

What remedies can the Tribunal provide?

This brochure is intended to provide you with information about the remedies the Tribunal can and cannot provide in resolving your complaint.

The Tribunal's powers to provide a remedy

You should consider whether the complaint is one for which the Tribunal can provide a remedy.

When the Tribunal conducts a formal review, it considers whether the decision or conduct complained about is unfair or unreasonable in its operation in relation to the complainant (the person making the complaint) in the circumstances. The Tribunal considers whether there are any adverse practical outcomes or consequences of the decision for the complainant.

The Tribunal's powers on review can only be used for the purpose of placing the complainant as nearly as practicable in a position that any unfairness and unreasonableness (in the operation of a superannuation provider's decision or conduct) no longer exists.

Also, the Tribunal is expressly prohibited from providing any remedy that would be contrary to law or the superannuation provider's Trust Deed or any relevant insurance policy. (A Trust Deed is a legal document that sets out the rules for the superannuation fund, and what the superannuation provider can and cannot do in relation to the fund).

Types of complaints that the Tribunal cannot remedy

The Tribunal cannot do anything on review contrary to the relevant Trust Deed or insurance policy. This means that the Tribunal cannot provide a remedy where the terms of the relevant Trust Deed or insurance policy required the superannuation provider to make the decision complained about.

The Tribunal cannot do anything on review that would be contrary to law. The effect of this includes that the Tribunal cannot provide a remedy that would require the superannuation provider to act contrary to other laws, like the superannuation prudential legislation or taxation legislation.

A complaint that the Tribunal is not legally empowered to remedy at review is generally withdrawn by the Tribunal.

The Tribunal at review cannot provide a remedy where there has been no adverse practical outcome or consequences of the decision for the complainant. In the course of dealing with a superannuation provider, you may experience poor customer service. While your experience with the superannuation provider may have been frustrating, the Tribunal does not have the power to provide a remedy for poor customer service, unless you can demonstrate that as a result of the service you suffered a financial loss or other practical detriment that can be alleviated.

Often, the remedy sought for a complaint about poor customer service is an apology from the superannuation provider and/or some form of compensation for the time, personal effort and upset caused by the poor service. However, complaints that are only about poor customer service and where no financial loss or other practical detriment has occurred are generally withdrawn by the Tribunal.

The Tribunal also cannot provide a remedy where the complaint is about the design of a fund. For example, some superannuation funds offer insurance to members on an 'opt-out' basis which means that the fund does not require the member's authorisation to provide insurance and deduct insurance premiums from the member's account.

You may be of the belief that insurance should be 'opt-in' rather than 'opt-out' and have an expectation that the Tribunal will be able to change the design of the insurance offerings provided by the fund. However, complaints that are only about the design of a fund are generally withdrawn by the Tribunal.

Where there appears to have been no reliance, or no financial loss or other detriment for you that the Tribunal's powers can remedy, but you are concerned that there may be a systemic issue with the fund, you may wish to contact the prudential regulator, the Australian Prudential Regulation Authority (APRA), which has offices in every state.

Showing financial loss or other detriment

No matter what your complaint is about you will need to show why the decision you are complaining about has operated unfairly or unreasonably in relation to you in the circumstances and any adverse practical outcomes or consequences of the decision for you.

If your complaint is about the lack of disclosure of information, misrepresentation and/or reliance on information provided, we will ask you to provide the following information:

what you expected would happen

what you based your expectations on

how you relied on the information

what you would have done differently had you known the correct information

quantify any financial loss

Some examples of complaints that fall within this category include:

Complaints about errors in annual member statements

Complaints about the calculation of a benefit

Complaints about a delay in rolling over a benefit, a cash payment or processing an instruction to switch investments

Also, while the Tribunal has no power to change the design of a fund, we can deal with complaints about the adequacy of the superannuation provider's disclosure about the insurance arrangements and premiums. This may include whether the amount of cover and the premiums that would be deducted from the account were disclosed and the ability to 'opt-out' of the cover was disclosed.

*For more information
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