempt public sector superannuation schemes | 7 |
| 4B Modified meanings of <i>beneficiary</i> , <i>member</i> etc..... | 8 |
| 5 Act does not apply to an excluded fund..... | 8 |
| 5A Severable operation of Act so far as complaints concerning death benefits are concerned..... | 8 |
| Part 2—Establishment and constitution of the Superannuation Complaints Tribunal | 10 |
| 6 Establishment | 10 |
| 7 Membership..... | 10 |
| 7A Tribunal Chairperson..... | 10 |
| 8 Eligibility for appointment | 11 |
| 9 Constitution of Tribunal | 11 |
| 10 Disclosure of interests | 12 |
| Part 3—Objectives and functions of the Tribunal | 14 |
| 11 Tribunal objectives..... | 14 |
| 12 Functions | 14 |
| 13 Tribunal to issue a memorandum explaining how complaints are to be dealt with | 14 |
| Part 4—Complaints, procedural matters relating to complaints and complaints the Tribunal cannot deal with | 16 |
| 14AA Complaints may be made about discretionary or non-discretionary decisions | 16 |
| 14 Complaints about decisions of trustees other than decisions to admit persons to life policy funds..... | 16 |
| 14A Complaints about decisions of trustees to admit persons to life policy funds..... | 18 |
| 15 Who may make a complaint under section 14 | 19 |
| 15A Complaints about conduct of insurers concerning sale of annuity policies..... | 20 |
| 15B Complaints about decisions of insurers under annuity policies | 21 |
| 15C Who may make a complaint under section 15B | 22 |

| | | |
|--|---|----|
| 15CA | Complaints about statements given to Commissioner of Taxation by superannuation provider | 23 |
| 15D | Tribunal cannot deal with certain complaints | 24 |
| 15E | Complaints about conduct of RSA providers concerning opening of RSAs | 25 |
| 15F | Complaints about decisions of RSA providers | 26 |
| 15G | Who may make a complaint under section 15F | 28 |
| 15H | Complaints about conduct of insurers concerning sale of insurance benefits | 29 |
| 15J | Complaints about decisions of insurers | 30 |
| 15K | Who may make a complaint under section 15J | 32 |
| 16 | Tribunal to help complainants to make complaints | 33 |
| 17 | Notification procedures on receipt of a complaint | 33 |
| 17A | Notification procedures relating to other persons joined or seeking to be joined as parties | 35 |
| 18 | Parties to a complaint | 36 |
| 19 | Tribunal not to deal with complaint unless the complainant has attempted to have the matter resolved | 39 |
| 20 | Tribunal not to deal with complaint if subject matter of complaint is subject of court proceedings | 40 |
| 21 | Withdrawal of complaint | 40 |
| 22 | Power to treat a complaint as having been withdrawn | 40 |
| 22A | Tribunal may refer complaint or part complaint to other complaint-handling body | 41 |
| 23 | Right to representation in relation to a complaint | 42 |
| 24 | Giving material documents to the Tribunal | 42 |
| 24AA | Complaint against superannuation provider: giving material documents to the Tribunal | 44 |
| 24A | Other parties may join a complaint | 45 |
| 25 | Power to obtain information and documents | 47 |
| 26 | Operation and implementation of a decision that is subject to a complaint | 49 |
| Part 5—Conciliation of complaints | | 53 |
| 27 | Inquiries by Tribunal | 53 |
| 28 | Tribunal may require attendance at conciliation conferences | 53 |
| 29 | Conferences may be conducted by telephone or other means of communication | 54 |
| 30 | Statements at conference to be privileged | 54 |
| 31 | Tribunal to implement settlements | 54 |
| Part 6—Review of decisions or conduct complained of | | 56 |
| Division 1—Preliminary procedures | | 56 |
| 32 | Arrangements for review meetings | 56 |

| | |
|---|----|
| Division 2—How the Tribunal informs itself about the decision or conduct under review | 57 |
| 33 Submissions to Tribunal | 57 |
| 34 Tribunal meetings | 57 |
| 35 Tribunal may allow telephone and other submissions | 57 |
| Division 3—The review meeting | 58 |
| 36 Meeting procedure | 58 |
| 37 Tribunal powers—complaints under section 14 | 58 |
| 37A Tribunal powers—complaints under section 14A | 59 |
| 37B Tribunal powers—complaints under section 15A | 61 |
| 37C Tribunal powers—complaints under section 15B | 62 |
| 37CA Tribunal powers: complaint under section 15CA | 63 |
| 37D Tribunal powers—complaints under section 15E | 64 |
| 37E Tribunal powers—complaints under section 15F | 66 |
| 37F Tribunal powers—complaints under section 15H | 67 |
| 37G Tribunal powers—complaints under section 15J | 69 |
| 38 Meeting to be private | 70 |
| 39 Reference of questions of law to Federal Court | 71 |
| 40 Tribunal to give reasons | 71 |
| 41 Operation of determination | 71 |
| Division 4—Other procedural matters | 72 |
| 42 Adjournment of review meetings | 72 |
| 43 Evidence of determination | 72 |
| Division 5—Notification of determination and appeal rights | 73 |
| 44 Notification of determination | 73 |
| 45 Notification of appeal rights | 74 |
| Part 7—Appeals | 75 |
| 46 Appeals to Federal Court of Australia from determinations of the Tribunal | 75 |
| 47 Operation and implementation of a determination that is subject to appeal | 75 |
| 48 Sending of documents to, and disclosure of documents by, the Federal Court | 77 |
| Part 8—Administrative provisions | 79 |
| Division 1—Administrative provisions relating to Tribunal Chairperson and Deputy Chairperson | 79 |
| 49 Terms and conditions of appointment | 79 |
| 50 Remuneration and allowances | 79 |
| 51 Leave of absence | 79 |
| 52 Resignation | 80 |
| 53 Termination of appointment | 80 |

| | | |
|--|--|----|
| 54 | Acting Tribunal Chairperson or Deputy Chairperson | 80 |
| Division 2—Administrative provisions relating to other Tribunal members | | |
| 55 | Terms and conditions of appointment | 82 |
| 56 | Remuneration and allowances | 82 |
| 57 | Resignation | 82 |
| 58 | Termination of appointment | 82 |
| Part 9—Miscellaneous | | |
| 59 | Certain powers of the Tribunal to be exercised by Tribunal Chairperson or staff member | 84 |
| 60 | Legal professional privilege | 84 |
| 61 | Liability for damages | 85 |
| 62 | Staff and facilities | 85 |
| 63 | Secrecy | 86 |
| 64 | Reference by Tribunal Chairperson of contraventions of the law or of the governing rules of a fund to APRA or ASIC or both | 87 |
| 64A | Reference by Tribunal Chairperson of breaches of terms and conditions to APRA or ASIC or both | 88 |
| 65 | Failure of a party to a complaint to comply with a determination or direction by the Tribunal | 88 |
| 66 | Conduct by directors, servants and agents | 89 |
| 67 | Annual report | 90 |
| 68 | Regulations | 90 |
| Notes | | 91 |

An Act relating to the resolution of complaints about decisions and conduct of trustees of superannuation funds and approved deposit funds and of RSA providers and insurers

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Superannuation (Resolution of Complaints) Act 1993*.

2 Commencement [see Note 1]

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) before 1 July 1994, it commences on that day.

3 Interpretation

- (1) Unless the contrary intention appears, an expression used in this Act has the same meaning as in the Supervision Act.
- (2) In this Act, unless the contrary intention appears:

annuity policy means a life policy in relation to an annuity that is declared to be a superannuation policy under regulations made for the purposes of paragraph (b) of the definition of ***superannuation policy*** in the *Life Insurance Act 1995*.

beneficiary has a meaning affected by section 4B.

complainant means a person who has made a complaint under section 14, 14A, 15A, 15B, 15CA, 15E, 15F, 15H or 15J.

complaint means a complaint that has been made under section 14, 14A, 15A, 15B, 15CA, 15E, 15F, 15H or 15J.

conduct includes acts, omissions and representations.

Section 3

Consumer Affairs Minister means the Minister administering Schedule 2 to the *Competition and Consumer Act 2010*.

death benefit means:

- (a) a benefit:
 - (i) that is payable by the trustee of a regulated superannuation fund in respect of a member of the fund on or after the death of the member; and
 - (ii) that is provided in accordance with subparagraph 62(1)(a)(iv) or (v) or (b)(iii) or (iv) of the Supervision Act or in accordance with an approval of APRA under subparagraph 62(1)(b)(v) of that Act; or
- (b) a benefit:
 - (i) that is payable by the trustee of an approved deposit fund in respect of a beneficiary of the fund on or after the death of the beneficiary; and
 - (ii) that is provided in accordance with the requirements of the Supervision Act; or
- (c) a benefit that is payable by a life company within the meaning of the *Life Insurance Act 1995* under an annuity policy in respect of the policy owner within the meaning of that Act on or after the death of the policy owner; or
- (d) a benefit:
 - (i) that is payable by an RSA provider in respect of the holder of an RSA provided by the RSA provider; and
 - (ii) that is payable on or after the death of the RSA holder; and
 - (iii) that is provided in accordance with subsection 15(3) or paragraph 15(4)(c) of the *Retirement Savings Accounts Act 1997*; or
- (e) a benefit:
 - (i) that is payable by an insurer, in relation to a contract of insurance where the premiums are paid from an RSA, in respect of the holder of an RSA provided by an RSA provider; and
 - (ii) that is payable on or after the death of the RSA holder; and
 - (iii) that is provided in accordance with subsection 15(3) or paragraph 15(4)(c) of the *Retirement Savings Accounts Act 1997*.

decision-maker, in relation to a complaint relating to a disability benefit (whether under a contract of insurance or otherwise), means a person who the Tribunal has decided under paragraph 18(1)(d) is responsible for determining either or both of the existence and the extent of the disability (whether total and permanent or otherwise).

disability benefit means:

- (a) a benefit that is:
 - (i) payable by the trustee of a regulated superannuation fund in the event of a temporary or permanent cessation of employment because of a partially or totally disabling physical or mental condition; and
 - (ii) provided in accordance with subparagraph 62(1)(b)(ii) of the Supervision Act; or
- (b) a benefit that is:
 - (i) payable by an RSA provider in the event of temporary or permanent cessation of employment because of a partially or totally disabling physical or mental condition; and
 - (ii) provided in accordance with paragraph 15(4)(b) of the *Retirement Savings Accounts Act 1997*; or
- (c) a benefit that is:
 - (i) payable by an insurer, in relation to a contract of insurance where the premiums are paid from an RSA in the event of temporary or permanent cessation of employment because of a partially or totally disabling physical or mental condition; and
 - (ii) provided in accordance with paragraph 15(4)(b) of the *Retirement Savings Accounts Act 1997*.

excluded complaint means:

- (a) a complaint about a decision of the trustee of a fund that is declared by the regulations to be a fund to which this Act does not apply; or
- (ab) a complaint about a decision of an RSA provider in relation to an RSA that is declared by the regulations to be an RSA provider to which this Act does not apply; or
- (b) a complaint about a matter declared by the regulations to be a matter about which complaints may not be made under this Act.

Section 3

excluded subject matter, in relation to a complaint, means subject matter that is declared by the regulations to be excluded subject matter for the purposes of this Act.

Federal Court means the Federal Court of Australia.

fund means a regulated superannuation fund or an approved deposit fund.

holder, in relation to an RSA, has a meaning affected by section 4B.

holder, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

insurer means:

- (a) in relation to a complaint under section 14 that concerns a decision relating to a death benefit or a disability benefit under a contract of insurance:
 - (i) the life company that is a party to that contract of insurance; or
 - (ii) the body corporate authorised to carry on insurance business under the *Insurance Act 1973* that is a party to the contract of insurance; or
- (b) in relation to a complaint under section 14A that concerns a decision to admit a person as a member of a life policy fund—the life company that is a party to the life policy covering the member; or
- (c) in relation to a complaint under section 15A or 15B—the life company that is a party to the policy to which the complaint relates; or
- (d) in relation to a complaint under section 15E, 15F, 15H or 15J, the life company that is a party to the policy to which the complaint relates.

interest means:

- (a) in relation to an annuity policy—a contractual right to the payment of money on the happening of certain events; and
- (b) in relation to a life policy fund—a beneficial interest in the fund.

life company has the same meaning as in the *Life Insurance Act 1995*.

life insurance broker means:

- (a) a financial services licensee (as defined in section 761A of the *Corporations Act 2001*) who carries on the business of arranging contracts of life insurance, whether in Australia or elsewhere, as an agent for intending insureds; or
- (b) a representative of such a licensee.

life policy has the same meaning as in the *Life Insurance Act 1995*.

life policy fund means a regulated superannuation fund for the purpose of which the trustee maintains, in relation to at least some of the members of the fund:

- (a) individual life policies covering each of those members; or
- (b) a single life policy covering all of those members.

member has a meaning affected by section 4B.

party, in relation to a complaint, has the meaning given by section 18.

party's representative means an officer or agent who is representing a party in accordance with section 23.

person who has an interest, in relation to a death benefit, has a meaning affected by section 4B.

review meeting means a meeting under Part 6 to review the decision of the trustee or superannuation provider to which the complaint relates.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

sale, in relation to an annuity policy in which a particular complainant has, or claims to have, an interest, includes any activity undertaken, or representation made:

- (a) at the time of, or preliminary to, the entry into the policy, so that the policy as so entered into extends to that complainant, or to a person through whom that complainant claims to have that interest; and

Section 3

- (b) at the time of, or preliminary to, the variation of the policy, so that the policy as so varied affects that complainant or a person through whom that complainant claims to have that interest.

superannuation provider means a person who is a superannuation provider within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

Supervision Act means the *Superannuation Industry (Supervision) Act 1993*.

Tribunal means the Superannuation Complaints Tribunal established by section 6.

Tribunal Chairperson means the Chairperson of the Tribunal.

Tribunal Deputy Chairperson means the Deputy Chairperson of the Tribunal.

Tribunal member means a member of the Tribunal and includes the Tribunal Chairperson and the Tribunal Deputy Chairperson.

trustee, in relation to a complaint, means the trustee of the fund to which the complaint relates.

Note 1: In relation to the definition of ***trustee*** see also the definition of ***trustee*** in section 10 of the Supervision Act.

Note 2: For definitions of ***APRA***, ***ASIC***, ***approved deposit fund***, ***excluded approved deposit fund***, ***self managed superannuation fund***, ***function***, ***regulated superannuation fund*** and ***Regulator***, see subsection 10(1) of the Supervision Act.

- (3) A reference in this Act to a representative of an insurer in relation to:
 - (a) an annuity policy issued by the insurer; or
 - (b) a life policy issued by the insurer and maintained by a trustee for the purposes of a life policy fund; or
 - (ba) a contract of insurance where the premiums are paid from an RSA;includes a reference to:
 - (c) an agent of the insurer who engages in conduct in relation to that policy or contract; and

- (d) any person, other than an agent of the insurer, who engages in such conduct and who is not a life insurance broker.
- (4) A reference in this Act to a representative of an RSA provider includes a reference to an agent, employee or officer of the RSA provider, or of an associate of the RSA provider, who engages in conduct in relation to an RSA.

4 Definition of decision made by a trustee, insurer, RSA provider or another decision-maker

For the purposes of this Act, a trustee, an insurer, an RSA provider or another decision-maker, makes a decision if:

- (a) the trustee, insurer, RSA provider or other decision-maker, or a person acting for the trustee, insurer, RSA provider or other decision-maker, makes, or fails to make, a decision; or
- (b) the trustee, insurer, RSA provider or other decision-maker, or a person acting for the trustee, insurer, RSA provider or other decision-maker, engages in any conduct, or fails to engage in any conduct, in relation to making a decision.

4AA Application of the *Criminal Code*

Chapter 2 (except Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

4A Act applies to certain exempt public sector superannuation schemes

The regulations may provide that a specified exempt public sector superannuation scheme is taken to be a regulated superannuation fund for the purposes of this Act. The scheme must be:

- (a) a superannuation fund that complies with subsections 19(2) and (3) of the Supervision Act; or
- (b) a scheme established:
 - (i) by or under a law of the Commonwealth; or
 - (ii) under the authority of the Commonwealth.

Section 4B

4B Modified meanings of *beneficiary, member* etc.

- (1) The regulations may provide that, for the purposes of this Act or specified provisions of this Act:
 - (a) a person is to be treated as being a qualifying person; or
 - (b) a person is not to be treated as being a qualifying person.
- (2) Without limiting subsection (1), regulations for the purposes of that subsection may be made in relation to a person who is entitled to become, or has applied to become, a member of a superannuation fund or a beneficiary of an approved deposit fund.
- (3) This Act applies with such modifications (if any) as are prescribed in relation to a person who is a qualifying person because of regulations made for the purposes of this section.
- (4) In this section:

qualifying person means:

- (a) a member of a superannuation fund; or
- (b) a beneficiary of an approved deposit fund; or
- (c) a person who has an interest in a death benefit; or
- (d) the holder of an RSA.

5 Act does not apply to an excluded fund

This Act does not apply to a self managed superannuation fund.

Note: For the definition of *self managed superannuation fund* see section 10 of the Supervision Act.

5A Severable operation of Act so far as complaints concerning death benefits are concerned

Without limiting its effect apart from this section, this Act also has the effect it would have if the power of the Tribunal to review a complaint under section 14 about a decision of a trustee of a regulated superannuation fund relating to the payment of a death benefit in respect of a deceased member of the fund were confined to a power to review a complaint about:

- (a) a decision of a trustee if the trustee is a constitutional corporation; or

- (b) a decision of a trustee if the benefit is provided under a contract of insurance with the trustee; or
- (c) a decision of a trustee if the benefit is:
 - (i) an invalid or old age pension within the meaning of section 51(xxiii) of the Constitution; or
 - (ii) a lump sum representing the commutation of an entitlement to such a pension; or
 - (iii) a lump sum representing the money in the fund comprising an accumulation of the contributions paid for the purpose of providing such a pension together with accumulated earnings at the time of payment of the lump sum.

Part 2—Establishment and constitution of the Superannuation Complaints Tribunal

6 Establishment

A Superannuation Complaints Tribunal is established.

7 Membership

- (1) The Tribunal consists of a Chairperson, a Deputy Chairperson and not fewer than 7 other members.
- (2) The Tribunal Chairperson and the Tribunal Deputy Chairperson are to be appointed by the Governor-General.
- (2A) The Tribunal Chairperson may be appointed to hold office either on a full-time basis or on a part time-basis.
- (2B) The Tribunal Deputy Chairperson may be appointed to hold office either on a full-time basis or on a part time-basis.
- (3) The Tribunal members, other than the Tribunal Chairperson and Deputy Chairperson, are to be appointed by the Minister and hold office on a part-time basis.

7A Tribunal Chairperson

- (1) The Tribunal Chairperson is the executive officer of the Tribunal and is responsible for the overall operation and administration of the Tribunal.
- (2) The Tribunal Chairperson is to:
 - (a) monitor the operations of the Tribunal to ensure that those operations are as fair, just, economical, informal and quick as practicable; and
 - (b) allocate the work of the Tribunal among the Tribunal members in accordance with guidelines under subsection (3).
- (3) The Tribunal Chairperson may formulate written guidelines for the allocation of the work of the Tribunal.

8 Eligibility for appointment

- (2) A person who is:
 - (a) a trustee of a fund; or
 - (b) a director or employee of a constitutional corporation that is a trustee of a fund; or
 - (c) a director or employee of an RSA provider; or
 - (d) a director or employee of an insurer;is not eligible to be appointed as Tribunal Chairperson or Deputy Chairperson.
- (3) A person may be appointed as a Tribunal member only if:
 - (a) in the case of the Tribunal Chairperson or Deputy Chairperson—the Governor-General is of the opinion; or
 - (b) in any other case—the Minister is of the opinion;that the person is qualified for appointment because of his or her knowledge of, or experience in, matters of kinds in respect of which complaints may be made to the Tribunal.
- (4) Two of the Tribunal members, other than the Tribunal Chairperson and Deputy Chairperson, are to be appointed after the Minister has consulted the Consumer Affairs Minister about their appointment.

9 Constitution of Tribunal

- (1) Subject to section 10, for the purposes of the performance or exercise of its functions or powers under this Act in relation to a particular complaint, the Tribunal is to be constituted by one or more, but not more than 3, Tribunal members selected by the Tribunal Chairperson.
- (1A) After the Tribunal has been constituted for the purpose of dealing with a particular complaint and before it has made a determination in respect of the complaint, the Tribunal may be reconstituted under subsection (1) if the Tribunal Chairperson considers that the reconstitution of the Tribunal is desirable:
 - (a) to remove any perception of bias; or
 - (b) to ensure the timely performance or exercise of the Tribunal's functions or powers under this Act.
- (2) In selecting the Tribunal member or Tribunal members to constitute the Tribunal for the purposes of a particular complaint,

Section 10

the Tribunal Chairperson is to take into account their qualifications, experience and suitability having regard to the nature of that complaint.

- (2A) The Tribunal Chairperson:
 - (a) is to formulate written guidelines setting out how the Tribunal will usually be constituted for the purposes of dealing with different classes of complaints; and
 - (b) is to make the guidelines available to the public.
- (2B) Subsections (3) to (5) apply where the Tribunal is constituted for the purposes of the performance or exercise of its functions or powers under this Act in relation to a particular complaint by more than one member.
- (3) The Tribunal Chairperson is to preside at all meetings of the members constituting the Tribunal at which the Chairperson is present.
- (3A) The Tribunal Deputy Chairperson is to preside at all meetings of the members constituting the Tribunal at which the Tribunal Deputy Chairperson, but not the Tribunal Chairperson, is present.
- (3B) If neither the Chairperson nor the Deputy Chairperson is present at a particular meeting, the Tribunal member selected by the Chairperson is to preside at that meeting.
- (4) The conduct of a meeting referred to in subsection (3), (3A) or (3B) is to be determined by the person presiding in accordance with procedural rules established by the Tribunal Chairperson.
- (5) If the members constituting the Tribunal disagree on a determination to be made by the Tribunal, a decision of the majority is taken to be a decision of all of them.

10 Disclosure of interests

- (1) The Tribunal Chairperson and Deputy Chairperson must each give written notice to the Minister of all direct or indirect financial interests that he or she has or acquires in:
 - (a) a fund; or
 - (b) a constitutional corporation that is a trustee of a fund; or
 - (ba) an RSA provider; or

- (bb) an insurer; or
 - (bc) an RSA; or
 - (c) any other business.
- (2) If a notice given by the Tribunal Chairperson under subsection (1) discloses a direct or indirect financial interest in relation to a particular complaint, another member, who may or may not be the Tribunal Deputy Chairperson, is to replace the Tribunal Chairperson in relation to that complaint.
- (2A) If a notice given by the Tribunal Deputy Chairperson under subsection (1) discloses a direct or indirect financial interest in relation to a particular complaint, another member, who may or may not be the Tribunal Chairperson, is to replace the Tribunal Deputy Chairperson in relation to that complaint.
- (3) If a Tribunal member who is selected by the Tribunal Chairperson to be one of the members constituting the Tribunal in relation to a particular matter has a direct or indirect financial interest in that matter, the member must give written notice to the Tribunal Chairperson of the fact that the Tribunal member has an interest as soon as practicable after becoming aware of the relevant facts.
- (4) If such a notice is given by a Tribunal member, the Tribunal Chairperson must reconstitute the Tribunal and select another Tribunal member to replace the member who gave the notice.

Part 3—Objectives and functions of the Tribunal

11 Tribunal objectives

The Tribunal must, in carrying out its functions or exercising its powers under this Act, pursue the objectives of providing mechanisms for:

- (a) the conciliation of complaints; and
- (b) if a complaint cannot be resolved by conciliation—the review of the decision or conduct to which the complaint relates; that are fair, economical, informal and quick.

12 Functions

- (1) The functions of the Tribunal are:
 - (a) to inquire into a complaint and to try to resolve it by conciliation; and
 - (b) if the complaint cannot be resolved by conciliation—to review the decision or conduct to which the complaint relates;
 - (c) any functions conferred on the Tribunal by or under any other Act.
- (2) In addition to the functions conferred on the Tribunal by a law of the Commonwealth, the Tribunal may perform functions conferred on the Tribunal by a law of a State or Territory, where:
 - (a) the functions relate to one or more exempt public sector superannuation schemes; and
 - (b) the schemes are not specified in regulations made for the purposes of section 4A.

13 Tribunal to issue a memorandum explaining how complaints are to be dealt with

- (1) The Tribunal must prepare a memorandum explaining how:
 - (a) complaints may be made to the Tribunal; and
 - (b) the Tribunal is to try to resolve complaints by conciliation; and

- (c) the Tribunal is to determine complaints that cannot be so resolved.
- (2) The Tribunal must arrange for the memorandum to be made reasonably available to members of regulated superannuation funds, beneficiaries of approved deposit funds, holders of RSAs and holders of annuity policies.

Section 14AA

Part 4—Complaints, procedural matters relating to complaints and complaints the Tribunal cannot deal with

14AA Complaints may be made about discretionary or non-discretionary decisions

- (1) To avoid doubt, a complaint may be made under this Part about a decision whether or not the decision involved the exercise of a discretion.
- (2) However, a decision that did not involve the exercise of a discretion is taken to have been unfair and unreasonable if the decision was contrary to law.

14 Complaints about decisions of trustees other than decisions to admit persons to life policy funds

- (1) This section applies if the trustee of a fund has made a decision (whether before or after the commencement of this Act) in relation to:
 - (a) a particular member or a particular former member of a regulated superannuation fund; or
 - (b) a particular beneficiary or a particular former beneficiary of an approved deposit fund.
- (1A) This section does not apply to a decision of a trustee in respect of which a complaint can be made to the Tribunal under section 14A.
- (2) Subject to subsection (3) and section 15, a person may make a complaint (other than an excluded complaint) to the Tribunal, that the decision is or was unfair or unreasonable.

Note: Although a complaint is about the decision of a trustee, the Tribunal may join an insurer or other person as a party to the complaint (see subsection 18(1)). The Tribunal may then review any decision of a person joined as a party that may be relevant to the complaint.

Section 14

- (3) If a person has been given a written notice by the trustee of a fund setting out:
- (a) the trustee's decision in relation to the person's objection to the payment of a death benefit; and
 - (b) the prescribed period within which the person must complain to the Tribunal about the decision;
- the person may only make a complaint under this section to the Tribunal within that period.
- (4) The Tribunal cannot deal with a complaint under this section about a trustee's decision that must be made within the prescribed period referred to in subsection (3) if the complaint is not made within that period.
- (5) The Tribunal cannot deal with a complaint under this section to the extent that it relates to excluded subject matter.
- (6) The Tribunal cannot deal with a complaint under this section that relates to the management of a fund as a whole.
- (6A) The Tribunal cannot deal with a complaint under this section about a decision of a trustee relating to the payment of a disability benefit because of total and permanent disability unless:
- (a) the decision is made on or after 1 November 1994; and
 - (b) the complaint is made within a period of 2 years after the making of the decision to which the complaint relates.
- (6B) The Tribunal cannot deal with a complaint under this section about a decision of a trustee relating to the payment of a disability benefit because of total and permanent disability if:
- (a) before the making of the decision, the person permanently ceased particular employment (whether before or after commencement of this subsection) because of the physical or mental condition that gave rise to the claim for disability benefit; and
 - (b) the claim was not lodged, or is not lodged, with the trustee, within 2 years after the person permanently ceased that employment.
- (6C) Without limiting the meaning of a decision of a trustee relating to the payment of a disability benefit in any other provision of this Act, that expression means, for the purposes of subsections (6A)
-

Section 14A

and (6B), the original decision of the trustee in relation to the matter.

- (6D) For the purposes of subsection (6C), if, as a result of a complaint about the original decision of the trustee under arrangements made under section 101 of the Supervision Act, the original decision was confirmed or varied, or another decision was substituted for the original decision:
- (a) the decision as so confirmed or varied, or the substituted decision, is taken to be the original decision; and
 - (b) the decision as so confirmed or varied, or the substituted decision, is taken to have been made at the time when the original decision was made.
- (7) A complaint under subsection (2) is to be made by sending or delivering a written complaint to the office of the Tribunal.

Note: See section 3 for definitions of *complaint*, *complainant*, *excluded complaint* and *excluded subject matter*.

14A Complaints about decisions of trustees to admit persons to life policy funds

- (1) A person who has, or claims to have, an interest in a life policy fund, either as a member of the fund who is covered by a life policy maintained by the trustee or as a person claiming through such a member, may complain that the decision of the trustee to admit the member to the fund was unfair or unreasonable.

Note: Although a complaint is about the decision of a trustee, the Tribunal may join the insurer and any other person as well, as parties to the complaint (see subsection 18(2)).

- (2) For the purposes of subsection (1), the conduct of an insurer, or a representative of an insurer, in relation to dealings preliminary to the admission of a person as a member of a life policy fund is relevant to determining whether the trustee's decision to admit the person as such a member was unfair or unreasonable.
- (3) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.
- (4) When a complaint is made under this section, the Tribunal must, in determining whether the decision of the trustee to admit a person to

a life policy fund was fair and reasonable, have regard, in particular, to the question whether that decision involved:

- (a) undue influence or pressure on the person; or
 - (b) material misrepresentation made to the person;
- in relation to becoming a member of the fund.

- (5) For the purposes of subsection (4), the Tribunal may take into account:
 - (a) the age, physical and mental condition, educational attainments and financial means of the person admitted to the fund; and
 - (b) the relative bargaining positions of the trustee and the person admitted to the fund or of any person acting for either of them; and
 - (c) the insurance and personal superannuation needs of the person admitted to the fund and of any other person having, or claiming to have, an interest in the fund as known to, or reasonably ascertainable by, the trustee or any person acting for the trustee; and
 - (d) the importance of ensuring that trustees act with fairness, openness and propriety in relation to invitations to become members of life policy funds and take reasonable steps to ensure that any persons acting for them also act with fairness, openness and propriety in relation to such matters; and
 - (e) the objects of this Act; and
 - (f) any other matter that the Tribunal considers relevant.
- (6) For the purposes of subsection (5), a reference to a person acting for the trustee of a life policy fund includes a reference to an insurer, or a representative of an insurer, when engaged in any dealings preliminary to the admission of a person as a member of the fund.

15 Who may make a complaint under section 14

- (1) A person may make a complaint under section 14 only if:
 - (a) in the case of a decision that relates to the payment of a death benefit:
 - (i) the person has an interest in the benefit; or
 - (ii) the person claims to be, or to be entitled to benefits through, a person referred to in subparagraph (i); or

Section 15A

- (iii) the person is acting for a person referred to in subparagraph (i) or (ii); or
- (b) in the case of a decision that does not relate to the payment of a death benefit—the person is:
 - (i) a member or former member of the regulated superannuation fund; or
 - (ii) a beneficiary or former beneficiary of the approved deposit fund; or
 - (iii) a person acting for a person referred to in subparagraph (i) or (ii) or for the estate of such a person.
- (2) A person does not have an interest in a death benefit for the purposes of paragraph (1)(a) unless:
 - (a) the person:
 - (i) has been given written notice by the trustee of the proposed payment of the benefit; and
 - (ii) has been given written notice by the trustee of the prescribed period within which the person may object; and
 - (iii) has objected to the trustee within the prescribed period; or
 - (b) the person has not been notified by the trustee of the proposed payment of the benefit and the failure to notify was unreasonable; or
 - (c) the person has been notified by the trustee of the proposed payment of the benefit but was not notified of the prescribed period to object to the payment; or
 - (d) the person has been notified by the trustee of the proposed payment of the benefit but was notified of a period less than the prescribed period for the purposes of subparagraph (a)(ii).

Note: See section 10 of the Supervision Act for definitions of *approved deposit fund* and *superannuation fund*.

15A Complaints about conduct of insurers concerning sale of annuity policies

- (1) A person who has, or claims to have, an interest in an annuity policy may complain to the Tribunal that the conduct of the insurer, or of a representative of the insurer, in respect of the sale of the policy, was unfair or unreasonable.

Section 15B

- (2) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.
- (3) When a complaint is made under this section concerning the conduct of the insurer, or of a representative of the insurer, in respect of the sale of an annuity policy, the Tribunal must, in determining whether the conduct of the insurer or of a representative of the insurer was unfair or unreasonable, have regard, in particular, to the question whether that conduct involved:
 - (a) undue influence or pressure on the insured; or
 - (b) material misrepresentation made to the insured;in relation to the sale of the policy.
- (4) For the purposes of subsection (3), the Tribunal may take into account:
 - (a) the age, physical and mental condition, educational attainments and financial means of the insured; and
 - (b) the relative bargaining positions of the insurer or the insurer's representative and of the insured or any person acting for the insured; and
 - (c) the insurance and personal superannuation needs of the insured or of any other person having, or claiming to have, an interest in the policy as known to, or reasonably ascertainable by, the insurer or the insurer's representative; and
 - (d) the importance of ensuring that insurers act with fairness, openness and propriety in relation to the sale of interests in annuity policies and take reasonable steps to ensure that their representatives also act with fairness, openness and propriety in relation to the sale of such interests; and
 - (e) the objects of this Act; and
 - (f) any other matter that the Tribunal considers relevant.

Note: See section 3 for the definition of *annuity policy*.

15B Complaints about decisions of insurers under annuity policies

- (1) Subject to subsection (3) and to section 15C, a person may, at any time, complain to the Tribunal that a decision of the insurer under an annuity policy is or was unfair or unreasonable.

Section 15C

- (2) If a person is given a notice by an insurer in respect of an annuity policy setting out:
 - (a) the insurer's decision in relation to the person's objection to the proposed payment of a death benefit under the policy; and
 - (b) the prescribed period within which the person must complain to the Tribunal about the decision;the person may only complain to the Tribunal within that period.
- (3) The Tribunal cannot deal with a complaint under this section that must be made within the prescribed period referred to in subsection (2) if the complaint is not made within that period.
- (4) The Tribunal cannot deal with a complaint under this section unless the decision relates to a matter that is particular to the complainant.
- (5) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.
- (6) When a complaint is made under this section about a decision of an insurer under an annuity policy, the Tribunal must, in determining whether that decision is or was unfair or unreasonable, have regard, in particular:
 - (a) to the seriousness of any failure to discharge an obligation under the terms of the policy; and
 - (b) to any action taken by the insurer that is contrary to the best interests of the insured or any other person having an interest under the policy.

Note: See section 3 for the definition of *annuity policy*.

15C Who may make a complaint under section 15B

- (1) A person may make a complaint under section 15B concerning a decision of an insurer under an annuity policy only if:
 - (a) in the case of a decision that relates to the payment of a death benefit:
 - (i) the person has an interest in the benefit; or
 - (ii) the person claims to be, or to be entitled to benefits through, a person referred to in subparagraph (i); or

Section 15CA

- (iii) the person is acting for a person referred to in subparagraph (i) or (ii); or
- (b) in the case of a decision that does not relate to the payment of a death benefit the person is:
 - (i) a person having an interest in the annuity policy; or
 - (ii) a person acting for a person referred to in subparagraph (i).
- (2) A person does not have an interest in a death benefit for the purposes of paragraph (1)(a) unless:
 - (a) the person:
 - (i) has been given written notice by the insurer of the proposed payment of the benefit; and
 - (ii) has been given written notice by the insurer of the prescribed period within which the person may object; and
 - (iii) has objected to the insurer within the prescribed period; or
 - (b) the person has not been notified by the insurer of the proposed payment of the benefit and the failure to notify was unreasonable; or
 - (c) the person has been notified by the insurer of the proposed payment of the benefit but was not notified of the prescribed period to object to the payment; or
 - (d) the person has been notified by the insurer of the proposed payment of the benefit but was notified of a period less than the prescribed period for the purposes of subparagraph (a)(ii).

**15CA Complaints about statements given to Commissioner of
Taxation by superannuation provider**

- (1) If a superannuation provider has given the Commissioner of Taxation a statement under:
 - (a) section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or
 - (b) section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; or
 - (c) section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*;

Section 15D

setting out an amount or amounts in respect of a person, the person may make a complaint (other than an excluded complaint) to the Tribunal that the decision to set out the amount or amounts in the statement was unfair or unreasonable.

- (2) If a person who is given by a superannuation provider a copy of a statement given by the provider to the Commissioner under:
 - (a) section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or
 - (b) section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; or
 - (c) section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*;is also given by the provider a notice setting out the prescribed period within which the person must complain to the Tribunal about the decision, the person may only make a complaint to the Tribunal under this section within that period.
- (3) The Tribunal cannot deal with a complaint under this section that must be made within the prescribed period referred to in subsection (2) if the complaint is not made within that period.
- (4) The Tribunal cannot deal with a complaint under this section to the extent that it relates to excluded subject matter.
- (5) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.

15D Tribunal cannot deal with certain complaints

- (1) The Tribunal cannot deal with a complaint under section 14A, 15A or 15B to the extent that it relates to excluded subject matter.
- (2) The Tribunal cannot deal with a complaint under section 14A unless the complainant, or the person through whom the complainant claims to have an interest in the life policy fund to which the complaint relates, was admitted to the fund on or after the day on which the *Superannuation Industry (Supervision) Legislation Amendment Act 1995* receives the Royal Assent (the **Assent day**).

Section 15E

- (3) Subsection (2) does not imply that if a person was admitted as a member of a life policy fund (however described) before the Assent day, that person, or a person claiming an interest in the fund through the first-mentioned person, cannot make a complaint under section 14, whether before, on or after that day, about the decision of the trustee to admit the first-mentioned person as a member of the fund.
- (4) The Tribunal cannot deal with a complaint under section 15A unless the interest of the complainant, or of the person through whom the complainant claims to have that interest, in the annuity policy to which the complaint relates:
 - (a) was acquired on or after the Assent day; or
 - (b) was varied on or after the Assent day whether or not it was acquired on or after that day.
- (5) The Tribunal cannot deal with a complaint under section 15B unless the interest of the complainant, or of the person through whom the complainant claims to have that interest, in the annuity policy to which the complaint relates, was acquired on or after the Assent day.

Note: See section 3 for the definition of *excluded subject matter*.

15E Complaints about conduct of RSA providers concerning opening of RSAs

- (1) A person who is, or claims to be, the holder, or the former holder of an RSA may make a complaint (other than an excluded complaint) to the Tribunal, that the conduct of the RSA provider, or of a representative of the RSA provider, in respect of the opening of the RSA, was unfair or unreasonable.

Note: Although a complaint is about the conduct of an RSA provider, the Tribunal may join an insurer and any other person, as parties to the complaint (see subsection 18(3A)). The Tribunal may then review any conduct of the person joined that may be relevant to the complaint.

- (2) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.
- (3) When a complaint is made under this section concerning the conduct of the RSA provider, or of a representative of the RSA provider, in respect of the opening of an RSA, the Tribunal must, in determining whether the conduct of the RSA provider or of a

Section 15F

representative of the RSA provider was unfair or unreasonable, have regard, in particular, to the question whether that conduct involved:

- (a) undue influence or pressure on the RSA holder; or
 - (b) material misrepresentation made to the RSA holder;
- in relation to the opening of the RSA.

- (4) For the purposes of subsection (3), the Tribunal may take into account:
- (a) the age, physical and mental condition, educational attainments and financial means of the RSA holder; and
 - (b) the relative bargaining positions of the RSA provider or the RSA provider's representative and of the RSA holder or any person acting for the RSA holder; and
 - (c) the insurance and personal superannuation needs of the RSA holder or of any other person having, or claiming to have, an interest in the RSA as known to, or reasonably ascertainable by, the RSA provider or the RSA provider's representative; and
 - (d) the importance of ensuring that RSA providers act with fairness, openness and propriety in relation to the opening of RSAs and take reasonable steps to ensure that their representatives also act with fairness, openness and propriety in relation to the opening of RSAs; and
 - (e) the objects of this Act; and
 - (f) any other matter that the Tribunal considers relevant.

15F Complaints about decisions of RSA providers

- (1) Subject to subsections (3) to (6) and section 15G, a person may, at any time, make a complaint (other than an excluded complaint) to the Tribunal, that a decision of an RSA provider in relation to a particular RSA holder or former RSA holder, is or was unfair or unreasonable.

Note: Although a complaint is about a decision of an RSA provider, the Tribunal may join an insurer and any other person, as parties to the complaint (see subsection 18(3A)). The Tribunal may then review any decision of the person joined that may be relevant to the complaint.

Section 15F

- (2) If a person is given a notice by an RSA provider in respect of an RSA setting out:
 - (a) the RSA provider's decision in relation to the person's objection to the proposed payment of a death benefit under the RSA; and
 - (b) the prescribed period within which the person must complain to the Tribunal about the decision;the person may only complain to the Tribunal within that period.
- (3) The Tribunal cannot deal with a complaint under this section that must be made within the prescribed period referred to in subsection (2) if the complaint is not made within that period.
- (4) The Tribunal cannot deal with a complaint under this section to the extent that it relates to the management as a whole of:
 - (a) an RSA provider; or
 - (b) an RSA provider's business; or
 - (c) an RSA provider's investments.
- (5) The Tribunal cannot deal with a complaint under this section about a decision of an RSA provider relating to the payment of a disability benefit because of total and permanent disability unless the complaint is made within a period of one year after the making of the decision to which the complaint relates.
- (6) The Tribunal cannot deal with a complaint under this section about a decision of an RSA provider relating to the payment of a disability benefit because of total and permanent disability if:
 - (a) before the making of the decision, the person permanently ceased particular employment because of the physical or mental condition that gave rise to the claim for disability benefit; and
 - (b) the claim was not lodged, or is not lodged, with the RSA provider, within one year after the person permanently ceased that employment because of that physical or mental condition.
- (7) Without limiting the meaning of a decision of an RSA provider relating to the payment of a disability benefit in any other provision of this Act, that expression means, for the purposes of subsections (5) and (6), the original decision of the RSA provider in relation to the matter.

Section 15G

- (8) For the purposes of subsection (7), if, as a result of a complaint about the original decision of the RSA provider under arrangements made under section 47 of the *Retirement Savings Accounts Act 1997*, the original decision was confirmed or varied, or another decision was substituted for the original decision:
 - (a) the decision as so confirmed or varied, or the substituted decision, is taken to be the original decision; and
 - (b) the decision as so confirmed or varied, or the substituted decision, is taken to have been made at the time when the original decision was made.
- (9) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.
- (10) When a complaint is made under this section about a decision of an RSA provider under an RSA, the Tribunal must, in determining whether that decision is or was unfair or unreasonable, have regard, in particular:
 - (a) to the seriousness of any failure to discharge an obligation under the terms of the RSA; and
 - (b) to any action taken by the RSA provider that is contrary to the best interests of the RSA holder or any other person having an interest under the RSA.

15G Who may make a complaint under section 15F

- (1) A person may make a complaint under section 15F concerning a decision of an RSA provider in relation to an RSA only if:
 - (a) in the case of a decision that relates to the payment of a death benefit:
 - (i) the person has an interest in the benefit; or
 - (ii) the person claims to be, or to be entitled to benefits through, a person referred to in subparagraph (i); or
 - (iii) the person is acting for a person referred to in subparagraph (i) or (ii); or
 - (b) in the case of a decision that does not relate to the payment of a death benefit—the person is:
 - (i) the holder or the former holder of the RSA; or
 - (ii) a person acting for the holder or the former holder of the RSA, or for the estate of such a person.

Section 15H

- (2) A person does not have an interest in a death benefit for the purposes of paragraph (1)(a) unless:
- (a) the person:
 - (i) has been given written notice by the RSA provider of the proposed payment of the benefit; and
 - (ii) has been given written notice by the RSA provider of the prescribed period within which the person may object; and
 - (iii) has objected to the RSA provider within the prescribed period; or
 - (b) the person has not been notified by the RSA provider of the proposed payment of the benefit and the failure to notify was unreasonable; or
 - (c) the person has been notified by the RSA provider of the proposed payment of the benefit but was not notified of the prescribed period to object to the payment; or
 - (d) the person has been notified by the RSA provider of the proposed payment of the benefit but was notified of a period less than the prescribed period for the purposes of subparagraph (a)(ii).

15H Complaints about conduct of insurers concerning sale of insurance benefits

- (1) A person who is, or claims to be, the holder, or the former holder, of an RSA may complain to the Tribunal that the conduct of an insurer, or of a representative of an insurer, in respect of the sale of insurance benefits in relation to a contract of insurance where the premiums are paid from an RSA, was unfair or unreasonable.

Note: Although a complaint is about the conduct of an insurer, the Tribunal may join the RSA provider and any other person, as parties to the complaint (see subsection 18(3B)). The Tribunal may then review any conduct of the person joined that may be relevant to the complaint.

- (2) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.
- (3) When a complaint is made under this section concerning the conduct of the an insurer, or of a representative of an insurer, in respect of the entry into a contract of insurance in connection with an RSA, the Tribunal must, in determining whether the conduct of the insurer, or of a representative of the insurer, was unfair or

Section 15J

unreasonable, have regard, in particular, to the question whether that conduct involved:

- (a) undue influence or pressure on the RSA holder; or
 - (b) material misrepresentation made to the RSA holder; in relation to entry into the contract.
- (4) For the purposes of subsection (3), the Tribunal may take into account:
- (a) the age, physical and mental condition, educational attainments and financial means of the RSA holder; and
 - (b) the relative bargaining positions of the insurer or the insurer's representative and of the RSA holder or any person acting for the RSA holder; and
 - (c) the insurance and personal superannuation needs of the RSA holder or of any other person having, or claiming to have, an interest in the RSA as known to, or reasonably ascertainable by, the insurer or the insurer's representative; and
 - (d) the importance of ensuring that insurers act with fairness, openness and propriety in relation to entering into contracts of insurance in connection with RSAs and take reasonable steps to ensure that their representatives also act with fairness, openness and propriety in relation to such conduct; and
 - (e) the objects of this Act; and
 - (f) any other matter that the Tribunal considers relevant.

15J Complaints about decisions of insurers

- (1) Subject to subsections (3) to (6) and to section 15K, a person may, at any time, complain to the Tribunal that a decision of an insurer in relation to a contract of insurance where the premiums are paid from an RSA, is or was unfair or unreasonable.

Note: Although a complaint is about a decision of an insurer, the Tribunal may join the RSA provider and any other person, as parties to the complaint (see subsection 18(3B)). The Tribunal may then review any decision of the person joined that may be relevant to the complaint.

Section 15J

- (2) If a person is given a notice by an insurer in respect of a contract of insurance setting out:
 - (a) the insurer's decision in relation to the person's objection to the proposed payment of a death benefit in relation to the contract of insurance; and
 - (b) the prescribed period within which the person must complain to the Tribunal about the decision;the person may only complain to the Tribunal within that period.
- (3) The Tribunal cannot deal with a complaint under this section that must be made within the prescribed period referred to in subsection (2) if the complaint is not made within that period.
- (4) The Tribunal cannot deal with a complaint under this section to the extent that it relates to the management as a whole of:
 - (a) an insurer; or
 - (b) an insurer's business; or
 - (c) an insurer's investments.
- (5) The Tribunal cannot deal with a complaint under this section about a decision of an insurer relating to the payment of a disability benefit because of total and permanent disability unless the complaint is made within a period of one year after the making of the decision to which the complaint relates.
- (6) The Tribunal cannot deal with a complaint under this section about a decision of an insurer relating to the payment of a disability benefit because of total and permanent disability if:
 - (a) before the making of the decision, the person permanently ceased particular employment because of the physical or mental condition that gave rise to the claim for disability benefit; and
 - (b) the claim was not lodged, or is not lodged, with the insurer, within one year after the person permanently ceased that employment because of the physical or mental condition.
- (7) Without limiting the meaning of a decision of an insurer relating to the payment of a disability benefit in any other provision of this Act, that expression means, for the purposes of subsections (5) and (6), the original decision of the insurer in relation to the matter.

Section 15K

- (8) For the purposes of subsection (7), if, as a result of a complaint about the original decision of the insurer under arrangements made for dealing with complaints, the original decision was confirmed or varied, or another decision was substituted for the original decision:
 - (a) the decision as so confirmed or varied, or the substituted decision, is taken to be the original decision; and
 - (b) the decision as so confirmed or varied, or the substituted decision, is taken to have been made at the time when the original decision was made.
- (9) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.
- (10) When a complaint is made under this section about a decision of an insurer in relation to a contract of insurance entered into in connection with an RSA, the Tribunal must, in determining whether that decision is or was unfair or unreasonable, have regard, in particular:
 - (a) to the seriousness of any failure to discharge an obligation under the terms of the contract of insurance; and
 - (b) to any action taken by the insurer that is contrary to the best interests of the RSA holder or any other person having an interest under the contract of insurance.

15K Who may make a complaint under section 15J

- (1) A person may make a complaint under section 15J concerning a decision of an insurer in relation to a contract of insurance entered into in connection with an RSA only if:
 - (a) in the case of a decision that relates to the payment of a death benefit:
 - (i) the person has an interest in the benefit; or
 - (ii) the person claims to be, or to be entitled to benefits through, a person referred to in subparagraph (i); or
 - (iii) the person is acting for a person referred to in subparagraph (i) or (ii); or
 - (b) in the case of a decision that does not relate to the payment of a death benefit—the person is:
 - (i) the holder or the former holder of the RSA; or

Section 16

- (ii) a person acting for the holder or the former holder of the RSA, or for the estate of such a person.
- (2) A person does not have an interest in a death benefit for the purposes of paragraph (1)(a) unless:
 - (a) the person:
 - (i) has been given written notice by the insurer of the proposed payment of the benefit; and
 - (ii) has been given written notice by the insurer of the prescribed period within which the person may object; and
 - (iii) has objected to the insurer within the prescribed period; or
 - (b) the person has not been notified by the insurer of the proposed payment of the benefit and the failure to notify was unreasonable; or
 - (c) the person has been notified by the insurer of the proposed payment of the benefit but was not notified of the prescribed period to object to the payment; or
 - (d) the person has been notified by the insurer of the proposed payment of the benefit but was notified of a period less than the prescribed period for the purposes of subparagraph (a)(ii).

16 Tribunal to help complainants to make complaints

If the Tribunal thinks that:

- (a) a complainant wishes to make a complaint; and
 - (b) the complainant needs help to make the complaint or to put it in writing;
- the Tribunal must take reasonable steps to help the complainant.

17 Notification procedures on receipt of a complaint

- (1) If the complainant sends or delivers a complaint under section 14 or 14A to an office of the Tribunal, the Tribunal must:
 - (a) by notice in writing given to the complainant, acknowledge receipt of the complaint; and
 - (b) by notice in writing given to the trustee concerned:
 - (i) tell the trustee that a complaint has been made to the Tribunal and identify the complainant; and

Section 17

- (ii) give details of the complaint; and
 - (iii) tell the trustee of the trustee's obligations under section 24.
- (2) If the complainant sends or delivers a complaint under section 15A or 15B to an office of the Tribunal, the Tribunal must:
 - (a) by notice in writing given to the complainant, acknowledge receipt of the complaint; and
 - (b) by notice in writing given to the insurer concerned:
 - (i) tell the insurer that a complaint has been made to the Tribunal and identify the complainant; and
 - (ii) give details of the complaint; and
 - (iii) tell the insurer of the insurer's obligations under section 24.
- (2A) If the complainant sends or delivers a complaint under section 15CA to an office of the Tribunal, the Tribunal must:
 - (a) by notice in writing given to the complainant, acknowledge receipt of the complaint; and
 - (b) by notice in writing given to the superannuation provider concerned:
 - (i) tell the provider that a complaint has been made to the Tribunal and identify the complainant; and
 - (ii) give details of the complaint; and
 - (iii) tell the provider of the provider's obligations under section 24AA.
- (3) If the complainant sends or delivers a complaint under section 15E or 15F to an office of the Tribunal, the Tribunal must:
 - (a) by notice in writing given to the complainant, acknowledge receipt of the complaint; and
 - (b) by notice in writing given to the RSA provider concerned:
 - (i) tell the RSA provider that a complaint has been made to the Tribunal and identify the complainant; and
 - (ii) give details of the complaint; and
 - (iii) tell the RSA provider of the RSA provider's obligations under section 24.

Section 17A

- (4) If the complainant sends or delivers a complaint under section 15H or 15J to an office of the Tribunal, the Tribunal must:
- (a) by notice in writing given to the complainant, acknowledge receipt of the complaint; and
 - (b) by notice in writing given to the insurer concerned:
 - (i) tell the insurer that a complaint has been made to the Tribunal and identify the complainant; and
 - (ii) give details of the complaint; and
 - (iii) tell the insurer of the insurer's obligations under section 24.

17A Notification procedures relating to other persons joined or seeking to be joined as parties

- (1) If:
- (a) a person has made a complaint under section 14; and
 - (b) the Tribunal decides, under subsection 18(1), that an insurer or other decision-maker or any other person should be joined as a party to the complaint;
- the Tribunal must, by notice in writing given to the new party and to all of the existing parties to the complaint:
- (c) tell them that it has so decided and of its reasons for so deciding; and
 - (d) tell the new party of the party's obligations under section 24.
- (2) If:
- (a) a person has made a complaint under section 14A; and
 - (b) the Tribunal decides, under subsection 18(2), that an insurer or other person should be joined as a party to the complaint;
- the Tribunal must, by notice in writing given to the new party and to all of the existing parties to the complaint:
- (c) tell them that it has so decided and of its reasons for so deciding; and
 - (d) tell the new party of the party's obligations under section 24.
- (3) If:
- (a) a person has made a complaint under section 15A 15B, 15E, 15F, 15H or 15J; and
 - (b) the Tribunal decides, under subsection 18(3), (3A) or (3B), that a person should be joined as a party to the complaint;

Section 18

the Tribunal must, by notice in writing given to the new party and to all of the existing parties to the complaint:

- (c) tell them that it has so decided and of its reasons for so deciding; and
- (d) tell the new party of the party's obligations under section 24.

(3A) If:

- (a) a person has made a complaint under section 15CA; and
- (b) the Tribunal decides, under subsection 18(3AA), that a person should be joined as a party to the complaint;

the Tribunal must, by notice in writing given to the new party and to all of the existing parties to the complaint:

- (c) tell them that it has so decided and of its reasons for so deciding; and
- (d) tell the new party of the party's obligations under section 24AA.

(4) If:

- (a) a person has made a complaint under section 14, 14A, 15A, 15B, 15CA, 15E, 15F, 15H or 15J; and
- (b) a person has applied to be made a party to the complaint (whether under section 24A or otherwise); and
- (c) the Tribunal decides that the person does not have a sufficient interest to be joined under paragraph 18(1)(e), (2)(d), (3)(c), (3AA)(b), (3A)(e) or (3B)(e), as the case requires, as a party to the complaint;

the Tribunal must, by notice in writing given to the applicant, tell the applicant that it has so decided and of its reasons for so deciding.

18 Parties to a complaint

(1) The parties to a complaint under section 14 are:

- (a) the complainant; and
- (b) the trustee; and
- (c) if the subject matter of the complaint relates to a death benefit or a disability benefit under a contract of insurance between the trustee and an insurer and the Tribunal decides that the insurer should be a party to the complaint—the insurer; and

- (d) if the subject matter of the complaint relates to a disability benefit (whether under a contract of insurance or otherwise) and the Tribunal decides that a person other than a trustee or insurer is responsible for determining either or both of the existence and the extent of the disability (whether total and permanent or otherwise)—that person; and
 - (e) if any other person has applied to the Tribunal to be made a party to the complaint (whether under section 24A or otherwise) and the Tribunal decides that the person should be a party to the complaint—that person.
- (2) The parties to a complaint under section 14A concerning a decision to admit a person to a life policy fund are:
 - (a) the complainant; and
 - (b) the trustee; and
 - (c) if the Tribunal decides that the insurer who issued to the trustee a life policy covering the life of the person to whom the complaint relates should be a party to the complaint—the insurer; and
 - (d) if any other person has applied to the Tribunal to be made a party to the complaint (whether under section 24A or otherwise) and the Tribunal decides that the person should be a party to the complaint—that person.
- (3) The parties to a complaint under section 15A or 15B are:
 - (a) the complainant; and
 - (b) the insurer; and
 - (c) if any other person has applied to the Tribunal to be made a party to the complaint (whether under section 24A or otherwise) and the Tribunal decides that the person should be a party to the complaint—that person.
- (3AA) The parties to a complaint under section 15CA are:
 - (a) the complainant; and
 - (b) the superannuation provider; and
 - (c) if any other person has applied to the Tribunal to be made a party to the complaint (whether under section 24A or otherwise) and the Tribunal decides that the person should be a party to the complaint—that person.

Section 18

(3A) The parties to a complaint under section 15E or 15F are:

- (a) the complainant; and
- (b) the RSA provider; and
- (c) if the subject matter of the complaint relates to a death benefit or a disability benefit in relation to a contract of insurance relating to an RSA, and the Tribunal decides that the insurer should be a party to the complaint—the insurer; and
- (d) if the subject matter of the complaint relates to a disability benefit (whether in relation to a contract of insurance or otherwise) and the Tribunal decides that a person other than an RSA provider or insurer is responsible for determining either or both of the existence and the extent of the disability (whether total and permanent or otherwise)—that person; and
- (e) if any other person has applied to the Tribunal to be made a party to the complaint (whether under section 24A or otherwise) and the Tribunal decides that the person should be a party to the complaint—that person.

(3B) The parties to a complaint under section 15H or 15J are:

- (a) the complainant; and
- (b) the insurer; and
- (c) if the subject matter of the complaint relates to a death benefit or a disability benefit in relation to a contract of insurance relating to an RSA and the Tribunal decides that the RSA provider should be a party to the complaint—the RSA provider; and
- (d) if the subject matter of the complaint relates to a disability benefit (whether in relation to a contract of insurance or otherwise) and the Tribunal decides that a person other than an RSA provider or insurer is responsible for determining either or both of the existence and the extent of the disability (whether total and permanent or otherwise)—that person; and
- (e) if any other person has applied to the Tribunal to be made a party to the complaint (whether under section 24A or otherwise) and the Tribunal decides that the person should be a party to the complaint—that person.

(4) Nothing in this section implies that a person cannot be joined under this section as a party to a complaint after the Tribunal has started to deal with the complaint.

19 Tribunal not to deal with complaint unless the complainant has attempted to have the matter resolved

- (1) The Tribunal cannot deal with a complaint under section 14 or 14A unless the complainant satisfies the Tribunal that:
 - (a) a complaint about the same subject matter was previously made to an appropriate person under arrangements for dealing with such complaints made under section 101 of the Supervision Act; and
 - (b) the complaint so made was not settled to the satisfaction of the complainant within 90 days or such longer period as the Tribunal allows.
- (2) The Tribunal cannot deal with a complaint under section 15A or 15B unless the complainant satisfies the Tribunal that the complainant has made all reasonable efforts to have the complaint resolved by the insurer under the annuity policy to which the complaint relates.
- (2A) The Tribunal cannot deal with a complaint under section 15CA unless the complainant satisfies the Tribunal that the complainant has made all reasonable efforts to have the complaint resolved by the superannuation provider to which the complaint relates.
- (3) The Tribunal cannot deal with a complaint under section 15E or 15F unless the complainant satisfies the Tribunal that:
 - (a) a complaint about the same subject matter was previously made to an appropriate person under arrangements for dealing with such complaints made under section 47 of the *Retirement Savings Accounts Act 1997*; and
 - (b) the complaint so made was not settled to the satisfaction of the complainant within 90 days or such longer period as the Tribunal allows.
- (4) The Tribunal cannot deal with a complaint under section 15H or 15J unless the complainant satisfies the Tribunal that the complainant has made all reasonable efforts to have the complaint resolved by the insurer who entered into the contract of insurance to which the complaint relates.

Section 20

20 Tribunal not to deal with complaint if subject matter of complaint is subject of court proceedings

- (1) The Tribunal cannot deal with a complaint if a proceeding has been begun in a court about the subject matter of the complaint and the proceeding has not been finally disposed of.
- (2) If, after a complaint has been made to the Tribunal, a proceeding is begun in a court about the subject matter of the complaint, the Tribunal cannot deal with the complaint until the proceeding is finally disposed of.

21 Withdrawal of complaint

A complainant may withdraw a complaint at any time.

22 Power to treat a complaint as having been withdrawn

- (1) If:
 - (a) a complainant makes a complaint; and
 - (b) the Tribunal is satisfied, either after having communicated with the complainant, or having made reasonable attempts to contact the complainant and having failed to do so, that the complainant does not intend to proceed with the complaint;the Tribunal must deal with the complaint as if it had been withdrawn by the complainant under section 21.
- (2) If the Tribunal decides to treat a complaint as withdrawn under subsection (1), the Tribunal must give notice in writing to:
 - (a) if the Tribunal communicated with the complainant—the complainant; and
 - (b) the other party, or each of the other parties, to the complaint; of that decision and the reasons for that decision.
- (3) The Tribunal may also decide to treat a complaint as if it had been withdrawn under section 21, in the following cases:
 - (a) if the complaint has been made to the Tribunal and relates to a decision or conduct (other than a decision of a trustee, RSA provider, insurer or other decision maker to pay a disability benefit because of total and permanent disability)—more than 12 months have elapsed since the decision complained

Section 22A

- of was made or the conduct complained of was undertaken;
or
 - (b) if the complaint has been made to the Tribunal—the Tribunal thinks that the complaint is trivial, vexatious, misconceived or lacking in substance;
 - (c) if a remedy has been sought from some other body in relation to the subject matter of the complaint—the Tribunal thinks that the subject matter of the complaint has been, or is likely to be, dealt with by that body;
 - (d) if the subject matter of the complaint has already been dealt with by the Tribunal or by another statutory authority—the Tribunal thinks that the subject matter of the complaint has been adequately dealt with;
 - (e) if the Tribunal thinks that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.
- (4) If the Tribunal decides to treat a complaint as withdrawn under subsection (3), the Tribunal must give notice in writing of that decision and of the reasons for that decision:
- (a) to the complainant; and
 - (b) to the other party, or each of the other parties, to the complaint.

22A Tribunal may refer complaint or part complaint to other complaint-handling body

- (1) If, in relation to a complaint or a part of a complaint, the Tribunal is satisfied that another body (other than a court) having power to deal with the complaint or that part of the complaint is prescribed for the purpose of this subsection:
- (a) subject to section 63, the Tribunal may refer the complaint or that part of the complaint to that body; and
 - (b) if it does so, must inform the parties to the complaint, in writing, accordingly.

Note: Under section 63 the consent of the complainant will normally be required before a referral takes place.

- (2) If the Tribunal refers a complaint or a part of a complaint made to it to another body, the complaint to the Tribunal is treated, on

Section 23

being so referred, as having been withdrawn or as having been withdrawn to the extent that it is so referred.

23 Right to representation in relation to a complaint

- (1) If a party to a complaint is a body corporate or unincorporate, the party may be represented by a responsible officer of the body.
- (2) If:
 - (a) a party to a complaint is not a body corporate or unincorporate; and
 - (b) the Tribunal is satisfied that the party cannot adequately act on his or her own behalf because he or she has a disability;the party may be represented by an agent.
- (3) If a party to a complaint is not entitled to be represented under subsection (1) or (2), the party must, unless the Tribunal allows the party to be represented by an agent because the Tribunal considers it necessary in all the circumstances, act on his or her own behalf.
- (4) In this section:

disability, in relation to a person, has the same meaning as in the *Disability Discrimination Act 1992*.

24 Giving material documents to the Tribunal

- (1) Subject to subsection (4), if, in relation to a complaint under section 14, 14A, 15A, 15B, 15E, 15F, 15H or 15J, a trustee, insurer or RSA provider is notified under section 17 of the making of the complaint, the trustee, insurer or RSA provider must, within 28 days after receiving the notice or such longer period as the Tribunal allows, give to the Tribunal a copy of all documents or parts of documents:
 - (a) that are in the possession, or under the control, of the trustee, insurer or RSA provider; and
 - (b) that are considered by the trustee, insurer or RSA provider to be relevant to the complaint.
- (2) Subject to subsection (4), if, in relation to a complaint under section 14, 14A, 15E, 15F, 15H, or 15J, a relevant person (as determined under subsection (3)) is notified under section 17A that the person has been joined as a party to the complaint under

Section 24

section 18, the person must, within 28 days after receiving notice of the joinder, or such longer period as the Tribunal allows, give to the Tribunal a copy of all documents or parts of documents:

- (a) that are in the possession, or under the control, of the person;
and
 - (b) that are considered by the person to be relevant to the complaint.
- (3) The following table sets out the persons who are relevant persons for the purposes of subsection (2) in relation to particular complaints:

| Relevant persons for the purposes of subsection (2) | | |
|--|--|--------------------------------------|
| Item | Section under which complaint is made | Relevant persons |
| 1 | 14 | insurer or other decision-maker |
| 2 | 14A | insurer |
| 3 | 15E | insurer |
| 4 | 15F | insurer or other decision-maker |
| 5 | 15H | RSA provider |
| 6 | 15J | RSA provider or other decision-maker |

- (4) The Tribunal may, on a request being made by the trustee, an insurer, the RSA provider or another decision-maker, allow the trustee, insurer, RSA provider or other decision-maker to give a summary of all documents or relevant parts of documents referred to in subsection (1), (2) or (3), as the case requires, within the period allowed by the Tribunal for the purpose.
- (5) A request under subsection (4) must be made within the period allowed for giving the Tribunal copies of documents or parts of documents under subsection (1), (2) or (3) or such longer period as the Tribunal allows under that subsection.
- (6) If:
- (a) in relation to a complaint under section 14, a person other than an insurer or other decision-maker is notified under subsection 17A(1); or

Section 24AA

- (b) in relation to a complaint under section 14A, a person other than an insurer is notified under subsection 17A(2); or
 - (c) in relation to a complaint under section 15A, 15B, 15E, 15F, 15H or 15J, a person is notified under subsection 17A(3);
- that the person has been joined as a party to the complaint, the Tribunal may, by notice in writing given to the person before, or while, the complaint is being dealt with, require the person to give to the Tribunal, within a period specified in the notice or such longer period as the Tribunal allows, copies of such documents relevant to the complaint as the Tribunal specifies in the notice.
- (7) The trustee, insurer, RSA provider, other decision-maker or any other person joined as a party to the complaint, must not intentionally or recklessly refuse or fail to comply with this section.

Penalty: Imprisonment for 6 months.

24AA Complaint against superannuation provider: giving material documents to the Tribunal

- (1) Subject to subsection (2), if a superannuation provider is notified under section 17 of the making of a complaint under section 15CA, the provider must, within 28 days after receiving the notice or any longer period that the Tribunal allows, give the Tribunal a copy of all documents or parts of documents:
 - (a) that are in the possession, or under the control, of the provider; and
 - (b) that are considered by the provider to be relevant to the complaint.
- (2) The Tribunal may, on a request being made by a superannuation provider, allow the provider to give a summary of all documents or relevant parts of documents referred to in subsection (1) within a period allowed by the Tribunal for the purpose.
- (3) A request under subsection (2) must be made within the period allowed for giving the Tribunal copies of documents or parts of documents under subsection (1) or any longer period that the Tribunal allows under that subsection.
- (4) If a person is notified under subsection 17A(3A) that the person has been joined as a party to a complaint under section 15AC, the

Section 24A

Tribunal may, by notice in writing given to the person before, or while, the complaint is being dealt with, require the person to give the Tribunal, within a period stated in the notice or any longer period that the Tribunal allows, copies of any documents relevant to the complaint that the Tribunal specifies in the notice.

- (5) The superannuation provider, or any other person joined as a party to the complaint, must not refuse or fail to comply with this section.

Penalty: Imprisonment for 6 months.

24A Other parties may join a complaint

- (1) If:

- (a) a complaint under section 14 has been made concerning a decision of the trustee; and
- (b) the decision complained of concerns the payment of a death benefit;

then, within 28 days or such longer period as the Tribunal allows after the trustee receives notice of the complaint under subsection 17(1), the trustee must give written notice in accordance with subsection (3) to all persons (other than the complainant) whom the trustee believes, after reasonable inquiry, may have an interest in the outcome of the complaint.

- (2) If:

- (a) a complaint under section 15B has been made concerning a decision of an insurer; and
- (b) the decision complained of concerns the payment of a death benefit;

the insurer must, within 28 days or such longer period as the Tribunal allows after the insurer receives a notice of the complaint under subsection 17(2), give written notice in accordance with subsection (3) to all persons (other than the complainant) whom the insurer believes, after reasonable inquiry, may have an interest in the outcome of the complaint.

- (2A) If:

- (a) a complaint under section 15F has been made concerning a decision of an RSA provider; and
- (b) the decision concerns the payment of a death benefit;

Section 24A

the RSA provider must, within 28 days, or such longer period as the Tribunal allows, after the RSA provider receives a notice of the complaint under subsection 17(3), give written notice in accordance with subsection (3) to all persons (other than the complainant) whom the RSA provider believes, after reasonable inquiry, may have an interest in the outcome of the complaint.

(2B) If:

(a) a complaint under section 15J has been made concerning a decision of an insurer; and

(b) the decision concerns the payment of a death benefit;
the insurer must, within 28 days, or such longer period as the Tribunal allows, after the insurer receives a notice of the complaint under subsection 17(4), give written notice in accordance with subsection (3) to all persons (other than the complainant) whom the insurer believes, after reasonable inquiry, may have an interest in the outcome of the complaint.

(3) A notice under subsection (1), (2), (2A) or (2B) must inform each of the persons to whom the notice relates:

(a) that a complaint has been received by the Tribunal; and

(b) of the details of the complaint; and

(c) that to become a party to the complaint, the person must, within 28 days of the giving of the notice, or within such further period as the Tribunal allows, apply to the Tribunal to be made a party to the complaint.

(4) If a trustee, insurer or RSA provider is required under subsection (1), (2), (2A) or (2B), as the case requires, to give a person notice relating to a complaint, the trustee, insurer or RSA provider must, at the same time as that notice is given, by notice in writing inform the Tribunal of:

(a) the names of the person to whom it has given the notice; and

(b) the period within which, unless the Tribunal allows a further period, an application by the person to be joined as a party to the complaint must be made; and

(c) either:

(i) if the trustee, insurer or RSA provider has the address and telephone number at which the person can be contacted—that address and telephone number; or

- (ii) if the trustee, insurer or RSA provider does not have those details but has other details that would enable the Tribunal to contact the person—those other details.
- (5) If:
 - (a) a person has been informed that to become a party to a complaint the person must apply to the Tribunal within a particular period; and
 - (b) the person does not so apply within that period;
the person may not, unless the Tribunal otherwise decides, be joined as a party to the original complaint.
- (6) A person, other than a person given a notice under this section, who considers that he or she is affected by:
 - (a) a decision that is the subject of a complaint under section 14, 14A, 15B, 15CA, 15F, or 15J; or
 - (b) conduct that is the subject of a complaint under section 15A, 15E or 15H;may, at any time before, or during, the period while the complaint is being dealt with, make a request in writing, to the Tribunal, to be joined under section 18 as a party to the complaint.
- (7) A person must not intentionally or recklessly fail to comply with subsection (1), (2), (2A) or (2B).

Penalty: 50 penalty units.

25 Power to obtain information and documents

- (1) The Tribunal may, by written notice signed by the Tribunal Chairperson and given to a person who has produced copies of documents or summaries of documents under section 24 or 24AA, require the person at such place, and within such period or on such date and at such time, as are stated in the notice to produce to the Tribunal the original documents from which the copies or summaries referred to in section 24 or 24AA were made.
- (2) If the Tribunal has reason to believe that the person whose decision or conduct, or whose representative's conduct, was complained of is capable of giving information or producing additional documents relevant to a complaint made under this Act, the Tribunal may, by written notice to the person signed by the Tribunal Chairperson,

Section 25

require the person at such place, and within such period or on such date and at such time, as are stated in the notice:

- (a) to give the Tribunal, by writing signed by the person, or, if the person is a constitutional corporation, by an officer of the constitutional corporation, any such information; or
 - (b) to produce to the Tribunal such documents or copies of such documents as are stated in the notice.
- (3) If the Tribunal has reason to believe that a person (other than the person whose decision or conduct, or whose representative's conduct, was complained of) is capable of giving information or producing documents relevant to a complaint made under this Act, the Tribunal may, by written notice to the person signed by the Tribunal Chairperson, require the person, at such place, and within such period or on such date and at such time, as are stated in the notice:
- (a) to give to the Tribunal, by writing signed by the person or, in the case of a body corporate, by an officer of the body corporate, any such information; or
 - (b) to produce to the Tribunal such documents or copies of such documents as are stated in the notice.
- (4) If documents (whether originals or copies) are so produced the Tribunal:
- (a) may take possession of, and may make copies of, or take extracts from, the documents; and
 - (b) may keep the documents for as long as is necessary for the purpose of dealing with the complaint; and
 - (c) while it is keeping the documents the Tribunal must permit a person who would be entitled to inspect any one or more of them if they were not in the possession of the Tribunal to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.
- (5) A person must not refuse to comply with a requirement made by the Tribunal under subsection (1), (2) or (3).

Penalty: 30 penalty units.

- (6) A person must not fail to comply with a requirement made by the Tribunal under subsection (1), (2) or (3).

Penalty: 30 penalty units.

- (7) Subsection (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) Subsections (5) and (6) do not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8), see subsection 13.3(3) of the *Criminal Code*.

26 Operation and implementation of a decision that is subject to a complaint

- (1) Subject to this section, making a complaint under section 14 to the Tribunal concerning a decision of a trustee does not affect the operation of the decision, or, if an insurer or other decision-maker is joined as a party to the complaint, of a decision of the insurer or other decision-maker, or prevent the taking of action to implement any such decision.
- (1A) Subject to this section, making a complaint under section 15B to the Tribunal concerning a decision of an insurer under an annuity policy does not affect the operation of the decision of the insurer or prevent the taking of action to implement any such decision.
- (1AA) Subject to this section, making a complaint under section 15CA about a decision of a superannuation provider to set out an amount in a statement given to the Commissioner of Taxation does not prevent the Commissioner from taking any action on the basis of the amount set out in the statement.
- (1B) Subject to this section, making a complaint under section 15F to the Tribunal concerning a decision of an RSA provider in relation to an RSA does not affect the operation of the decision of the RSA provider or, if an insurer or other decision-maker is joined as a party to the complaint, of a decision of the insurer or other decision-maker, or prevent the taking of action to implement any such decision.
- (1C) Subject to this section, making a complaint under section 15J to the Tribunal concerning a decision of an insurer in relation to a contract of insurance entered in connection with an RSA does not affect the operation of the decision of the insurer or, if an RSA

Section 26

provider or other decision-maker is joined as a party to the complaint, of a decision of the RSA provider or other decision-maker, or prevent the taking of action to implement any such decision.

- (2) The Tribunal may, on a request being made by a person making a complaint under section 14, if the Tribunal thinks that it is desirable to do so after taking into account the interest of any persons who may be affected by the request, make such order or orders staying or otherwise affecting the operation or implementation of the whole or part of the decision of the trustee concerned, or, if appropriate, of an insurer or other decision-maker whose decision is relevant to the subject matter of the complaint.
- (2A) The Tribunal may, on a request being made by a person making a complaint under section 15B concerning a decision of an insurer under an annuity policy, if it thinks it is desirable to do so after taking into account the interests of any persons who may be affected by the request, make such order or orders staying or otherwise affecting the operation or implementation of the whole or part of a decision of the insurer.
- (2AA) The Tribunal may, on a request being made by a person making a complaint under section 15CA about a decision of a superannuation provider to set out an amount, in a statement given to the Commissioner of Taxation, as an amount of surchargeable contributions, if it thinks it is desirable to do so after taking into account the interests of any person who may be affected by the request, make an order preventing the Commissioner from taking any action on the basis of the amount set out in the statement.
- (2B) The Tribunal may, on a request being made by a person making a complaint under section 15F concerning a decision of an RSA provider in relation to an RSA, if it thinks it is desirable to do so after taking into account the interests of any persons who may be affected by the request, make an order or orders staying or otherwise affecting the operation or implementation of the whole or part of a decision of the RSA provider or, if appropriate, of an insurer or other decision-maker whose decision is relevant to the subject matter of the complaint.
- (2C) The Tribunal may, on a request being made by a person making a complaint under section 15J concerning a decision of an insurer in

relation to a contract of insurance entered in connection with an RSA, if it thinks it is desirable to do so after taking into account the interests of any persons who may be affected by the request, make an order or orders staying or otherwise affecting the operation or implementation of the whole or part of a decision of the insurer, or if appropriate, of an RSA provider or other decision-maker whose decision is relevant to the subject matter of the complaint.

- (3) If an order is in force under subsection (2), (2A), (2AA), (2B) or (2C) (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal may, on a request being made by a party to the complaint make an order varying or revoking the first-mentioned order.
- (4) The Tribunal must not:
 - (a) make an order under subsection (2), (2A), (2AA), (2B) or (2C) unless the relevant decision-maker has been given a reasonable opportunity to make a submission to the Tribunal in relation to the matter; or
 - (b) make an order varying or revoking an order in force under subsection (2), (2A), (2AA), (2B) or (2C) (including an order that has previously been varied on one or more occasions under subsection (3)) unless:
 - (i) the complainant; and
 - (ii) the decision-maker concerned; and
 - (iii) if the order under subsection (2), (2A), (2AA), (2B) or (2C) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the last-mentioned order or orders;have been given a reasonable opportunity to make submissions to the Tribunal in relation to the matter.
- (5) An order that is in force under subsection (2), (2A), (2AA), (2B) or (2C) (including an order that has previously been varied on one or more occasions under subsection (3)):
 - (a) is subject to such conditions as are specified in the order; and
 - (b) has effect until:
 - (i) if a period for the operation of the order is specified in the order—the end of that period or, if the complaint is determined by the Tribunal before the end of that

Section 26

- period, the determination of the Tribunal in relation to the complaint comes into operation; or
- (ii) if no period is so specified—the determination of the Tribunal in relation to the complaint comes into operation.

Part 5—Conciliation of complaints

27 Inquiries by Tribunal

If:

- (a) a complaint has been made to the Tribunal; and
- (b) the complaint has not been withdrawn; and
- (c) the Tribunal is satisfied that the Tribunal can deal with the complaint under this Act;

the Tribunal must inquire into the complaint and try to settle it by conciliation.

28 Tribunal may require attendance at conciliation conferences

- (1) The purpose of this section is to help the Tribunal to settle a complaint in accordance with section 27.
- (2) The Tribunal may, if it thinks it desirable to do so after considering any documents given to it, by notice in writing given to:
 - (a) each party to the complaint; and
 - (b) any other person:
 - (i) who, in the Tribunal's opinion, is likely to be able to provide information relevant to the settlement of the complaint; or
 - (ii) whose presence at the conference would, in the Tribunal's opinion, be likely to be conducive to settling the complaint;require the party or other person to attend a conciliation conference.
- (3) The notice must also fix the date, time and place for the conference.
- (4) If the complainant fails to attend the conference, the Tribunal may deal with the complaint as if it had been withdrawn by the complainant under section 21.

Section 29

- (5) A person, other than the complainant, commits an offence if he or she does not attend a conference when required to do so under this section.

Penalty: 30 penalty units or imprisonment for 6 months.

- (6) If a party attending a conference is not proficient in English, the Tribunal may recommend that communication with the party at the conference proceed through an interpreter.
- (7) The Tribunal is to formulate in writing, and make available to the public in any way that it thinks appropriate, guidelines indicating the kinds of circumstances in which it would ordinarily require persons to attend a conciliation conference.

29 Conferences may be conducted by telephone or other means of communication

The Tribunal may determine that a conciliation conference is to be conducted by:

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

30 Statements at conference to be privileged

- (1) At a review meeting in relation to the complaint, unless the parties otherwise agree, evidence must not be given and statements must not be made about any word spoken or act done at a conciliation conference if the word or act related to a question to be determined by the Tribunal.

31 Tribunal to implement settlements

- (1) If:
- (a) a conciliation conference is held; and
 - (b) at or after the conference, the parties agree as to the terms of a settlement of the complaint that would be acceptable to the parties; and
 - (c) the terms of the agreement are put in writing signed by or for the parties and lodged with the Tribunal;

the Tribunal must treat the complaint as withdrawn under section 21.

- (2) The Tribunal may give details of a settlement to the Regulator that it thinks may require investigation by the Regulator.

Part 6—Review of decisions or conduct complained of

Division 1—Preliminary procedures

32 Arrangements for review meetings

- (1) If the Tribunal has tried to settle a complaint by conciliation under Part 5 but has not been successful, the Tribunal must fix the date, time and place for a review meeting.
- (2) The Tribunal must write to the parties inviting written submissions by the date specified in the notice.
- (3) The date specified for the meeting must be such as to allow a reasonable period for the parties to make written submissions.

Division 2—How the Tribunal informs itself about the decision or conduct under review

33 Submissions to Tribunal

A party to the review meeting may make written submissions to the Tribunal for the purposes of the review meeting.

34 Tribunal meetings

- (1) Subject to subsection (2), the Tribunal must conduct a review meeting without oral submissions from the parties.
- (2) The Tribunal may, if it thinks necessary, make an order allowing the parties to make oral submissions to the Tribunal at the review meeting.
- (3) If the Tribunal makes an order under subsection (2), the Tribunal must give the parties written notice of the date, time and place fixed for making the oral submissions.
- (4) If a party or the party's representative has advised the Tribunal that the party does not intend to make oral submissions in accordance with an order made under subsection (2), the Tribunal may conduct the review meeting without oral submissions from the party.
- (5) If a party or the party's representative does not attend the review meeting at the time fixed for the meeting, the Tribunal may conduct the review meeting without oral submissions from the party or the party's representative.
- (6) If a party attending the review meeting is not proficient in English, the Tribunal may direct the use of an interpreter.

35 Tribunal may allow telephone and other submissions

The Tribunal may determine that oral submissions to the Tribunal by a party or the party's representative may be made by:

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

Division 3—The review meeting

36 Meeting procedure

The Tribunal, in reviewing a decision or conduct:

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) is to act as speedily as proper consideration of the review allows, having regard to:
 - (i) the objectives laid down by section 11; and
 - (ii) if the complaint relates to a fund—the interests of all the members of the fund; and
- (c) may inform itself of any matter relevant to the review in any way it thinks appropriate.

37 Tribunal powers—complaints under section 14

- (1) For the purpose of reviewing a decision of the trustee of a fund that is the subject of a complaint under section 14:
 - (a) the Tribunal has all the powers, obligations and discretions that are conferred on the trustee; and
 - (b) subject to subsection (6), must make a determination in accordance with subsection (3).
- (2) If an insurer or other decision-maker has been joined as a party to a complaint under section 14:
 - (a) the Tribunal must, when reviewing the trustee's decision, also review any decision of the insurer or other decision-maker that is relevant to the complaint; and
 - (b) for that purpose, has all the powers, obligations and discretions that are conferred on the insurer or other decision-maker; and
 - (c) subject to subsection (6), must make a determination in accordance with subsection (3).
- (3) On reviewing the decision of a trustee, insurer or other decision-maker that is the subject of, or relevant to, a complaint under section 14, the Tribunal must make a determination in writing:

- (a) affirming the decision; or
 - (b) remitting the matter to which the decision relates to the trustee, insurer or other decision-maker for reconsideration in accordance with the directions of the Tribunal; or
 - (c) varying the decision; or
 - (d) setting aside the decision and substituting a decision for the decision so set aside.
- (4) The Tribunal may only exercise its determination-making power under subsection (3) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness, or both, that the Tribunal has determined to exist in relation to the trustee's decision that is the subject of the complaint no longer exists.
- (5) The Tribunal must not do anything under subsection (3) that would be contrary to law, to the governing rules of the fund concerned and, if a contract of insurance between an insurer and trustee is involved, to the terms of the contract.
- (6) The Tribunal must affirm a decision referred to under subsection (3) if it is satisfied that the decision, in its operation in relation to:
 - (a) the complainant; and
 - (b) so far as concerns a complaint regarding the payment of a death benefit—any person (other than the complainant, a trustee, insurer or decision-maker) who:
 - (i) has become a party to the complaint; and
 - (ii) has an interest in the death benefit or claims to be, or to be entitled to benefits through, a person having an interest in the death benefit;was fair and reasonable in the circumstances.

37A Tribunal powers—complaints under section 14A

- (1) For the purpose of reviewing the decision of a trustee that is the subject of a complaint under section 14A:
 - (a) the Tribunal has all the powers, obligations and discretions that are conferred on the trustee; and

Section 37A

- (b) subject to subsection (7), must make a determination in relation to the trustee's decision in accordance with subsection (2).
- (2) On reviewing the decision of the trustee that is the subject of a complaint under section 14A, the Tribunal must make a determination in writing:
 - (a) affirming the decision; or
 - (b) remitting the matter to which the decision relates to the trustee for reconsideration in accordance with the Tribunal's directions; or
 - (c) varying the decision; or
 - (d) setting aside the decision and substituting a decision for the decision so set aside.
- (3) If an insurer has been joined as a party to a complaint under section 14A, the determination of the Tribunal must also, so far as concerns the life policy covering the person to whom the complaint relates, either:
 - (a) do all or any of the following:
 - (i) set aside the whole or a part of the policy in its application to the complainant;
 - (ii) vary the terms of the policy in their application to the complainant;
 - (iii) require any party to the policy to repay all money or particular money received under the policy, together with interest worked out in the manner prescribed in the regulations; or
 - (b) declare that, in all the circumstances of the case, action of a kind referred to in paragraph (a) is not appropriate.
- (4) On reviewing a decision of the trustee that is the subject of a complaint under section 14A, the Tribunal may do all or any of the following:
 - (a) cancel the complainant's membership of the fund to which the complaint relates or of any sub-plan of the fund;
 - (b) vary the governing rules of the fund in their application to the complainant;
 - (c) require one or both of the complainant and the trustee to repay all or any money received in relation to the fund

together with interest worked out in the manner prescribed in the regulations.

- (5) The Tribunal may only exercise its powers in subsections (2), (3) and (4) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness, or both, that the Tribunal has determined to exist in relation to the trustee's decision that is the subject of the complaint under section 14A no longer exists.
- (6) The Tribunal must not do anything under subsection (2) that would be contrary to law or, subject to paragraph (4)(b), to the governing rules of the fund.
- (7) The Tribunal must:
 - (a) affirm a decision mentioned in subsection (2); and
 - (b) if an insurer has been joined as a party to the complaint relating to the decision—make a declaration under paragraph (3)(b);if it is satisfied that the decision, in its operation in relation to the complainant, was fair and reasonable in all the circumstances.

37B Tribunal powers—complaints under section 15A

- (1) For the purpose of reviewing the conduct of an insurer, or of a representative of an insurer, that is the subject of a complaint under section 15A concerning the sale of an annuity policy:
 - (a) the Tribunal has all the powers, obligations and discretions that are conferred on the insurer; and
 - (b) subject to subsection (4), must make a determination in accordance with subsection (2).
- (2) On reviewing the conduct of an insurer, or of a representative of an insurer that is the subject of a complaint under section 15A, the Tribunal must make a determination in writing, so far as concerns the annuity policy to which the complaint relates, either:
 - (a) doing all or any of the following:
 - (i) setting aside the whole or a part of the policy in its application to the complainant;
 - (ii) varying the terms of the policy in their application to the complainant;

Section 37C

- (iii) requiring any party to the policy to repay all money or particular money received under the policy together with interest worked out in a manner prescribed in the regulations; or
 - (b) declaring that, in all the circumstances of the case, action of a kind referred to in paragraph (a) is not appropriate.
- (3) The Tribunal may only exercise its determination-making power under subsection (2) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness, or both, that the Tribunal has determined to exist in relation to the conduct of the insurer, or of a representative of the insurer that is the subject of the complaint no longer exists.
- (4) The Tribunal must not make a determination under subsection (2) to take action of a kind referred to in paragraph (2)(a) in respect of a complaint under section 15A concerning the conduct of an insurer or of a representative of an insurer, if the Tribunal is of the view that the conduct of the insurer, or of the insurer's representative, was fair and reasonable in all the circumstances.

37C Tribunal powers—complaints under section 15B

- (1) For the purpose of reviewing the decision of an insurer under an annuity policy where that decision is the subject of a complaint under section 15B:
 - (a) the Tribunal has all of the powers, obligations and discretions that are conferred on the insurer; and
 - (b) subject to subsection (5), must make a determination in accordance with subsection (2).
- (2) On reviewing a decision of an insurer under an annuity policy that is subject to a complaint under section 15B, the Tribunal must make a determination in writing:
 - (a) affirming the decision; or
 - (b) remitting the matter to which the decision relates to the insurer for reconsideration in accordance with the directions of the Tribunal; or
 - (c) varying the decision; or
 - (d) setting aside the decision and substituting a decision for the decision so set aside.

- (3) The Tribunal may only exercise its determination-making power under subsection (2) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness, or both, that the Tribunal has determined to exist in relation to the conduct of the insurer, or of a representative of the insurer, that is the subject of the complaint no longer exists.
- (4) The Tribunal must not do anything under subsection (2) that would be contrary to law or to the provisions of the annuity policy.
- (5) The Tribunal must affirm a decision referred to in subsection (2) if it is satisfied that the decision, in its operation in relation to:
 - (a) the complainant; and
 - (b) so far as concerns a complaint regarding the payment of a death benefit—any person (other than the complainant, insurer or a trustee) who:
 - (i) has become a party to the complaint; and
 - (ii) has an interest in the death benefit or claims to be, or to be entitled to benefits through, a person having an interest in the death benefit;was fair and reasonable in all the circumstances.

37CA Tribunal powers: complaint under section 15CA

- (1) For the purpose of reviewing a decision of a superannuation provider that is the subject of a complaint under section 15CA:
 - (a) the Tribunal has all the powers, obligations and discretions that are conferred on the superannuation provider; and
 - (b) subject to subsection (4), must make a determination in accordance with subsection (2).
- (2) On reviewing the decision, the Tribunal must make a determination in writing:
 - (a) affirming the decision; or
 - (b) remitting the matter to which the decision relates to the superannuation provider for reconsideration in accordance with the Tribunal's directions; or
 - (c) varying the decision; or
 - (d) setting aside the decision and substituting a decision for the decision so set aside.

Section 37D

- (3) The Tribunal may only exercise its determination-making power under subsection (2) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness, or both, that the Tribunal has determined to exist in relation to the superannuation provider's decision to which the complaint relates no longer exists.
- (4) The Tribunal must not do anything under subsection (2) that would be contrary to law.
- (5) The Tribunal must affirm a decision referred to in subsection (2) if it is satisfied that the decision, in its operation in relation to the complainant, was fair and reasonable in all the circumstances.

37D Tribunal powers—complaints under section 15E

- (1) For the purpose of reviewing the conduct of an RSA provider, or of a representative of an RSA provider, that is the subject of a complaint under section 15E concerning the opening of an RSA:
 - (a) the Tribunal has all the powers, obligations and discretions that are conferred on the RSA provider; and
 - (b) subject to subsection (4), must make a determination in accordance with subsection (3).
- (2) If an insurer has been joined as a party to a complaint under section 15E:
 - (a) the Tribunal must, when reviewing the RSA provider's conduct, also review any conduct of the insurer that is relevant to the complaint; and
 - (b) for that purpose, has all the powers, obligations and discretions that are conferred on the insurer; and
 - (c) must make a determination in accordance with subsection (5).
- (3) On reviewing the conduct of an RSA provider, or a representative of an RSA provider, that is the subject of a complaint under section 15E, the Tribunal must make a determination in writing, so far as concerns the RSA to which the complaint relates, either:
 - (a) doing all or any of the following:
 - (i) setting aside the whole or a part of the terms and conditions of the RSA in their application to the complainant;

- (ii) varying the terms and conditions of the RSA in their application to the complainant;
 - (iii) requiring any party to the RSA to repay all money or particular money received under the RSA;
 - (iv) requiring any party to the RSA to pay any additional interest, worked out in a manner prescribed in the regulations; or
 - (b) declaring that, in all the circumstances of the case, action of a kind referred to in paragraph (a) is not appropriate.
- (4) The Tribunal must not make a determination under subsection (3) to take action of a kind referred to in paragraph (3)(a) in respect of a complaint under section 15E concerning the conduct of an RSA provider, or of a representative of an RSA provider, if the Tribunal is of the view that the conduct of the RSA provider, or of the representative, was fair and reasonable in all the circumstances.
- (5) On reviewing the conduct of an insurer, or a representative of an insurer, that has been joined as a party to a complaint under section 15E, the Tribunal must make a determination in writing, so far as concerns the contract of insurance to which the complaint relates, either:
- (a) doing all or any of the following:
 - (i) setting aside the whole or a part of the terms and conditions of the contract of insurance in their application to the complainant;
 - (ii) varying the terms and conditions of the contract of insurance in their application to the complainant;
 - (iii) requiring any party to the contract of insurance to repay all money or particular money received under the contract;
 - (iv) requiring any party to the contract of insurance to pay any additional interest, worked out in a manner prescribed in the regulations; or
 - (b) declaring that, in all the circumstances of the case, action of a kind referred to in paragraph (a) is not appropriate.
- (6) The Tribunal may only exercise its determination-making power under paragraph (3)(a) or (5)(a) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness or both, that the Tribunal has

Section 37E

determined to exist in relation to the conduct that is the subject of the complaint, no longer exists.

37E Tribunal powers—complaints under section 15F

- (1) For the purpose of reviewing the decision of an RSA provider in relation to an RSA where that decision is the subject of a complaint under section 15F:
 - (a) the Tribunal has all of the powers, obligations and discretions that are conferred on the RSA provider; and
 - (b) subject to subsection (6), must make a determination in accordance with subsection (3).
- (2) If an insurer or other person has been joined as a party to a complaint under section 15F:
 - (a) the Tribunal must, when reviewing the RSA provider's decision, also review any decision of the insurer or other person that is relevant to the complaint; and
 - (b) for that purpose, has all the powers, obligations and discretions that are conferred on the insurer or other person; and
 - (c) subject to subsection (6), must make a determination in accordance with subsection (3).
- (3) On reviewing a decision of an RSA provider, insurer or other person that is the subject of, or relevant to, a complaint under section 15F, the Tribunal must make a determination in writing:
 - (a) affirming the decision; or
 - (b) remitting the matter to which the decision relates to the RSA provider, insurer or other person for reconsideration in accordance with the directions of the Tribunal; or
 - (c) varying the decision; or
 - (d) setting aside the decision and substituting a decision for the decision so set aside.
- (4) The Tribunal may only exercise its determination-making power under subsection (3) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness or both, that the Tribunal has determined to exist in relation to the RSA provider's decision that is the subject of the complaint, no longer exists.

- (5) The Tribunal must not do anything under subsection (3) that would be contrary to law or to the terms and conditions of the RSA or the contract of insurance.
- (6) The Tribunal must affirm a decision referred to in subsection (3) if it satisfied that the decision, in its operation in relation to:
 - (a) the complainant; and
 - (b) so far as concerns a complaint regarding a payment of a death benefit—any person (other than the complainant or RSA provider) who:
 - (i) has become party to the complaint; and
 - (ii) has an interest in the death benefit or claims to be entitled to benefits through a person having an interest in the death benefit;was fair and reasonable in all the circumstances.

37F Tribunal powers—complaints under section 15H

- (1) For the purpose of reviewing the conduct of an insurer, or of a representative of an insurer, that is the subject of a complaint under section 15H concerning the entry into a contract of insurance in connection with an RSA:
 - (a) the Tribunal has all the powers, obligations and discretions that are conferred on the insurer; and
 - (b) subject to subsection (4), must make a determination in accordance with subsection (3).
- (2) If an RSA provider has been joined as a party to a complaint under section 15H:
 - (a) the Tribunal must, when reviewing the insurer's conduct, also review any conduct of the RSA provider that is relevant to the complaint; and
 - (b) for that purpose, has all the powers, obligations and discretions that are conferred on the RSA provider; and
 - (c) must make a determination in accordance with subsection (5).
- (3) On reviewing the conduct of an insurer, or a representative of an insurer, that is the subject of a complaint under section 15H, the Tribunal must make a determination in writing, so far as concerns the contract of insurance to which the complaint relates, either:

Section 37F

- (a) doing all or any of the following:
 - (i) setting aside the whole or a part of the terms and conditions of the contract of insurance in their application to the complainant;
 - (ii) varying the terms and conditions of the contract of insurance in their application to the complainant;
 - (iii) requiring any party to the contract of insurance to repay all money or particular money received under the contract;
 - (iv) requiring any party to the contract of insurance to pay any additional interest, worked out in a manner prescribed in the regulations; or
 - (b) declaring that, in all the circumstances of the case, action of a kind referred to in paragraph (a) is not appropriate.
- (4) The Tribunal must not make a determination under subsection (3) to take action of a kind referred to in paragraph (3)(a) in respect of a complaint under section 15H concerning the conduct of an insurer, or of a representative of an insurer, if the Tribunal is of the view that the conduct of the insurer, or of the representative, was fair and reasonable in all the circumstances.
- (5) On reviewing the conduct of an RSA provider, or a representative of an RSA provider, that is joined as a party to a complaint under section 15H, the Tribunal must make a determination in writing, so far as concerns the RSA to which the complaint relates, either:
- (a) doing all or any of the following:
 - (i) setting aside the whole or a part of the terms and conditions of the RSA in their application to the complainant;
 - (ii) varying the terms and conditions of the RSA in their application to the complainant;
 - (iii) requiring any party to the RSA to repay all money or particular money received under the RSA;
 - (iv) requiring any party to the RSA to pay any additional interest, worked out in a manner prescribed in the regulations; or
 - (b) declaring that, in all the circumstances of the case, action of a kind referred to in paragraph (a) is not appropriate.

- (6) The Tribunal may only exercise its determination-making power under paragraph (3)(a) or (5)(a) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness or both, that the Tribunal has determined to exist in relation to the conduct that is the subject of the complaint, no longer exists.

37G Tribunal powers—complaints under section 15J

- (1) For the purpose of reviewing the decision of an insurer in relation to a contract of insurance entered in connection with an RSA where that decision is the subject of a complaint under section 15J:
 - (a) the Tribunal has all of the powers, obligations and discretions that are conferred on the insurer; and
 - (b) subject to subsection (6), must make a determination in accordance with subsection (3).
- (2) If an RSA provider or another person has been joined as a party to a complaint under section 15J:
 - (a) the Tribunal must, when reviewing the insurer's decision, also review any decision of the RSA provider or other person that is relevant to the complaint; and
 - (b) for that purpose, has all the powers, obligations and discretions that are conferred on the RSA provider or other person; and
 - (c) subject to subsection (6), must make a determination in accordance with subsection (3).
- (3) On reviewing a decision of an insurer, RSA provider or other person that is the subject of, or relevant to, a complaint under section 15J, the Tribunal must make a determination in writing:
 - (a) affirming the decision; or
 - (b) remitting the matter to which the decision relates to the insurer, RSA provider or other person for reconsideration in accordance with the directions of the Tribunal; or
 - (c) varying the decision; or
 - (d) setting aside the decision and substituting a decision for the decision so set aside.
- (4) The Tribunal may only exercise its determination-making power under subsection (3) for the purpose of placing the complainant as

Section 38

nearly as practicable in such a position that the unfairness, unreasonableness or both, that the Tribunal has determined to exist in relation to the insurer's decision that is the subject of the complaint, no longer exists.

- (5) The Tribunal must not do anything under subsection (3) that would be contrary to law or to the terms and conditions of the contract of insurance or the RSA.
- (6) The Tribunal must affirm a decision referred to in subsection (3) if it is satisfied that the decision, in its operation in relation to:
 - (a) the complainant; and
 - (b) so far as concerns a complaint regarding a payment of a death benefit—any person (other than the complainant or insurer) who:
 - (i) has become party to the complaint; and
 - (ii) has an interest in the death benefit or claims to be entitled to benefits through a person having an interest in the death benefit;was fair and reasonable in all the circumstances.

38 Meeting to be private

- (1) A review meeting of the Tribunal is to be in private.
- (2) The Tribunal may give directions as to the persons who may be present at any review meeting.
- (3) The Tribunal may give directions prohibiting or restricting the disclosure of documents or information relating to a review meeting.
- (4) In giving directions, the Tribunal must have regard to the wishes of the parties in relation to the complaint and the need to protect their privacy.
- (5) Directions may be made in writing or orally.
- (6) A person must not refuse or fail to comply with a direction of the Tribunal.

Penalty: 30 penalty units.

39 Reference of questions of law to Federal Court

- (1) The Tribunal may, on its own initiative or on the request of a party, refer a question of law arising in relation to a complaint to the Federal Court for decision.
- (2) The Federal Court has jurisdiction to hear and determine a question of law referred to it under this section.
- (3) If a question of law in relation to a complaint has been so referred to the Federal Court, the Tribunal must not:
 - (a) make a determination to which the question is relevant while the reference is pending; or
 - (b) do anything that is inconsistent with the opinion of the Federal Court on the question.

40 Tribunal to give reasons

The Tribunal must give written reasons for its determination.

41 Operation of determination

- (1) Subject to subsection (2), a determination of the Tribunal comes into operation immediately upon the making of the determination.
- (2) The Tribunal may specify in a determination that the determination is not to come into operation until a later date specified in the determination and, if a later date is so specified, the determination comes into operation on that date.
- (3) A decision of a trustee, insurer, RSA provider or other decision-maker as varied by the Tribunal, or a decision made by the Tribunal in substitution for a decision of a trustee, insurer, RSA provider or other decision-maker:
 - (a) is, for all purposes (other than the making of a complaint about the decision) taken to be a decision of a trustee, insurer, RSA provider or other decision-maker concerned; and
 - (b) on the coming into operation of the determination by the Tribunal, unless the Tribunal otherwise orders, has effect, and is taken to have had effect, on and from the day on which the original decision has or had effect.

Division 4—Other procedural matters

42 Adjournment of review meetings

The Tribunal may adjourn a review meeting from time to time.

43 Evidence of determination

Without prejudice to any other method available by law for the proof of determinations of the Tribunal, a document purporting to be a copy of such a determination, and purporting to be certified by the Tribunal Chairperson or Deputy Chairperson to be a true copy of the determination, is, in any proceeding, *prima facie* evidence of the determination.

Division 5—Notification of determination and appeal rights

44 Notification of determination

- (1) If the Tribunal determines a review, the Tribunal must cause a copy of its determination and of the reasons for the determination, to be given to each party to the complaint.
- (2) If the determination was made as a result of a section 14 complaint, the Tribunal may direct the trustee to inform:
 - (a) if the Tribunal's determination was in relation to a particular member or a particular former member of a superannuation fund—all or any of the other members or all or any of the former members of the superannuation fund; or
 - (b) if the Tribunal's determination was in relation to a particular beneficiary or a particular former beneficiary of an approved deposit fund—all or any of the other beneficiaries or all or any of the former beneficiaries of the approved deposit fund;of the Tribunal's determination.
- (2A) If the determination was made as a result of a section 15E or 15F complaint, the Tribunal may direct the RSA provider to inform, if the Tribunal's determination was in relation to a particular holder of an RSA—all or any of the other holders of RSAs provided by the RSA provider of the Tribunal's determination.
- (2B) If the determination was made as a result of a section 15H or 15J complaint, the Tribunal may direct the insurer to inform, if the Tribunal's determination was in relation to a particular holder of an RSA—all or any of the other parties to contracts of insurance entered into with the insurer in connection with the provision of RSAs of the Tribunal's determination.
- (3) A trustee, RSA provider or insurer must not intentionally or recklessly refuse or fail to comply with a direction of the Tribunal.

Penalty: 30 penalty units.

Section 45

45 Notification of appeal rights

If the Tribunal determines a review, the Tribunal must give each party a written notice that includes a statement to the effect that, if the party is dissatisfied with the decision of the Tribunal on a question of law, the party may appeal to the Federal Court under section 46.

Part 7—Appeals

46 Appeals to Federal Court of Australia from determinations of the Tribunal

- (1) A party may appeal to the Federal Court, on a question of law, from the determination of the Tribunal.
- (2) An appeal by a person under subsection (1) is to be instituted:
 - (a) not later than the 28th day after the day on which a copy of the determination of the Tribunal is given to the person or within such further period as the Federal Court (whether before or after the end of that day) allows; and
 - (b) in accordance with rules of court made under the *Federal Court of Australia Act 1976*.
- (3) The Federal Court is to hear and determine the appeal and may make such order as it thinks appropriate.
- (4) Without limiting by implication the generality of subsection (3), the orders that may be made by the Federal Court on an appeal include an order affirming or setting aside the determination of the Tribunal and an order remitting the matter to be determined again by the Tribunal in accordance with the directions of the Court.
- (5) The Federal Court must not make an order awarding costs against a complainant if the complainant does not defend an appeal instituted by another party to the complaint.

47 Operation and implementation of a determination that is subject to appeal

- (1) Subject to this section, the institution of an appeal to the Federal Court from a determination of the Tribunal does not affect the operation of the determination or prevent the taking of action to implement the determination.
- (2) If:
 - (a) an appeal is brought to the Federal Court from a determination of the Tribunal; and

Section 47

(b) the Tribunal's determination was made as a result of a complaint under section 14;
the Court or a Judge of the Court may make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:

(c) the determination of the Tribunal or a part of that determination;

(d) the whole or part of the trustee's decision that is complained of or of a decision of an insurer or other decision-maker who is a party to the complaint;

as the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

(2A) If:

(a) an appeal is brought to the Federal Court from a determination of the Tribunal; and

(b) the Tribunal's determination was made as a result of a complaint under section 14A, 15A, 15E or 15H;

the Court or a Judge of the Court may make such order or orders staying or otherwise affecting the operation or implementation of the determination as the Court or Judge thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

(2B) If:

(a) an appeal is brought to the Federal Court from a determination of the Tribunal; and

(b) the Tribunal's determination was made as a result of a complaint under section 15B, 15F or 15J;

the Court or a Judge of the Court may make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:

(c) the determination of the Tribunal or a part of that determination;

(d) the whole or part of the insurer's or RSA provider's decision that is complained of;

as the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

- (2C) If:
- (a) an appeal is brought to the Federal Court from a determination of the Tribunal; and
 - (b) the Tribunal's determination was made as a result of a complaint under section 15CA;
- the Court or a Judge of the Court may make such order or orders preventing the Commissioner of Taxation from taking any action on the basis of an amount:
- (c) set out in the statement referred to in that section as affected by the Tribunal's determination; or
 - (d) set out in the statement referred to in that section under the decision that is complained of;
- as the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.
- (3) If an order is in force under subsection (2), (2A), (2B) or (2C) (including an order that has previously been varied on one or more occasions under this subsection), the Court or a Judge of the Court may make an order varying or revoking the first-mentioned order.
- (4) An order in force under subsection (2), (2A), (2B) or (2C) (including an order that has previously been varied on one or more occasions under subsection (3)):
- (a) is subject to such conditions as are specified in the order; and
 - (b) has effect until:
 - (i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
 - (ii) if no period is so specified—the giving of a decision on the appeal.

48 Sending of documents to, and disclosure of documents by, the Federal Court

If an appeal is instituted in the Federal Court:

- (a) the Tribunal must send to the Court all documents that were before the Tribunal in connection with the consideration of the matter to which the appeal relates; and

Section 48

- (b) at the conclusion of the proceeding before the Court in relation to the appeal, the Court must return the documents to the Tribunal.

Part 8—Administrative provisions

Division 1—Administrative provisions relating to Tribunal Chairperson and Deputy Chairperson

49 Terms and conditions of appointment

- (1) The Tribunal Chairperson and Deputy Chairperson hold office, subject to this Division, for such periods, not exceeding 5 years, as are specified in their respective instruments of appointment.
- (2) The Tribunal Chairperson and Deputy Chairperson hold office on such terms and conditions (if any) in respect of matters not provided for by this Division as are determined by the Governor-General.

50 Remuneration and allowances

- (1) Subject to the *Remuneration Tribunal Act 1973*, the Tribunal Chairperson and Deputy Chairperson are respectively to be paid:
 - (a) such remuneration as is determined by the Remuneration Tribunal; and
 - (b) such allowances as are prescribed.
- (2) If there is no determination in force, the Tribunal Chairperson and Deputy Chairperson are respectively to be paid such remuneration as is prescribed.

51 Leave of absence

- (1) The Tribunal Chairperson and Deputy Chairperson have respectively such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Tribunal Chairperson or Deputy Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

52 Resignation

The Tribunal Chairperson or Deputy Chairperson may resign from office by delivering to the Governor-General a signed notice of resignation.

53 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Tribunal Chairperson or Deputy Chairperson for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Tribunal Chairperson or Deputy Chairperson if that person:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) becomes:
 - (i) a director or employee of a constitutional corporation of a kind referred to in paragraph 8(2)(b); or
 - (ii) a trustee of a fund; or
 - (iii) a director or employee of an RSA provider; or
 - (iv) a director or employee of an insurer; or
 - (d) engages in paid employment outside the duties of the office without the approval of the Minister; or
 - (e) contravenes subsection 10(1) without reasonable excuse.

54 Acting Tribunal Chairperson or Deputy Chairperson

- (1) The Minister may appoint a person who is eligible to be appointed as Tribunal Chairperson to act as Tribunal Chairperson:
 - (a) during a vacancy in the office of Tribunal Chairperson (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Tribunal Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Tribunal Chairperson.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(1A) The Minister may appoint a person who is eligible to be appointed as Tribunal Deputy Chairperson to act as Tribunal Deputy Chairperson:

- (a) during a vacancy in the office of Tribunal Deputy Chairperson (whether or not an appointment has previously been made to the office); or
- (b) during any period or during all periods when the Tribunal Deputy Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Tribunal Deputy Chairperson.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2) The Minister may appoint a person who is eligible to be appointed as Tribunal Chairperson to act as Tribunal Chairperson in relation to a particular complaint where the Tribunal Chairperson has given a notice under subsection 10(1).

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2A) The Minister may appoint a person who is eligible to be appointed as Tribunal Deputy Chairperson to act as Tribunal Deputy Chairperson in relation to a particular complaint if the Tribunal Deputy Chairperson has given a notice under subsection 10(1).

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Division 2—Administrative provisions relating to other Tribunal members

55 Terms and conditions of appointment

- (1) A Tribunal member, other than the Tribunal Chairperson or Deputy Chairperson, holds office, subject to this Division, for such period, not exceeding 5 years, as is specified in the instrument of appointment.
- (2) A Tribunal member, other than the Tribunal Chairperson or Deputy Chairperson, holds office on such terms and conditions (if any) in respect of matters not provided for by this Division as are determined by the Minister.

56 Remuneration and allowances

- (1) Each Tribunal member, other than the Tribunal Chairperson or Deputy Chairperson, who together with either or both of those persons, constitutes the Tribunal in relation to a complaint, is to be paid, in respect of performing functions in respect of that complaint, such fees and allowances as are determined by the Remuneration Tribunal.
- (2) If no determination is in force, the Tribunal members are to be paid such fees and allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

57 Resignation

A Tribunal member, other than the Tribunal Chairperson or Deputy Chairperson, may resign from office by delivering to the Minister a signed notice of resignation.

58 Termination of appointment

- (1) The Minister may terminate the appointment of a Tribunal member, other than the Tribunal Chairperson or Deputy Chairperson, for misbehaviour or physical or mental incapacity.

- (2) The Minister must terminate the appointment of a Tribunal member, other than the Tribunal Chairperson or Deputy Chairperson, if the member:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) contravenes subsection 10(3) without reasonable excuse.

Part 9—Miscellaneous

59 Certain powers of the Tribunal to be exercised by Tribunal Chairperson or staff member

- (1) Despite subsection 9(1), the powers of the Tribunal under paragraphs 12(1)(a) and 18(1)(c), (d) or (e), (2)(c) or (d) and (3)(c), (3A)(c), (3A)(d), (3A)(e), (3B)(c), (3B)(d) or (3B)(e), section 17A, subsections 23(2) and (3), 25(1), (2) and (3) and 31(1) and sections 13, 16, 17, 19, 22, 22A, 24, 24AA, 24A, 27, 28, 29 and 32 are to be exercised on behalf of the Tribunal by the Tribunal Chairperson or Deputy Chairperson or by a member of the staff of the Tribunal who is made available to the Tribunal under subsection 62(2) and is authorised by the Tribunal Chairperson to exercise the powers concerned.
- (2) Despite subsection 9(1):
 - (a) the powers of the Tribunal under subsections 26(2), (2A), (2AA), (2B), (2C), (3) and (4) and 31(2) and paragraph 48(a) are to be exercised on behalf of the Tribunal by the Tribunal Chairperson; and
 - (b) the powers of the Tribunal under subsections 34(2), (3) and (6), 38(2) and (3) and 44(1) and sections 22A, 35 and 45 are to be exercised on behalf of the Tribunal by the Tribunal Chairperson or Deputy Chairperson.

60 Legal professional privilege

- (1) This section applies if:
 - (a) under section 25, a person requires a lawyer:
 - (i) to give information; or
 - (ii) to produce a document; and
 - (b) giving the information would involve disclosing, or the document contains, as the case may be, a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.
- (2) The lawyer is entitled to refuse to comply with the requirement unless:

- (a) if the person to whom, or by or on behalf of whom, the communication was made is a body corporate that is under administration or is being wound up—the administrator or liquidator of the body; or
 - (b) otherwise—the person to whom, or by or on behalf of whom, the communication was made;
- consents to the lawyer complying with the requirement.
- (3) If the lawyer so refuses, he or she must, as soon as practicable, give to the Tribunal a written notice setting out:
 - (a) if the lawyer knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and
 - (b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and
 - (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to identify the document, or the part of the document, containing the communication.
- (4) A person must not intentionally or recklessly refuse or fail to comply with subsection (3).

Penalty: 30 penalty units.

61 Liability for damages

Neither a Tribunal member nor a member of the staff of ASIC who is made available to the Tribunal under subsection 62(2) is liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power, conferred by this Act.

62 Staff and facilities

- (1) The staff required to assist the Tribunal in the performance of its functions are to be persons engaged under the *Public Service Act 1999*.
- (2) ASIC must make available to the Tribunal such staff and facilities as are necessary or desirable to enable the Tribunal to perform its functions.

Section 63

63 Secrecy

- (1) This section applies to a person who is or has been:
 - (a) a Tribunal member; or
 - (b) a member of the staff of ASIC who is made available to the Tribunal under subsection 62(2).
- (2) Subject to subsection (3), and to sections 64, 64A and 65, the person must not directly or indirectly:
 - (a) make a record of, or disclose to any person or court, any information acquired by the first-mentioned person in connection with a complaint made to the Tribunal under this Act or the review under this Act of a decision or conduct in respect of which such a complaint was made; or
 - (b) produce to any person or court a document so acquired.

Penalty: 10 penalty units.

- (2A) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2B) Subsection (2) does not apply to the extent that the person makes the record of the information, discloses the information, or produces the document for the purposes of this Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2B), see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (2) does not prohibit the Tribunal from disclosing information or producing a document:
 - (a) to ASIC; or
 - (aa) to APRA if requested by APRA to do so; or
 - (b) to a particular party to the complaint if the person who provided the information or document to the Tribunal consents in writing to the disclosure or production.
- (3A) Subsection (2) does not prohibit the Tribunal, or a member of the ASIC's staff made available under subsection 62(2), from disclosing, subject to subsection (3B):
 - (a) a complaint or a part of a complaint; or
 - (b) any information or material relating to that complaint or part of a complaint;

to a complaint-handling body to which the Tribunal has decided to refer the complaint, or that part of the complaint, under subsection 22A(1).

- (3B) A member of the Tribunal, or a member of ASIC's staff made available under subsection 62(2), must not disclose to a particular complaint-handling body:

- (a) a complaint or part of a complaint; or
- (b) information or material relating to a complaint or part of a complaint;

that reveals personal information relating to an individual unless the individual has consented in writing to the disclosure.

Penalty: Imprisonment for 2 years.

- (4) Subsection (2) does not prevent the Tribunal from disclosing information in a way that does not enable the identification of the parties to a complaint.
- (5) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to, and ***production*** has a corresponding meaning.

64 Reference by Tribunal Chairperson of contraventions of the law or of the governing rules of a fund to APRA or ASIC or both

If, in connection with a complaint made to the Tribunal under this Act, a Tribunal member becomes aware that a contravention of any law or of the governing rules of a fund may have occurred, the Tribunal member:

- (a) if he or she is not the Tribunal Chairperson—must give particulars of the contravention to the Tribunal Chairperson; or
- (b) if he or she is the Tribunal Chairperson:
 - (i) in the case of a contravention of a law that is administered by APRA—must give particulars of the contravention to APRA and, if he or she thinks it

Section 64A

appropriate to do so, may also give particulars of the contravention to ASIC; or

- (ii) in any other case—must give particulars of the contravention to ASIC and, if he or she thinks it appropriate to do so, may also give particulars of the contravention to APRA.

64A Reference by Tribunal Chairperson of breaches of terms and conditions to APRA or ASIC or both

If, in connection with a complaint made to the Tribunal under this Act, a Tribunal member becomes aware of a breach in the terms and conditions relating to an annuity policy, a life policy or an RSA, the Tribunal member:

- (a) if he or she is not the Tribunal Chairperson—must give particulars of the breach to the Tribunal Chairperson; or
- (b) if he or she is the Tribunal Chairperson—must do one of the following:
 - (i) give particulars of the breach to APRA;
 - (ii) give particulars of the breach to ASIC;
 - (iii) give particulars of the breach to both APRA and ASIC; as he or she thinks appropriate.

65 Failure of a party to a complaint to comply with a determination or direction by the Tribunal

- (1) If a Tribunal member becomes aware that a party to a complaint has refused or failed to give effect to a determination made by the Tribunal, he or she must, as soon as practicable:
 - (a) if he or she is a Tribunal member other than the Tribunal Chairperson—give particulars of the refusal or failure to the Tribunal Chairperson; or
 - (b) if he or she is the Tribunal Chairperson—do one of the following:
 - (i) give particulars of the refusal or failure to APRA;
 - (ii) give particulars of the refusal or failure to ASIC;
 - (iii) give particulars of the refusal or failure to both APRA and ASIC; as he or she thinks appropriate.

- (2) If the Tribunal remits a matter to a party to a complaint for reconsideration in accordance with the directions of the Tribunal, the party must reconsider the matter in accordance with those directions as soon as practicable.

66 Conduct by directors, servants and agents

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

Section 67

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (6) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (8) A reference in this section to an offence against this Act includes a reference to an offence created by section 6 of the *Crimes Act 1914*, or section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to this Act.

67 Annual report

- (1) The Tribunal Chairperson must, on behalf of the Tribunal, within 3 months after each year ending on 30 June, give to the Minister a report on the working of this Act during that year.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

68 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Superannuation (Resolution of Complaints) Act 1993*****Note 1**

The *Superannuation (Resolution of Complaints) Act 1993* as shown in this compilation comprises Act No. 80, 1993 amended as indicated in the Tables below.

Part 7A ceased to have effect on 13 September 1999 (*see* s. 48F and *Gazette* 1999, No. S423) and was repealed by Act No. 116, 2003 on 28 November 2003.

All relevant information pertaining to application, saving or transitional provisions prior to 29 June 1998 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|-----------------|----------------|---|--|
| <i>Superannuation (Resolution of Complaints) Act 1993</i> | 80, 1993 | 30 Nov 1993 | 1 July 1994 | |
| <i>Superannuation Industry (Supervision) Legislation Amendment Act 1994</i> | 140, 1994 | 28 Nov 1994 | Div. 1 (s. 49) and Div. 2 (ss. 50, 51) of Part 3 (ss. 49–51): (a) Div. 5 (ss. 12, 13), Div. 12 (ss. 28–31) and Div. 15 (ss. 36–39) of Part 2: 1 Dec 1993 Div. 7 (ss. 17, 18), Div. 8 (ss. 19, 20), Div. 11 (ss. 26, 27) and Div. 17 (ss. 42, 43) of Part 2: 26 Dec 1994 Remainder: Royal Assent | Ss. 50 and 52 |

Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|-----------------|----------------|--|---|
| <i>Superannuation Industry (Supervision) Legislation Amendment Act 1995</i> | 144, 1995 | 12 Dec 1995 | Schedule 5 (items 1–7, 10–12, 25–71, 73–78, 95(a)–(c), 96(a), (b), 97–102): Royal Assent (b) Schedule 5 (items 8, 9, 13–24, 72, 79–94, 95(d), 96(c)): 19 Apr 1996 (see <i>Gazette</i> 1996, No. GN15) (b) | Sch. 5 (items 70, 76) |
| as amended by | | | | |
| <i>Statute Law Revision Act 2002</i> | 63, 2002 | 3 July 2002 | Schedule 2 (item 30): (ba) | — |
| <i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i> | 62, 1997 | 28 May 1997 | 2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202) | — |
| <i>Superannuation Contributions Tax (Consequential Amendments) Act 1997</i> | 71, 1997 | 5 June 1997 | 5 June 1997 | — |
| <i>Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997</i> | 191, 1997 | 7 Dec 1997 | Schedule 7: Royal Assent (c) | — |
| <i>Financial Sector Reform (Amendments and Transitional Provisions) Act 1998</i> | 54, 1998 | 29 June 1998 | Schedule 17: (Parts 1, 2): 1 July 1998 (d) Schedule 17 (Part 3): (d) | Sch. 19 (item 36) [see Table A] S. 2(17) (am. by 24, 2000, Sch. 11 [item 2]) |
| as amended by | | | | |
| <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000</i> | 24, 2000 | 3 Apr 2000 | Schedule 11 (items 2, 3): (da) | — |
| <i>Superannuation Legislation Amendment (Resolution of Complaints) Act 1998</i> | 118, 1998 | 11 Dec 1998 | 11 Dec 1998 | — |
| <i>Superannuation Legislation Amendment Act 1999</i> | 38, 1999 | 31 May 1999 | Schedule 3: Royal Assent (e) | — |
| <i>Superannuation Legislation Amendment Act (No. 3) 1999</i> | 121, 1999 | 8 Oct 1999 | Schedule 2 (items 38–40, 42(3)): Royal Assent (f) | Sch. 2 (item 42(3)) [see Table A] |

Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|-----------------|----------------|--|--|
| <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i> | 146, 1999 | 11 Nov 1999 | Schedule 1 (items 908, 909): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (g) | — |
| <i>Financial Sector Legislation Amendment Act (No. 1) 2000</i> | 160, 2000 | 21 Dec 2000 | Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001 | — |
| <i>Family Law Legislation Amendment (Superannuation) Act 2001</i> | 61, 2001 | 28 June 2001 | 28 Dec 2002 | S. 4 S. 5 (as am. by 86, 2002, Sch. 5 [item 10]) [see Table A] |
| as amended by | | | | |
| <i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</i> | 86, 2002 | 11 Oct 2002 | Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44) | — |
| <i>Financial Services Reform (Consequential Provisions) Act 2001</i> | 123, 2001 | 27 Sept 2001 | Schedule 1 (item 346): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (h) | — |
| <i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i> | 146, 2001 | 1 Oct 2001 | S. 4 and Schedule 1: 15 Dec 2001 (i) | S. 4 [see Table A] |
| <i>Statute Law Revision Act 2002</i> | 63, 2002 | 3 July 2002 | Schedule 1 (items 31, 32): (j) | — |
| <i>Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003</i> | 111, 2003 | 12 Nov 2003 | 12 Nov 2003 | Sch. 1 (item 25) [see Table A] |
| <i>Financial Sector Legislation Amendment Act (No. 1) 2003</i> | 116, 2003 | 27 Nov 2003 | Schedule 7: 28 Nov 2003 | — |
| <i>Statute Law Revision Act 2007</i> | 8, 2007 | 15 Mar 2007 | Schedule 4 (item 31): Royal Assent | — |
| <i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i> | 9, 2007 | 15 Mar 2007 | Schedule 4 (items 9, 10, 16): Royal Assent | Sch. 4 (item 16) [see Table A] |

Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|--|-----------------|----------------|---|--|
| <i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010</i> | 4, 2010 | 19 Feb 2010 | Schedule 10 (item 29): 20 Feb 2010 | — |
| <i>Statute Law Revision Act 2011</i> | 5, 2011 | 22 Mar 2011 | Schedule 5 (items 207, 208): 19 April 2011 | — |
| <i>Acts Interpretation Amendment Act 2011</i> | 46, 2011 | 27 June 2011 | Schedule 2 (items 1096–1098) and Schedule 3 (items 10, 11): 27 Dec 2011 | Sch. 3 (items 10, 11) [see Table A] |

Act Notes

- (a) Subsection 2(4) of the *Superannuation Industry (Supervision) Legislation Amendment Act 1994* provides as follows:
- (4) Divisions 1 and 2 of Part 3 commence, or are taken to have commenced, as the case requires, immediately after the commencement of the *Superannuation (Resolution of Complaints) Act 1993*.
- The *Superannuation (Resolution of Complaints) Act 1993* came into operation on 1 July 1994.
- (b) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 5 (items 1–102) only of the *Superannuation Industry (Supervision) Legislation Amendment Act 1995*, subsections 2(1) and (4) of which provide as follows:
- (1) Sections 1, 2 and 3, subsection 4(1), section 5, Schedules 1 and 2, items 1, 6, 10, 22 to 27, 30 to 33, 71 to 75 and 86 of Schedule 4 and items 1 to 7, 10 to 12, 25 to 71, 73 to 78, paragraphs (a), (b) and (c) of item 95, paragraphs (a) and (b) of item 96 and items 97 to 102 of Schedule 5 commence on the day on which this Act receives the Royal Assent.
- (4) The remaining items of Schedule 5 commence on a day to be fixed by Proclamation.
- (ba) Subsection 2(1) (item 59) of the *Statute Law Revision Act 2002* provides as follows:

Commencement information

| Column 1 | Column 2 | Column 3 |
|-------------------------|--|------------------|
| Provision(s) | Commencement | Date/Details |
| 59. Schedule 2, item 30 | Immediately after the time specified in the <i>Superannuation Industry (Supervision) Legislation Amendment Act 1995</i> for the commencement of paragraph 102(b) of Schedule 5 to that Act | 12 December 1995 |

- (c) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 7 only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 17 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsections 2(2)(o) and (17) of which provide as follows:
- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (o) Schedule 17;
- (17) Part 3 of Schedule 17 has effect only if the *Australian Prudential Regulation Authority Act 1998* commences before the commencement of Schedule 3 to the *Superannuation Legislation Amendment Act 1999* and, if so, Part 3 commences immediately after the commencement of Schedule 3 to the *Superannuation Legislation Amendment Act 1999*.
- Schedule 3 commenced on 31 May 1999.
- (da) The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* was amended by Schedule 11 (items 2 and 3) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsection 2(9) of which provides as follows:
- (9) Items 1, 2 and 3 of Schedule 11 are taken to have commenced immediately after the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received the Royal Assent.
- The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received Royal Assent on 29 June 1998.

Act Notes

- (e) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 3 only of the *Superannuation Legislation Amendment Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 2 (items 38–40) only of the *Superannuation Legislation Amendment Act (No. 3) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (g) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 1 (items 908 and 909) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (h) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 1 (item 346) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provide as follows:
- (1) In this section:
- FSR commencement** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.
- (i) The *Superannuation (Resolution of Complaints) Act 1993* was amended by Schedule 1 only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.
- (j) Subsection 2(1) (items 25 and 26) of the *Statute Law Revision Act 2002* provides as follows:

| Provision(s) | Commencement | Date/Details |
|-------------------------|--|------------------|
| 25. Schedule 1, item 31 | Immediately after subitem 95(b) of Schedule 5 to the <i>Superannuation Industry (Supervision) Legislation Amendment Act 1995</i> commenced | 12 December 1995 |
| 26. Schedule 1, item 32 | Immediately after subitem 95(c) of Schedule 5 to the <i>Superannuation Industry (Supervision) Legislation Amendment Act 1995</i> commenced | 12 December 1995 |

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|-------------------------|---|
| Title | am. No. 62, 1997 |
| Part 1 | |
| S. 3 | am. No. 140, 1994; No. 144, 1995; Nos. 62, 71 and 191, 1997; Nos. 54 and 118, 1998; Nos. 61 and 123, 2001; No. 116, 2003; No. 5, 2011 |
| Note 2 to s. 3(2) | rs. No. 54, 1998 am. No. 121, 1999 |
| Heading to s. 4 | am. No. 62, 1997 |
| S. 4 | rs. No. 144, 1995 am. No. 62, 1997 |
| S. 4AA | ad. No. 146, 2001 |
| S. 4A | ad. No. 140, 1994 |
| S. 4B | ad. No. 61, 2001 am. No. 46, 2011 |
| S. 5 | am. No. 121, 1999 |
| Note to s. 5 | am. No. 121, 1999 |
| S. 5A | ad. No. 144, 1995 |
| Part 2 | |
| S. 7 | am. No. 144, 1995; No. 160, 2000; No. 116, 2003 |
| S. 7A | ad. No. 38, 1999 |
| S. 8 | am. No. 144, 1995; No. 62, 1997; No. 5, 2011 |
| S. 9 | am. No. 144, 1995; No. 62, 1997; No. 38, 1999 |
| S. 10 | am. No. 144, 1995; No. 62, 1997 |
| Part 3 | |
| S. 11 | am. No. 144, 1995; No. 118, 1998; No. 116, 2003 |
| S. 12 | am. No. 140, 1994; No. 144, 1995; No. 118, 1998; No. 116, 2003 |
| S. 13 | am. No. 62, 1997; No. 118, 1998; No. 116, 2003 |
| Part 4 | |
| S. 14AA | ad. No. 118, 1998 |
| Heading to s. 14 | am. No. 144, 1995 |
| S. 14 | am. No. 144, 1995; No. 38, 1999; No. 116, 2003 |
| S. 14A | ad. No. 144, 1995 |
| Heading to s. 15 | am. No. 144, 1995 |
| S. 15 | am. No. 144, 1995 |
| Ss. 15A–15C | ad. No. 144, 1995 |
| S. 15CA | ad. No. 71, 1997 am. No. 191, 1997; No. 111, 2003; No. 9, 2007 |
| S. 15D | ad. No. 144, 1995 |
| Ss. 15E–15H | ad. No. 62, 1997 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|----------------------------------|---|
| Ss. 15J, 15K..... | ad. No. 62, 1997 |
| S. 17 | rs. No. 144, 1995 am. Nos. 62 and 71, 1997 |
| S. 17A | ad. No. 144, 1995 am. Nos. 62 and 71, 1997 |
| S. 18 | am. No. 144, 1995; Nos. 62 and 71, 1997 |
| Heading to s. 19 | am. No. 144, 1995 |
| S. 19 | am. No. 144, 1995; Nos. 62 and 71, 1997 |
| S. 22 | am. No. 144, 1995; No. 62, 1997 |
| S. 22A | ad. No. 144, 1995 |
| S. 23 | rs. No. 144, 1995 |
| S. 24 | rs. No. 144, 1995 am. No. 62, 1997 |
| S. 24AA..... | ad. No. 71, 1997 am. No. 146, 2001 |
| S. 24A | ad. No. 144, 1995 am. Nos. 62 and 71, 1997; No. 38, 1999 |
| S. 25 | am. No. 144, 1995; No. 71, 1997; No. 146, 2001 |
| S. 26 | am. No. 144, 1995; Nos. 62 and 71, 1997 |
| Part 5 | |
| S. 28 | rs. No. 116, 2003 |
| S. 30 | am. No. 118, 1998; No. 116, 2003 |
| S. 31 | am. No. 54, 1998 |
| Part 6 | |
| Heading to Part 6 | am. No. 144, 1995 |
| Division 1 | |
| S. 32 | am. No. 116, 2003 |
| Division 2 | |
| Heading to Div. 2 of Part 6..... | am. No. 144, 1995 |
| Division 3 | |
| S. 36 | am. No. 144, 1995; No. 62, 1997 |
| S. 37 | rs. No. 144, 1995 |
| S. 37A | ad. No. 144, 1995 am. No. 38, 1999 |
| S. 37B | ad. No. 144, 1995 |
| S. 37C..... | ad. No. 144, 1995 am. No. 62, 1997 |
| S. 37CA..... | ad. No. 71, 1997 |
| Ss. 37D–37G..... | ad. No. 62, 1997 |
| S. 38 | am. No. 146, 2001 |
| S. 41 | am. No. 144, 1995; No. 62, 1997 |
| Division 4 | |
| S. 43 | am. No. 144, 1995 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|-----------------------------------|---|
| Division 5 | |
| S. 44 | am. No. 144, 1995; No. 62, 1997 |
| Part 7 | |
| S. 47 | am. No. 144, 1995; Nos. 62 and 71, 1997 |
| Part 7A | ad. No. 118, 1998 rep. No. 116, 2003 |
| Ss. 48A–48F | ad. No. 118, 1998 rep. No. 116, 2003 |
| Part 8 | |
| Division 1 | |
| Heading to Div. 1 of Part 8 | am. No. 144, 1995 |
| Ss. 49, 50 | am. No. 144, 1995 |
| S. 51 | am. No. 144, 1995; No. 146, 1999 |
| S. 52 | am. No. 144, 1995 |
| S. 53 | am. No. 144, 1995; No. 62, 1997 |
| Heading to s. 54 | am. No. 144, 1995 |
| S. 54 | am. No. 144, 1995; No. 46, 2011 |
| Note to s. 54(1) | ad. No. 46, 2011 |
| Note to s. 54(1A) | ad. No. 46, 2011 |
| Note to s. 54(2) | ad. No. 46, 2011 |
| Note to s. 54(2A) | ad. No. 46, 2011 |
| Division 2 | |
| Ss. 55–58 | am. No. 144, 1995 |
| Part 9 | |
| S. 59 | am. No. 144, 1995; Nos. 62 and 71, 1997; No. 118, 1998; No. 63, 2002; No. 116, 2003 |
| S. 60 | am. No. 144, 1995; No. 8, 2007 |
| S. 61 | am. No. 54, 1998 |
| S. 62 | am. No. 54, 1998; No. 146, 1999 |
| S. 63 | am. No. 144, 1995; Nos. 54 and 118, 1998; No. 38, 1999; No. 146, 2001; No. 116, 2003 |
| Heading to s. 64 | am. No. 54, 1998 rs. No. 116, 2003 |
| S. 64 | am. No. 54, 1998 rs. No. 116, 2003 |
| Heading to s. 64A | am. No. 54, 1998 rs. No. 116, 2003 |
| S. 64A | ad. No. 62, 1997 am. No. 54, 1998 rs. No. 116, 2003 |
| Heading to s. 65 | am. No. 144, 1995 |
| S. 65 | am. No. 144, 1995 (as am. by No. 63, 2002); No. 54, 1998; No. 116, 2003 |
| S. 66 | am. No. 146, 2001; No. 4, 2010 |

Table A

Table A

Application, saving or transitional provisions

Financial Sector Reform (Amendments and Transitional Provisions) Act 1998
(No. 54, 1998)

Schedule 19

36 Instruments made and things done before the APRA commencement by the Commissioner under Acts now administered by ASIC

- (1) An instrument made or issued by the Commissioner under a provision of:
 - (a) the *Insurance (Agents and Brokers) Act 1984*; or
 - (b) the *Insurance Contracts Act 1984*; or
 - (c) the *Superannuation (Resolution of Complaints) Act 1993*;and in force immediately before the APRA commencement, continues to have effect after the APRA commencement as if it were made or issued, on the APRA commencement, by ASIC under the Act under which it was made or issued.
- (2) If an instrument was, when made, to have effect only for a limited period, it has effect only for so much of the period as has not already expired before the APRA commencement.
- (3) Anything done before the APRA commencement in relation to the Commissioner (for example, lodging an application with the Commissioner) under a provision of:
 - (a) the *Insurance (Agents and Brokers) Act 1984*; or
 - (b) the *Insurance Contracts Act 1984*; or
 - (c) the *Superannuation (Resolution of Complaints) Act 1993*;has effect after the APRA commencement as if it had been done in relation to ASIC.

Table A

Superannuation Legislation Amendment Act (No. 3) 1999 (No. 121, 1999)

Schedule 2

42 Application provisions

- (3) Until 1 April 2000, the *Superannuation (Resolution of Complaints) Act 1993* continues to apply to a fund that was an excluded fund immediately before the later of:
- (a) 1 July 1999; and
 - (b) the day on which this Act received the Royal Assent;
- as if the amendments of that Act made by this Schedule had not happened.

Family Law Legislation Amendment (Superannuation) Act 2001
(No. 61, 2001)

4 Definitions

In this Act, unless the contrary intention appears:

Family Law Act means the *Family Law Act 1975*.

marriage includes a void marriage.

section 79 order means an order (other than an interim order) made under section 79 of the Family Law Act.

section 87 agreement means an agreement approved under section 87 of the Family Law Act.

startup time means the time when Schedule 1 commences.

superannuation amendments means the amendments made by Schedule 1.

5 Application of superannuation amendments

- (1) Subject to this section, the superannuation amendments apply to all marriages, including those that were dissolved before the startup time.

Table A

- (2) Subject to subsections (3) and (4), the superannuation amendments do not apply to a marriage if a section 79 order, or a section 87 agreement, is in force in relation to the marriage at the startup time.
- (3) If a section 79 order that is in force at the startup time is later set aside under paragraph 79A(1)(a), (b), (c), (d) or (e) of the Family Law Act, then the superannuation amendments apply to the marriage from the time the order is set aside.
- (4) If an approval of a section 87 agreement that is in force at the startup time is later revoked on a ground specified in paragraph 87(8)(a), (c) or (d) of the Family Law Act, then the superannuation amendments apply to the marriage from the time the approval is revoked.
- (5) Part VIIIB of the Family Law Act does not apply in relation to a financial agreement that was made before the startup time.

Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001 (No. 146, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
 - (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.
-

Table A

*Superannuation (Government Co-contribution for Low Income Earners)
(Consequential Amendments) Act 2003* (No. 111, 2003)

Schedule 1

25 Application of amendments

The amendments made by Part 1 of this Schedule apply in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2003.

Tax Laws Amendment (Simplified Superannuation) Act 2007 (No. 9, 2007)

Schedule 4

16 Application

The amendments made by this Schedule apply in relation to things that are done and events that occur on or after 1 July 2007.

Note: For transitional rules about provisions related to the application of Division 292 of the *Income Tax Assessment Act 1997* in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.