

CASES AND TRIBUNAL DECISIONS

Group IP: Terms of deed and policy must be paramount in SCT's review

AIA Australia Ltd v Lancaster [2017] FCA 962

[Link to decision](#)

Background

On 18 August 2017 Chief Justice Allsop of the Federal Court gave judgment on an appeal against a determination of the Superannuation Complaints Tribunal (the Tribunal) about an income protection benefit under a group insurance policy.

The policy belonged to Maritime Super Pty Ltd as trustee of the Maritime Super Fund (the "Fund") and was issued by AIA Australia Ltd (the "Insurer").

Mr Lancaster commenced work as a stevedore with Patrick Stevedores in 2006. The policy commenced in March 2012 while he was a member of the Fund.

On 2 April 2012, a letter was sent to members with an "Insurance Update". It told members that;

"Under the new rules, the premiums for cover are based on occupation and the sum insured, and not on a percentage of contributions...."

If we don't have a salary recorded for you, a default cover level reflecting a salary of \$4,000 per month (which will provide a benefit of \$3,000 per month) will be used. It's important to let us know your salary so you don't end up over- or under-insured...."

The update invited members to contact the Insurer with details of their salary. Mr Lancaster did not do this.

In January 2013, Mr Lancaster suffered a disc prolapse in the course of his work, and in May 2013 he ceased work and lodged a claim for income protection benefits under the policy. The claim was accepted by the Fund and the Insurer.

Up until 3 September 2012 Mr Lancaster was being paid an annual salary of around \$45,000, but due to a change in the category of his employment it increased to approximately \$97,000. This salary increase was not notified to the Insurer or the Fund by Mr Lancaster or his employer.

The trustee had written to Mr Lancaster on 2 July 2012 and provided him with an opportunity to update his salary details, noting that

"that in the event of a claim your Income Protection benefit will be limited to 75% of the Salary we have recorded against your account, therefore it's important you advise the Fund of your correct Salary."

Shortly after the pay rise in September 2012, Mr Lancaster was also provided with an "Annual Statement" that noted his salary was \$44,849.48 and included a reminder that he needed to keep his salary details up to date.

The policy provided that the benefit was 75% of the Insured Member's Income; or the Amount Insured. By a series of interlocking definitions the policy required that where the member's income had increased by 30% or more the member had to apply to the Insurer to increase the Amount Insured.

As Mr Lancaster had not done this the Insurer assessed the benefit using the lower salary amount and the Fund agreed.

Mr Lancaster complained to the Tribunal under section 14 of the *Superannuation (Resolution of Complaints) Act 1993* (Cth) (the "SRC Act"). The Tribunal concluded that the insurer had "correctly" calculated the benefit "on the

information available to it at the time by basing it upon the "Amount Insured".

However, the Tribunal went on to say that, as the policy required the member's income as at the date of disablement to be used as part of the formula for calculating the benefit, then it would be reasonable for the Insurer or the Fund to ask members for this information when completing the claim forms.

It consequently found that for the decision to be fair and reasonable in its operation in relation to Mr Lancaster in the circumstances within the terms of section 37(6) the Insurer should have used the higher amount.

Decision

An appeal to the Federal Court is only available under section 46(1) of the SRC Act in relation to a question of law. Chief Justice Allsop concluded that the Insurer's grounds of appeal were that the Tribunal had failed to properly construe the terms of the policy and this was a question of law that met the test in the section.

His Honour then examined the powers of the Tribunal under section 37 of the SRC Act, noting in particular that section 37(5) provides that the Tribunal cannot do anything that would be *"contrary to law, 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."*

In its determination, the Tribunal focussed much of its attention on who had the responsibility for notifying the trustee of Mr Lancaster's salary increase in September 2012.

Despite the fact he had several opportunities to do so, it was sympathetic to Mr Lancaster's situation, because a large number of members were changing their employment status at the same time and it may have been reasonable for him to assume that the employer would have notified the Fund and the Insurer of the new salaries.

In Chief Justice Allsop's judgment, this process of reasoning led the Tribunal to set the decisions of the Fund and the Insurer aside, despite acknowledging that the benefit had been calculated in accordance with the policy.

His Honour consequently went on to accept the Insurer's principal submission that, as he had found in *Retail Employees Superannuation Pty Ltd v Crocker*¹, the Tribunal had no power to set aside a decision on a basis that was inconsistent with the terms of the policy.

He repeated the observation in *Crocker* that the question as to whether a decision was unfair or unreasonable *"cannot be judged otherwise than by having regard to the conformity of the decision with the governing rules of the fund and the terms of the policy."*

His Honour consequently concluded that;

*"If the Tribunal finds that the decision of the trustee or the insurer is in conformity, with and required, by the governing rules or policy terms... it cannot other than find or be satisfied that the decision is fair and reasonable."*²

Implications

This judgment is further confirmation of a consistent line of judicial authority that a decision of the Tribunal that fails to properly interpret the trust deed or rules of a superannuation fund, or an insurance policy can be the subject of an appeal to the Federal Court as a matter of law.

It also confirms that a decision of the trustee or insurer that correctly applies them will be a fair and reasonable one in its operation to a member within the remit given to the Tribunal under section 37 of the SRC Act and cannot be set aside.

¹ [2001] FCA 1330.

² Par 33