

Special powers will be key to AFCA's success

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OPINION | Death may be a certainty, but nothing is certain about death benefit claims – as many a fund trustee will attest.

Disputes about death benefits are among the most common complaints brought against superannuation funds. This has long been the case but in recent years these disputes have become much more complex.

In the financial year ended June 30, 2016, the Superannuation Complaints Tribunal (SCT) received 429 written complaints relating to death benefits.

As noted in the SCT's annual report, the rising number of disputes over who is entitled to receive a death benefit payment reflects the changing nature of modern households and relationships. As more people are living in de facto relationships or as part of less-conventional family structures, it is often more difficult to determine who qualifies as having been in a 'dependent' or 'interdependent' relationship with the deceased.

Disputes over death benefits often arise when adult children object because the life insurance payout has gone to their parent's new de-facto partner following a divorce. Many complainants also wrongly assume superannuation death benefits form part of a deceased's estate.

The growing complexity of death benefit disputes, and the increasingly significant sums of money involved, make it critically important that super fund members continue to have access to a dispute resolution body with the appropriate powers to ensure a fair outcome for all parties.

New one-stop shop

In the recent federal budget, it was announced that the SCT would be rolled into a one-stop shop for financial industry disputes. This single body – to be known as the Australian Financial Complaints Authority (AFCA) – will also replace the Financial Ombudsman Service and the Credit and Investments Ombudsman.

The AFCA is proposed to begin operating from July 1, 2018, with the SCT continuing to operate until July 1, 2020.

A range of industry bodies, including the Australian Institute of Superannuation Trustees, have previously voiced concerns that rolling the SCT into a larger body could cause important consumer protection

measures to be diluted or even lost.

So, following the budget, it was pleasing to see more detail in the draft legislation on the new external dispute resolution framework that addresses many of our concerns.

While AFCA will have an ombudsman-like structure, it will also have some stronger tribunal-like powers in relation to superannuation complaints.

One of these powers is the ability to involve other parties who might have an interest in the complaint, including those who might have an interest in a death benefit claim. Another is the power to obtain information and documents about a super complaint, which ensures access to all relevant information in determinations.

The AFCA will also retain the power to require attendance at a conciliation conference. But, most importantly for both super fund members and funds, the right to appeal against the new body's decision has been retained.

This is critically important. In a compulsory superannuation system where matters such as death benefit disputes can be incredibly complex and involve large sums of money, we think it is only fair that all participants are given the opportunity to challenge decisions.

What to watch

Even with small 't' tribunal powers, the shift to an ombudsman model has the potential to change the way claims are processed.

With a tribunal, the claims process is entrenched in legislation. In an ombudsman structure, some guidelines – such as the time limit for lodging a claim – can be changed without any public debate.

Another development is the proposal for the Australian Securities and Investments Commission to have stronger powers to ensure the new body complies with legislative requirements.

Additionally, funds will be required to report their internal dispute resolution to ASIC, which will have the power to determine the form and content of this reporting.

Add in the fact that the AFCA board will be responsible for determining funding and how much of this funding is allocated to super complaints, and there are still plenty of unknowns and potential issues for our industry and other stakeholders to consider.

The transition to the new scheme will need to be carefully managed to ensure a positive outcome for both funds and members.

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