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**LIFE AND SUPERANNUATION CASES**

# AFCA's jurisdiction in the spotlight

## *MetLife Insurance Limited v Australian Financial Complaints Authority Limited* (FCAFC 2022)

Link to decision

The case of *MetLife Insurance Limited v Australian Financial Complaints Authority Limited* (FCAFC 2022) (the **Judgment**) is a judgment of the Full Court of the FCA (the **Full Court**) on appeal. The Judgment is instructive on the proper statutory interpretation of s1053(1) of the *Corporations Act 2001* (Cth) (the **Act**) concerning the jurisdiction of AFCA to deal with superannuation complaints.

## Brief Facts

The claimant, a former NSW Police Officer, claimed to be totally and permanently disabled within the meaning of two policies of life insurance between the insurer and the trustee of the superannuation fund to which he was a member.

The claimant lodged claims under both policies which were declined in response to which he lodged two complaints – one in 2017 and the other in November 2018 (the **2018 Complaint**). The 2018 Complaint was lodged after the commencement of the AFCA Scheme and is the only complaint relevant for the purposes of the Judgment. Relevantly, the 2018 Complaint was drafted against the insurer and not the trustee.

AFCA did not have jurisdiction to hear the 2018 Complaint in its superannuation jurisdiction as it was made out of time for the purposes of a superannuation complaint. Regardless, in February 2019 AFCA determined that the complaint nevertheless fell within AFCA's general jurisdiction.

In April 2019, AFCA determined the 2018 Complaint adversely to the insurer (the **AFCA Decision**).

### *Procedural History*

In May 2019, the insurer commenced proceedings in the FCA seeking a declaration that the AFCA Decision was not binding on it.

The FCA disagreed and held that AFCA had jurisdiction to hear the 2018 Complaint in its general jurisdiction.

The effect of the decision was that certain complaints in substance relating to superannuation such as the 2018 Complaint may be brought in either AFCA's superannuation jurisdiction or its general jurisdiction.

### *The Issues*

The insurer appealed the decision of the FCA to the Full Federal Court on two grounds, one of which was not pressed at trial.

The insurer alleged that the primary judge erred in finding that, on the proper construction of s1053(1) of the Act, AFCA had the authority to determine the 2018 Complaint under the AFCA Scheme and ought to have found it had no such authority.

AFCA supported the reasoning of the primary judge. Additionally, it alleged that, should the insurer be correct in its interpretation of s1053(1) of the Act, the primary judge erred in finding that the 2018 Complaint was a '*complaint relating to superannuation*' and ought to have found that it was a complaint about a decision made by an insurer.

## Judgment

It is helpful to reproduce the heading to s1053(1) of the Act below:

> *(1) A person may, subject to section 1056, make a complaint relating to superannuation under the AFCA scheme only if the complaint is a complaint:*
>
> *(a) – j) {10 categories are set out in paragraphs a) – j) }*

The type of complaints listed in subsections (a) – (j) include a complaint that a trustee of a regulated superannuation fund has made a decision relating to a member that is unfair or unreasonable.

### *The proper construction of s1053(1) of the Act*

The Full Court overturned the decision at first instance on this issue. It held that s1053(1) circumscribed the kinds of complaints '*relating to superannuation*' that can be dealt with under the AFCA Scheme to only those kinds of complaints listed in subsections (a) – (j), with the effect that all other complaints '*relating to superannuation*' are not to be dealt with by AFCA whether in its superannuation jurisdiction or general jurisdiction.

This contrasts with the Primary Judge's construction which is to the effect that complaints which relate to superannuation may be dealt with under the AFCA scheme in its superannuation jurisdiction if it satisfies (a) – (j), *or* in its general jurisdiction if it does not.

The reasons of the Full Court are summarised below.

***Textual Meaning***

The Full Court held that in the grammatical and ordinary meaning of the words of s1053(1) are such that a complaint that relates to superannuation can only be made under the AFCA scheme if it satisfies one of subsections (a) – (j).

The Court could not find any textual support for the construction of the Primary Judge which construction was propounded by AFCA. The Court observed that such construction would, contrary to accepted rules of statutory interpretation, deprive the words '*only if*' in s1053(1) of any meaning or effect.

***Statutory Context***

The Court observed that s1053 is important to the provisions of the Act which provide the mechanism for the resolution of superannuation complaints, by prescribing what matters are and are not superannuation complaints.

The Court did not accept AFCA's submissions that the construction propounded by the insurer (which was followed by the Court) would result in a gap in AFCA's coverage of complaints by which matters which could be heard under the previous schemes could not be heard under the AFCA Scheme. In this regard the Court noted that there was no practical gap as the 2018 Complaint could have been heard under s1053(1)(a) of the Act had it been made against the trustee. Any absence of coverage only arose in the current context because the 2018 Complaint was not made until after the two year limitation period for superannuation complaints under the AFCA rules.

***Extrinsic Materials***

The Court found that various extrinsic materials including the Revised Explanatory Memorandum, the Second Reading Speech, and the Ramsay Report support the textual meaning of s1053(1) above.

The Revised Explanatory Memorandum in particular states that superannuation complaints can only be made under the AFCA Scheme in circumstances identical to subsection (a) to (j).

In light of the above, the Court held that the construction of the Primary Judge would be antithetical to the intention of Parliament expressed in the materials above. Furthermore, it would enable complainants in certain cases to effectively elect to be heard under the superannuation or general jurisdictions of AFCA, creating disparate outcomes contrary to what was intended.

***Is the 2018 complaint a complaint relating to superannuation?***

The Court rejected AFCA's further submission that the 2018 Complaint was not a complaint relating to superannuation (as it was made against an insurer) and therefore could be heard in its general jurisdiction. The Court concurred with the insurer's submissions and found that the 2018 Complaint was a '*complaint relating to superannuation*'.

The Court reasoned that the way in which the 2018 Complaint was framed, including the fact that it was made directly against the insurer, did not change the character of the complaint as a complaint relating to superannuation. The insurance benefit was a superannuation benefit.

## Implications

- The decision confirms that there are limits to AFCA's jurisdiction to determine complaints relating to superannuation.
- The Court found AFCA has no jurisdiction to determine a complaint relating to superannuation that falls outside the ambit of s1053 of the Act.
- Complainants will no longer be able to choose between a complaint against a superannuation trustee or the insurer if the complaint is one relating to superannuation. Instead the complaint must be brought jointly against the superannuation trustee and the insurer if AFCA is to hear it.
- If a superannuation complaint is out of time a complainant has the option to seek relief in the courts.
- Whilst courts are increasingly favoring a '*purposive*' approach to statutory interpretation, they won't ignore clear statutory wording such as '*only if*' which applied here.

**For more information, please contact**

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