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A new dawn for superannuation complaints – Australian Financial Complaints Authority (AFCA)

AFCA is the new authority for dealing with complaints about Financial Firms and applies to complaints submitted from 1 November 2018.

The scheme is governed by Scheme Rules, Operational Guidelines to the Rules and a Transitional Superannuation Guide. These are extensive documents and this article is only intended to provide a very brief introduction to them.

In short AFCA is an external complaints resolution scheme established to resolve complaints about Financial Firms. A Financial Firm is defined in the Rules, but an entity must be an AFCA Member for the scheme to apply. It is free of charge for Complainants and there is no requirement for a Complainant to have legal or other paid representation. There is no obligation to use the scheme to lodge complaints hence preserving the rights of court proceedings and other available dispute resolution forums.

To lodge a complaint, one must be an Eligible Person – in brief this includes individuals, including when one acts as a trustee of legal personal representative, the corporate trustee of a SMSF and others as defined.

Complaints that AFCA considers are set out in A.4 of the Scheme Rules – it must arise from a customer relationship or other circumstance that brings it within AFCA's jurisdiction, there must be a sufficient connection with Australia, time limits apply and where involving Traditional Trustee Company Services other persons who are affected must consent to the complaint being brought.

Procedures are set out in A.5 through to A.14 about the approach taken, restrictions on commencing legal proceedings if AFCA is dealing with a matter, the resolution approach, how information about the complaint is gathered, information sharing, the making of submissions, confidentiality, assessments and the decision making approach.

Complaints

Complaints are broken down into:

- Superannuation Complaints,
- Traditional Trustee Company Complaints and,
- Other Complaints.

The rules set out which ones apply to the relevant type of complaint – some are unique and only apply to say a superannuation complaint, while others are common to all complaints. It is therefore important to understand which rules apply to which complaint.

Superannuation Complaints – Section B – Requirements

It is noted that superannuation providers are required by law to become members of AFCA so that complaints against them can be resolved under the AFCA rules.

There is a defined list of parties who are eligible to submit a complaint (B.1.1) and the complaint must arise from or relate to certain defined matters (B.2.1).

In relation to the payment of a death benefit a person must have "an interest in the benefit" to be eligible to apply. A person

has an interest if the person is within the class of people eligible to receive all or part of the death benefit under the governing rules of the fund or annuity policy. This will cover those classed as “dependants” under the Trust deed which would normally include all SIS dependants under the legislation.

The Requirements are set out in full in the Operational Guidelines to the Rules and any super fund trustee, potential beneficiary of a super fund death benefit will need to have a clear understanding of the guidelines to know what is required.

The Requirements refer to (amongst other items):

- What is a Superannuation Complaint?
- Who can submit a Complaint?
- Time limits for complaints.

Transitional Superannuation Guideline

This part is designed to assist superannuation providers and consumers with complaints about super providers and how AFCA operates its superannuation jurisdiction and particularly during the period when the Superannuation Complaints Tribunal is also dealing with pre 1 November matters.

The guideline extends to 124 pages, so no attempt has been made to try and summarise it here.

Relevance

If your client is aggrieved by any Financial Service (as defined) then they should consider whether their issue is one which can be referred to AFCA.