



South Australian Superannuation Board (2019/07546)

Own initiative investigation concerning the South Australian Superannuation Board

The Ombudsman conducted an own initiative investigation following a complaint, made to the Ombudsman by the Public Trustee on behalf of one of their clients, concerning the South Australian Superannuation Board (the Board).

The investigation concerned regulations 58(12) and (14) of the *Southern State Superannuation Regulations 2009*, which respectively provide:

- that a member of a relevant superannuation fund has a time limit of two years after the termination of their employment to give written notice of a claim for Total and Permanent Disablement entitlements, and
- this two-year time limit cannot be extended under any circumstances.

In particular, the Ombudsman considered the following issues under the Ombudsman Act:

1. whether the Board, by not considering applications for Total and Permanent Disablement entitlements outside a two-year statutory limit, acted in accordance with an enactment, being Regulations 58(12) and (14) of the *Southern State Superannuation Regulations 2009*, which may be unjust or improperly discriminatory towards people with disabilities, and
2. whether the Board's communications with its members in respect of Death and Total and Permanent Disability policies and in respect of the time limit for making claims under the *Southern State Superannuation Regulations* were wrong.

The Ombudsman's view on the first issue was that, while the Board was required to act in accordance with these regulations, in doing so it acted in accordance with an enactment that was unjust or improperly discriminatory towards people with disabilities, as per section 25(1)(c) of the Ombudsman Act (as it was then). The Ombudsman noted the actions of staff to redress these issues, but also observed that the cases considered showed a small number of members for whom the regulation meant that they were not able to access all of their entitlements.

Regarding the second issue, the Ombudsman expressed some concern about how information had previously been provided to members. However, on the basis of all the information available, and in light of improvements made by the Board to its communications and accessibility, the Ombudsman was of the view that further investigation of the agency's communications with members was not necessary or justifiable at this stage, as per section 17(2)(d) of the Ombudsman Act (as it was then).

The Ombudsman made one recommendation as a consequence of his view on the first issue, recommending that the Minister, being the Treasurer, undertake a review of regulations 58(12) and (14), and consider whether the regulations be amended to give the agency a discretion to accept an application that might otherwise be out of time, where the applicant has a disability.