JUD/*2019*AATA601 -

Administrative Appeals Tribunal

DECISION AND
REASONS FOR DECISION

Steidler and Australian Prudential Regulation Authority (Taxation) [2019] AATA 601 (12 March 2019)

Division: **TAXATION AND COMMERCIAL DIVISION**

File Number: **2018/3935**

Re: **Nandor Steidler**

APPLICANT

And **Australian Prudential Regulation Authority**

RESPONDENT

File Number: **2018/4448**

Re: **Chee Steidler**

APPLICANT

And **Australian Prudential Regulation Authority**

RESPONDENT

DECISION

Tribunal: **Deputy President S A Forgie**

Date of decision: **12 March 2019**

Place: **Melbourne**

The Tribunal decides that:

1. it does not have jurisdiction to consider the applications for review of a decision by a delegate of the respondent to issue a notice of non-compliance to the Steidler Personal Superannuation Fund; and
2. dismisses the application lodged by each applicant.

[sgd].....
Deputy President S A Forgie

Catchwords
PRUDENTIAL REGULATION – JURISDICTION – application for review of decision by APRA to issue notice of non-compliance – no decision confirming or varying decision to issue notice of non-compliance made – as beneficiaries of the trust, applicants not persons "*affected*" by APRA's decision under the *Superannuation Industry (Supervision) Act 1993* – no jurisdiction to review decision of which review sought – applications dismissed

Legislation
Acts Interpretation Act 1901
Administrative Appeals Tribunal Act 1975
Australian Prudential Regulation Authority Act 1998
Corporations Act 2001
Income Tax Assessment Act 1997
Superannuation Industry (Supervision) Act 1993

Cases
Alphapharm Pty Limited v Smithkline Beecham (Australia) Pty Limited and Others (1994) 49 FCR 250; 121 ALR 373; 32 ALD 71
Botany Bay City Council v Minister for Transport [1996] FCA 1507; (1996) 66 FCR 537; 137 ALR 281; 41 ALD 84 at 556; 299
Comptroller-General of Customs v Members of the Administrative Appeals Tribunal (1994) 123 ALR 140; 32 ALD 463
Finch v Telstra Super Pty Ltd [2010] HCA 36; (2010) 242 CLR 254
Lidden v Composite Buyers Ltd (1996) 67 FCR 560; 139 ALR 549
Marrickville Council v Minister for the Environment, Sport and Territories [1996] FCA 851
O'Rourke v Darbishire [1920] AC 581
Pearson v Commissioner of Taxation (2001) 116 FCR 357
Re Control Investment Pty Ltd and Australian Broadcasting Tribunal (No 1) [1980] AATA 78; (1980) 3 ALD 74; 50 FLR 1
Re Coram (1992) 109 ALR 353
Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health [1995] FCA 1060; (1995) 56 FCR 50; 128 ALR 238; 37 ALD 357
United States Tobacco Company v Minister for Consumer Affairs and Others (1988) 20 FCR 520; 16 ALD 266; 83 ALR 79

REASONS FOR DECISION

Deputy President S A Forgie

1. On 11 August 2017, a delegate of the Australian Prudential Regulation Authority (APRA) gave a notice about complying fund status to Perpetual Superannuation Limited (PSL), as

trustee of the Steidler Personal Superannuation Fund (SPSF). The notice was given under s 40(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and stated that SPSF was a non-complying superannuation fund in relation to the years of income ending 30 June 2012, 2013, 2015. APRA gave particulars of the notice to the Commissioner of Taxation (Commissioner) under s 40(3) of the SIS Act. The consequence of being a non-complying superannuation fund was that SPSF's assessable income was taxed at the highest marginal tax rate for each income year that it remained non-complying.

2. As its trustee, PSL engaged in various negotiations with APRA and with the Australian Taxation Office (ATO) and ultimately made a request to APRA to revoke the decision to give the notice of non-compliance. APRA's decision was a reviewable decision under s 10(1) of the SIS Act. PSL acknowledged that its request was outside the 21 day time period permitted by s 344(2) of the SIS Act.[1] APRA declined to reconsider its decision to give PSL a non-compliance notice in relation to SPSF. PSL took no further action.

3. Dr Nandor Steidler and Dr Chee Steidler then sought review of APRA's decision declining to review its decision. I have decided that a request to review APRA's decision to give the non-compliance notice had not been made within the 21 day period and APRA had not extended the period. In the absence of a request, APRA had not made a decision under s 344(4) and no decision deeming the decision to be confirmed had been made under s 344(5) as no request had been made. Therefore, an application could not be made to the Tribunal for review of APRA's decision as such an application could only be made if APRA had confirmed or varied that decision under s 344(4). Furthermore, even if an application could have been made, Dr Nandor Steidler and Dr Chee Steidler were not within the category of persons who are regarded as affected by APRA's decision. That follows from the construction of s 344 and related provisions in the SIS Act with particular regard to s 344(12) and its application to ss 344 and 345.

BACKGROUND

4. On 6 November 2015, Perpetual Trustee Company Limited (PTCL) wrote to the ATO as tax agent for SPSF. On the basis of the information set out in that letter, which has not been contradicted in the other material that I have, I find that, initially, SPSF was established in Australia on 20 June 1996 as a self managed superannuation fund. On 16 November 2011, it converted to what was known as a "*Small APRA Fund*" i.e. a superannuation fund that did not meet the requirements of s 17A of the SIS Act but did have a trustee, which had

[1] Section 344(2) provides: "*The request must be made by written notice given to the Regulator within the period of 21 days after the day on which the person first receives notice of the decision, or within such further period as the Regulator allows.*"

given APRA a notice electing that the legislation applied in relation to the fund.[2] The SPSF's trustee at the time was The Trust Company (Superannuation) Limited (TTCSL), which was an Australian domiciled company. On 22 August 2014, PSL was appointed as trustee. PSL was also an Australian domiciled company.

5. When SPSF was established, it had two members, each of whom was an Australian resident for tax purposes. Both ceased being Australian residents on 9 December 2010 and have lived outside Australia ever since. Since they left, the following member non-concessional contributions were made on behalf of the two members in the following amounts and at the following times:

(1)	13 December 2011	$600,000
(2)	30 January 2013	$450,000
(3)	4 September 2014	$450,000

6. When PSL was preparing SPSF's taxation returns, it assessed SPSF's residency status in accordance with s 295-95(2) of the *Income Tax Assessment Act 1997* (ITAA97). It formed the view that SFSF had breached the superannuation fund residency rules because personal non-concessional contributions were made on behalf of non-resident active members, who were the only members of the fund. From this PSL concluded that SPSF would no longer be classified as an Australian superannuation fund even though it had been established in Australia and its central management and control was vested in an Australian company as its trustee.

7. PSL wrote to the Commissioner of Taxation (Commissioner) on 6 November 2015 to ask whether the change in complying status occurred on 13 December 2011 when the first contribution was made after the members were no longer resident in Australia or during the income year when ruled on by the Commissioner. It also asked whether there was any restitution activity that the trustee could undertake whereby the Commissioner could use any discretion he had not to rule SPSF as a non-complying superannuation fund.

8. On 8 March 2016, PSL advised APRA that it suspected that the SPSF might have breached its active member test. APRA wrote to PSL noting its request that it make a determination in respect of the compliance status of the SPSF. To enable it to consider the matter, APRA wrote a letter dated 26 May 2016 requesting PSL for confirmation that it, the trustee, had satisfied itself with certainty as to the relevant members' Australian residency status for taxation purposes. It also asked PSL for details of the manner in which it had

[2] SIS Act; ss 19(1), (2) and (4)

satisfied itself of that matter. APRA advised PSL that it would then communicate with it regarding any further action required in the matter.

9. PSL responded with the relevant information in a letter dated 2 June 2016. On receiving that, APRA decided that it was not able to make a determination until PSL and/or the members of the SPSF had sought a ruling from the ATO as to whether that superannuation fund was an Australian Superannuation Fund for the purposes of s 295-95 of ITAA97. APRA acknowledged PSL's assessment that Dr Chee Steidler and Dr Nandor Steidler were not Australian residents in any of the three years. That would suggest that the active members of the SPSF were non-resident for taxation purposes but only the ATO could authoritatively determine whether the SPSF was an Australian superannuation fund and whether its active members were Australian residents for taxation purposes.

10. PSL applied to the Commissioner for a private ruling but withdrew it. The ATO gave general guidance concluding that the total of the accrued entitlements of non-resident active members to the SPSF would exceed 50% of the total accrued entitlement of all active members. It did so in a letter to PSL dated 6 January 2017.

11. APRA followed its letter with a further letter dated 17 March 2017 advising that its preliminary conclusion on the information provided by PSL and the ATO was that the SPSF was not a complying superannuation fund in relation to the 2012, 2013 or 2015 income years. As a consequence, it proposed to give PSL a written notice stating that the SPSF was not a complying superannuation fund in those three income years. APRA invited PSL to provide further submissions or information.

12. PSL asked for an extension of time within which to make a further submission and submitted its submission on 28 April 2017. In that submission, PSL raised the possibility that the members might seek to argue that the contributions had been made by them on the mistaken understanding that the contributions could be made to the SPSF without affecting the superannuation fund's complying status. If that were the case, the members could claim a refund of their contributions. If they were permitted to do that, that would potentially lead to a reconsideration of the "*active member'* test. APRA approved a further extension of time while PSL sought instructions and made its final submission on 29 May 2017. That submission did not take the matter any further.

13. On 11 August 2017, a delegate of APRA decided to provide a notice under s 40 of the SIS Act to PSL that the SPSF was a non-complying superannuation fund in the 2012, 2013 and 2015 income years. Comprehensive reasons were given but the essential point on which the SPSF was found not to be a complying superannuation fund in relation to any of

the years of income was that at least 50% of the total market value of the fund's assets attributable to superannuation interests held by active members or of the sum of the amounts that would be payable to, or in respect of, active members if they voluntarily ceased to be members, is attributable to superannuation interests held by active members who are not Australian residents. That finding followed from the findings that Dr Chee Steidler and Dr Nandor Steidler were the only members of the SPSF and that they had ceased to be Australian residents before the three income years in question. The conclusion meant that, not only was the SPSF not a complying superannuation fund for the purposes of s 42 of the SIS Act, it was not a resident regulated superannuation fund for the purposes of s 10 of the SIS Act or an Australian superannuation fund for the purposes of s 295-95(2) of ITAA97.

14. On 12 February 2018, PSL wrote to APRA summarising the discussion it had with officers of the ATO and APRA. PSL asked that it be permitted to rectify the situation by returning the non-concessional contributions and allocating or returning SPSF's earnings to its members so that they would be taxed in their hands. It began its letter with the following paragraph:

> "*In accordance with Section 344(1) of the Superannuation Industry (Supervision) Act 1993, Perpetual Superannuation Limited ('PSL') in its capacity as Trustee for the abovenamed superannuation Fund herein respectfully requests the Australian Prudential Regulation Authority ('APRA') to review its issuance as at 11 August 2017 of a 'Notice about complying fund status (non-complying) ('the Notice'). In this regard, the Trustee, PSL, acknowledges that the request for reconsideration is to be in writing and within such period as APRA allows, given the expiry of the 21 day period, subsequent to notification having been made and notified by APRA.*"

15. APRA responded on 8 March 2018 asking for the relevant statutory provisions or legal bases which would be relied upon to support the course PSL had proposed. It acknowledged that PSL had been involved in discussions with the ATO regarding the potential to enter Enforceable Undertakings to enable APRA to reverse the non-complying determination but noted that it had responsibility for compliance determinations for small funds.

16. On 23 April 2018, PSL followed up on its request that APRA review its decision. APRA replied on 26 April 2018 repeating the substance of its previous letter dated 8 March 2018. On 6 June 2018, APRA wrote an email to PSL following a conversation between their officers earlier in the day. It said:

> "*To date, the Trustee has not been able to provide any legal basis that would justify APRA giving reconsideration to its determination of 11 August declaring that the SAF* [SPSF] *was non-complying for the 2011-12, 2012-13, 2014-15 and 2015-16 years of income.*

Given APRA's decision was made based on evidence provided by the Trustee, and that no further evidence appears to be available relevant to the status of the SAF, APRA sees no benefit in meeting with the Trustee to further discuss this matter."

17. On 13 July 2018, Dr Chee Steidler and Dr Nandor Steidler each lodged an application for review of APRA's decision made on 11 August 2017. They stated in their application that they had not received the decisions until 9 July 2018. The reasons for their applications were that:

> "*The effect of the decision is oppressive to the Members of the Superannuation Fund in the circumstances that:*
>
> *a. The Applicants were at all relevant times unaware of the implications of contributions to the Fund made by Non-Residents;*
>
> *b. At all times they sought and followed the advice of professional advisors;*
>
> *c. The Applicants, at all times, relied on that advice.*
>
> *The Respondent wrongfully refused to reconsider its decision to issue a notice of non-compliance under section 40 of the SIS Act 1993 as required by section 344 of the SIS Act.*
>
> *Further and in the alternative, the Respondent failed to properly consider or at all the facts before it and/or to make necessary inquiries to properly inform itself as to whether it ought to exercise its discretion to revoke or vary the decision in issue.*"

LEGISLATIVE BACKGROUND

Division 295 of ITAA97

18. Division 295 of Part 3-30 of the *Income Tax Assessment Act 1997* (ITAA97) is concerned with the taxation of superannuation entities. At all relevant times, s 295-5(1) has provided that the Division applies to, among others, an entity that is a complying superannuation fund or a non-complying superannuation fund.[3] The superannuation provider in relation to an entity of this sort is liable to pay tax on the taxable income of that entity.[4] In relation to a superannuation fund, the superannuation provider is its trustee.[5]

19. Section 295-95 of ITAA97 is concerned with deductions relating to contributions. Section 295-95(1) provides that provisions of ITAA97 about deducting amounts apply to certain entities as if all contributions made to them were included in their assessable income. I am concerned with two of those entities: complying superannuation funds[6] and non-complying superannuation funds that are Australian superannuation funds.[7]

[3] ITAA97; ss 295-5(1)(a) and (b)
[4] ITAA97; s 295-5(2)
[5] ITAA97; s 995-1(1)
[6] ITAA97; s 295-95(1)(a)
[7] ITAA97; s 295-95(1)(b)

20. Section 995-1(1) of ITAA97 provides that a "*complying superannuation fund*" is a complying superannuation fund within the meaning of the SIS Act. A superannuation fund is an "*Australian superannuation fund*":

> "*… at a time, and for the income year in which that time occurs, if:*
>
> *(a) the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and*
>
> *(b) at that time, the central management and control of the fund is ordinarily in Australia; and*
>
> *(c) at that time either the fund had no member covered by subsection (3) (an* **active member***) or at least 50% of:*
>
> *(i) the total *market value of the fund's assets attributable to *superannuation interests held by active members; or*
>
> *(ii) the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members;*
>
> *is attributable to superannuation interests held by active members who are Australian residents.*"[8]

21. A member is covered by s 295-95(3):

> "*… at a time if the member is:*
>
> *(a) a contributor to the fund at that time; or*
>
> *(b) an individual on whose behalf contributions have been made, other than an individual:*
>
> *(i) who is a foreign resident; and*
>
> *(ii) who is not a contributor at that time; and*
>
> *(iii) for whom contributions made to the fund on the individual's behalf after the individual became a foreign resident are only payments in respect of a time when the individual was an Australian resident.*"

APRA's provision of notices about complying fund status

22. The administration of the various provisions of the SIS Act is vested in APRA, the Commissioner and the Australian Securities and Investments Commission as set out in s 6 of that legislation. References to the "*Regulator*" in the SIS Act may be a reference to one or the other as determined by that section.

23. APRA has the general administration of, among other provisions, Part 5 of the SIS Act to the extent that it does not relate to self managed superannuation funds.[9] It is the Regulator for the purposes of that Part. APRA was established under the *Australian*

[8] ITAA97; s 995-1(2)

[9] Paragraph (a) of the definition of "*Regulator*" in s 10(1) of the SIS Act read with s 6(1)(a)(ii) providing that APRA has the general administration of, among others, Part 5, but only to the extent that administration of its provisions is not conferred on, in the case of self managed superannuation funds, the Commissioner: SIS Act; ss 6(1)(a) and (e).

Prudential Regulation Authority Act 1998 (APRA Act) for purposes set out in s 8 of that legislation. Among them, is the purpose of regulating bodies in the financial sector in accordance with other laws of the Commonwealth providing for prudential regulation or for retirement income standards.[10] Among those bodies are many superannuation funds.

24. The objects of Part 5 of the SIS Act are:

> "*(a) to provide for a system of notices about complying fund status in relation to a year of income (see Division 2); and*
>
> *(b) to provide for those notices to be used to determine complying fund status for tax purposes (see Division 3).*"[11]

25. APRA may give written notice to a trustee of an entity stating whether that entity is, or is not, a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust in relation to a year of income specified in the notice. That is the effect of s 40(1). If APRA's notice states that the entity is none of those three things in relation to a year of income, it must set out its reasons in the notice.[12] When APRA gives such a notice under s 40(1), it must also give particulars of that notice to the Commissioner of Taxation (Commissioner).[13] APRA is not obliged to give a notice under s 40(1) unless one of the circumstances set out in s 40(2) applies.[14]

26. In this context an "*entity*" means a fund, scheme or trust.[15] Section 42 of the SIS Act sets out the circumstances in which an entity is a complying superannuation fund in relation to a year of income. Section 42A sets out the circumstances in which a fund that has been a self managed superannuation fund at any time during the year may be a complying superannuation fund. Section 42A may be relevant as SPSF converted to a self managed superannuation fund part way through the 2012 income year. Section 42 will have relevance in relation to the 2013 and 2015 income years.

27. Beginning with s 42A, I will use s 42A(2) as an example of the circumstances in which an entity may be a complying superannuation fund. It provides for an entity that was a self managed superannuation fund for part of the year of income, as SPSF was during part of the 2012 year of income. The change came on 16 November 2011 when the SPSF changed from a self managed superannuation fund to a Small APRA Fund. In its circumstances, SPSF had to be a resident regulated superannuation fund at all times during the year of income in order to come within s 42A(2)(a)(i). If it did not meet that

[10] APRA Act; s 8(1)(a)
[11] SIS Act; s 37
[12] SIS Act; s 40(2)
[13] SIS Act; s 40(3). The notice may be accompanied by a statement of the entity's tax file number" SIS Act; s 299U(3)
[14] SIS Act; s 41(1)
[15] SIS Act; s 38

criterion, there is no point in considering whether it met s 42A(2)(b). The same is true of each of the other circumstances set out in s 42A. Each of them requires as an essential criterion that the entity be a resident regulated superannuation fund.

28. The same is also true of s 42(1)(a)(i), which would apply to the 2013 and 2015 income years. It required an entity to be a resident regulated superannuation fund at all times during the year of income. If it did not meet that criterion, there is no point in considering whether it met s 42(2)(b). Again, each of the other circumstances set out in s 42 specifies that the entity had to be a resident regulated superannuation fund at all times during the year of income.

29. A "*resident regulated superannuation fund*" is a regulated superannuation fund that is an Australian superannuation fund within the meaning of ITAA97.[16] The expression "*regulated superannuation fund*" is given its meaning by s 19.[17] Section 19(1) provides that a regulated superannuation fund is a superannuation fund in respect of which ss 19(2) and (4) have been complied with. Section 19(2) provides that the fund must have a trustee. Section 19(4) provides that the trustee or trustees must have given APRA a written notice that is an approved form and signed by the trustee or each trustee electing that the SIS Act apply in relation to the fund.

Review of APRA's decision

30. Section 344(1) of the SIS Act provides that:

> "*A person who is affected by a reviewable decision of the Regulator may, if dissatisfied with the decision, request the Regulator to reconsider the decision.*"

Section 344(12) is relevant in determining who comes within the description of a "*person who is affected by a reviewable decision*" when it provides:

> "*For the purposes of this section and section 345, a person is taken not to be affected by a reviewable decision (other than a reviewable decision covered by paragraph (dd), (de), (df), (dg), (dl), (dm), (dn), (doa), (dob), (dod), (q), (qa), (qb), (r), (ra), (rb), (rc), (rd), (re), (rf), (rg), (rh), (ri), (s), (t), (ua) or (ub) of the definition of* **reviewable decision** *in section 10) unless the person is a trustee of a superannuation entity that is affected by the decision.*"

31. The expression "*reviewable decision*" means a decision specified in paragraphs (a) to (zg) of the definition of that term in s 10(1). As APRA, as the Regulator, has given a notice under s 40, the relevant paragraph is paragraph (e): "*a decision of the Regulator to give a notice under section 40*". A request for review of that decision must be made by written

[16] SIS Act; s 10(1)
[17] SIS Act; s 10(1)

notice given to APRA within 21 days of the day on which the person first received notice of the decision or within such further period as APRA allows.[18] The request must set out the reasons for making it.[19]

32. Upon receiving a request, APRA must reconsider the decision. Having done so, it may confirm or revoke the decision or vary it in such manner as it thinks fit.[20] If APRA does not take one or other of those courses before 60 days have passed after it received the request, s 344(5) provides that it is taken to have confirmed the decision under s 344(4). That decision is deemed to have been made at the end of the 60 day time period.

33. Section 344(8) provides that:

> "*Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Regulator that have been confirmed or varied under subsection (4).*"

34. When an enactment, such as the SIS Act, provides that applications may be made to the Tribunal, that enactment may also include provisions adding to or modifying certain provisions.[21] Those provisions include ss 27, 29 and 41(1) of the *Administrative Appeals Tribunal Act 1975* (AAT Act). Section 27 is concerned with those who may apply to the Tribunal and I will return to it. Section 29 is concerned with the manner of applying for review and includes the time within which an application must be made. Section 344(9) of the SIS Act varies the application of s 29 of the AAT Act to the extent that, when a decision is taken to have been confirmed because of the operation of s 344(5) of the SIS Act, the prescribed time for making an application for review is calculated as if the 28 day time period began on the day on which the decision is taken to be confirmed. Section 41 of the AAT Act confers power on the Tribunal to stay the operation or implementation of a decision. For the purposes of s 41 of the AAT Act, s 344(10) of the SIS Act treats a request for review made to APRA under s 344(1) as if it were a request to the Tribunal. In that way, the Tribunal may stay the operation or implementation of a decision made by APRA while it is being reviewed internally and before any application is made to the Tribunal.

THE SUBMISSIONS

35. On behalf of APRA, Ms Foda of counsel submitted that the Tribunal does not have jurisdiction to review the two applications on two bases. One was that neither Dr Chee Steidler nor Dr Nandor Steidler has standing to make an application as only the trustee, PSL, may do so. The second basis was that, even if PSL had applied for review, APRA

[18] SIS Act; s 344(2)
[19] SIS Act; s 344(3)
[20] SIS Act; s 344(4)
[21] *Administrative Appeals Tribunal Act 1975*; s 25(6)

had not made a decision that had been confirmed or varied under s 344(4). As it had not done so, s 344(8) did not authorise an application to be made to the Tribunal. Even if the Tribunal had jurisdiction, the applications were out of time and no reason has been given to support the Tribunal's extending it.

36. On behalf of Dr Chee Steidler and Dr Nandor Steidler, Dr Orow of counsel submitted that APRA never advised PSL that its request for review was out of time. Therefore, it was not permitted now to suggest that the request had not been made because APRA had not extended the time within which it could make that request. APRA must either be taken to have accepted the request and thereby extended time or, alternatively, it is estopped from denying that it had by reason of its own failure to address extension in express terms. Furthermore, APRA's requirement that PSL set out a legal basis for its request for a review under s 344(1) had no legal basis. There is no requirement in s 344 to that effect.

CONSIDERATION

Has APRA confirmed or varied a reviewable decision at the request of PSL?

37. The starting point for any consideration regarding jurisdiction is s 25(1) of the AAT Act. Only s 25(1)(a) is relevant in this case and it provides:

> "*An enactment may provide that applications may be made to the Tribunal:*
>
> *(a) for review of decisions made in the exercise of powers conferred by that enactment; or*
>
> *(b) …*"

38. If an enactment has made such a provision, it is implicit that the Tribunal may review the decision in respect of which an application is made to it. Section 344(8) of the SIS Act is an enactment that has provided that applications may be made to the Tribunal for review of decisions. Consistent with s 25(3) of the AAT Act, s 344(8) specifies the decisions in relation to which applications may be made. They are decisions of the Regulator – APRA in this matter – that have been confirmed or varied under s 344(4).

39. In this matter, it is possible for a decision to come within the description of decisions that may be reviewed in one of two ways. The first way comes about if a reviewable decision has been made by APRA and that decision has been confirmed of varied by APRA under s 344(4) of the SIS Act. APRA made a reviewable decision when it made its non-compliance decision but it has not made any further decision under s 344(4) confirming or varying that non-compliance determination. Indeed, it expressly stated that it had found no justification for reconsidering its decision when it wrote an email to PSL on 6 June 2018.

40. That raises the second way for a decision to come within the description of decisions that may be reviewed. That is by there first being a request to APRA for review of a reviewable decision and APRA's then failing to confirm, revoke or vary that decision before the end of the period of 60 days after the day on which it received the request. At the end of that 60 day period, APRA is deemed to have made a decision confirming the reviewable decision.

41. If APRA is deemed to have made a decision in this way, it follows that it must first have received a request. In its letter dated 12 February 2018, PSL requested APRA to review its decision to issue the non-compliance notice dated 11 August 2017. It is a "*request*" in the ordinary sense of the word and it is also a "*written notice given to …*" APRA within the meaning of s 344(2) of the SIS Act.

42. Under s 344(1), there must not only be a request but a request that is given to APRA "*… within the period of 21 days after the day on which the person first receives notice of the decision, or within such further period as the Regulator* [APRA] *allows.*" It was not given within the 21 day time period specified in s 344(1) but PSL had acknowledged in its letter dated 12 February 2018 that the 21 day time period within which its request had to be made had expired. I have set out the relevant passage at [14] above. Although not expressly requested, it seems to me that it is implicit in PSL's letter that it was asking APRA to extend the 21 day time period imposed by s 344(1) as well as asking it to review its decision to issue the non-compliance notice.

43. In its subsequent correspondence, APRA has not expressly identified or addressed that request or the issue that the request was out of time. That is not the same as not addressing the request or the issue. I have come to the view that it did so implicitly and that it refused the request. It did so implicitly when it explored with PSL the legal basis on which the trustee of the SPSF could reverse the payment of money by a member, who had intended to make that contribution, so that the payment could be treated as if it had never occurred. The payment of those contributions was a relevant fact in the determination APRA had made regarding non-compliance of the SPSF. Unless it had a legal foundation on which to do so, APRA had no basis on which to change its reviewable decision to issue a non-compliance notice. APRA asked PSL to provide the relevant statutory provision or legal bases in its letters dated 8 March 2018 and 26 April 2018. APRA concluded in its email dated 6 June 2018 that PSL had not provided any legal basis that would justify its reconsidering its determination dated 11 August 2017.[22] Implicit in that statement is APRA's decision that it would not extend the 21 day time period in order to reconsider its determination. It is implicit because, if it were to reconsider its determination, it had to

[22] See [16] above

extend the time period in order for PSL's request for reconsideration to comply with s 344(1). As it concluded that there was no justification for reconsideration, it implicitly refused to extend the 21 day time period.

44. As the 21 day time period was not extended, APRA did not receive a request under s 344(1). Therefore, s 344(5) does not operate to deem APRA to have made a decision under s 344(4) confirming its non-compliance determination. Therefore, there is no decision that has been confirmed under s 344(4) in relation to which an application may be made to the Tribunal under s 344(8). Issues relating to estoppel do not arise. As no application may be made to the Tribunal because there is no reviewable decision that has been confirmed or varied by APRA, it does not have jurisdiction or power to review the non-compliance decision.

45. For the sake of completeness, I note that a decision made by APRA refusing to extend the period within which a request may be made under s 344(1) is not a reviewable decision within the meaning of s 10(1). Therefore, there is no path that can be followed from APRA's refusal to extend the period to a request for review of that decision and ultimately an application to the Tribunal.

Are the applicants persons whose interests are affected by any such decision?

46. Again for the sake of completeness, I will also consider whether or not Dr Nandor Steidler and Dr Chee Steidler would be entitled to make an application to the Tribunal had APRA made, or been deemed to have made, a decision under s 344(4) of the SIS Act. They would be entitled to do so if they are persons "*whose interests are affected by the decision*". That follows from s 27(1) of the AAT Act, which has not been excluded by the SIS Act. Section 27(1) provides:

> "*Where this Act or any other enactment (other than the* Australian Security Intelligence Organisation Act 1979*) provides that an application may be made to the Tribunal for a review of a decision, the application may be made by or on behalf of any person or persons (including the Commonwealth or an authority of the Commonwealth or Norfolk Island or an authority of Norfolk Island) whose interests are affected by the decision.*
>
> *Note: …*"

47. In *Re Control Investment Pty Ltd and Australian Broadcasting Tribunal (No 1)*[23] (*Control Investment*), Davies J considered when a person's "*interests are affected*" within the meaning of ss 27(2)[24] and 30(1)(c) of the AAT Act. At the time, s 30(1)(c) provided that "*… the parties to a proceeding are … any other person … whose interests are affected by the*

[23] [1980] AATA 78; (1980) 3 ALD 74; 50 FLR 1
[24] Section 27 provides, in part, that a person whose interests are affected by a decision may apply for review.

decision and who applied to the Tribunal to be made a party to the proceeding and was made such a party by an order of the Tribunal." Davies J said:

> *"In their context in ss 27 and 30, the words 'interests are affected' denote interests which a person has other than as a member of the general public and other than as a person merely holding a belief that a particular type of conduct should be prevented or a particular law observed. The interest affected need not be a legal interest nor need the person seeking joinder establish legal ownership of the interest. ... However, a person seeking joinder must be able to identify a relevant interest which is his. In other contexts, dicta in cases have used the adjectives 'real', 'genuine' and 'direct' to describe the relationship required between the decision and the interest. Sections 27(1) and 30(1) do not make use of adjectives but they do require that the applicant demonstrates genuine affection of an interest which attaches to him. The nature of the interest required in a particular case will be influenced by the subject matter and context of the decision under review. As Brennan J said in* McHattan's *case [*Re McHattan and Collector of Customs *(1977) 18 ALR 154 at 157]: 'However, a decision which affects interests of one person directly may affect the interests of others indirectly. Across the pool of sundry interest, the ripples of affection may widely extend. The problem which is inherent in the language of the statute is the determination of the point beyond which the affection of interests by a decision should be regarded as too remote for the purposes of s 27(1). The character of the decision is relevant, for if the interests relied on are of such a kind that a decision of the given character could not affect them directly, there must be some evidence to show that the interests are in truth affected.'"*[25]

This passage was approved by the Full Court in *United States Tobacco Company v Minister for Consumer Affairs and Others*[26] (*US Tobacco*), *Alphapharm Pty Limited v Smithkline Beecham (Australia) Pty Limited and Others*[27] (*Alphapharm*) and *Comptroller-General of Customs v Members of the Administrative Appeals Tribunal.*[28]

48. I will summarise the principles that can be drawn from those cases and from subsequent cases. Some were decided in the context of civil proceedings in the courts when the decision was whether an applicant for joinder was a person "*aggrieved*" by a decision. The principles are, however, equally applicable in administrative proceedings reviewing decisions by a body, such as the Tribunal.

No technical rules apply to determine when person's interests affected

(1) "… *The meaning … is not encased in any technical rules; much depends upon the nature of the particular decision and the extent to which the interest of the applicant rises above that of an ordinary member of the public.*"[29]

[25] [1980] AATA 78; (1980) 3 ALD 74; 50 FLR 1 at 79-80, 8-9
[26] (1988) 20 FCR 520; 16 ALD 266; 83 ALR 79; Davies, Wilcox and Gummow JJ
[27] (1994) 49 FCR 250; 121 ALR 373; 32 ALD 71; Davies, Burchett and Gummow JJ
[28] (1994) 123 ALR 140; 32 ALD 463; Hill J
[29] *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (*Right to Life*) [1995] FCA 1060; (1995) 56 FCR 50; 128 ALR 238; 37 ALD 357; Lockhart, Beaumont and Gummow JJ at [65]; 65; 251; 370 per Lockhart J

Relevant interests determined by relevant enactment and each decision

(2) The relevant interests must be determined by reference to the terms of the particular decision that has been made and the enactment under which that decision was made:[30]

(a) " *The expression 'affected by' and cognate terms appear in a range of laws of the Commonwealth. … It is necessary to answer the questions posed … in respect of s 119(1) of the Authority Act by reference to the subject, scope and purpose of that statute, rather than by the application of concepts derived from decisions under the general law respecting what has come to be known as 'standing'. …*

… A particular statute may establish a regime which specifically provides for its own measure of judicial review on the application of persons meeting criteria specified in that statute. … The starting point, as indicated by several authorities in the Full Court of the Federal Court …, is the construction of the Authority Act with regard to its subject, scope and purpose. …

… What serves to identify a person as one affected by a reviewable decision will vary having regard to the nature of the reviewable decision itself. …"[31]

(i) "*… In such event, the review, which forms part of the process of administrative decision-making, is provided to promote the achievement of the objects of the statute. …*".[32]

(3) Where more than one decision can be made under an enactment, interests that are relevant in relation to one decision may not be in relation to another. Therefore, what are relevant interests must be determined by reference to each decision and the legislative context in which it is made:

(a) "*… The denotation of the phrase 'whose interests are affected' … should not be assumed to be the same across this spectrum of decision making. It has a series of distinct operations and, in this sense, is of an ambulatory nature. … it cannot be correct that … the class of persons whose interests are affected by an initial decision is limited to disaffected applicants. Persons whose existing situation under the legislation is changed by operation of the initial decision, which was not sought but was imposed upon them, must be persons whose interests are affected by the initial decision.*"[33]

(4) What may amount to relevant interests must be determined afresh in relation to each applicant, whether for review or joinder, in relation to each decision under each enactment:

"*… it is important not to draw from what was said in any particular decision by way of identification of that which did or did not amount to a sufficient affectation of an interest any general proposition which*

[30] *Alphapharm* (1994) 49 FCR 250, 121 ALR 373, 32 ALD 71 at 260; 383; 80 per Davies J citing *US Tobacco* at 529
[31] [2001] HCA 58; (2001) 208 CLR 167; 183 ALR 380 at [15]-[17]; 174, 384 per Gleeson CJ, Gaudron, Gummow, Hayne and Callinan JJ
[32] (1994) 49 FCR 250, 121 ALR 373, 32 ALD 71 at 260; 383; 80 per Davies J
[33] (1994) 49 FCR 250; 121 ALR 373; 32 ALD 71 at 273, 396, 91-92 per Gummow J

may be translated to … [a particular] *dispute. In each case, the content of the terms 'affect' and 'interest' are to be seen in the light of the scope and purpose of the particular statute in issue.*"[34]

The person's interests must be more than those of a concerned member of the public

(5) The effect on a person's rights or interests must be something more than the effect on that person as a member of the public:

(a) "*The question whether the Council qualified as an applicant … involves an assessment of the importance of the concern which an applicant has with respect to the particular subject matter of the decision and the closeness of the applicant's relationship to that matter …*"[35]

(b) " *Many such decisions do not affect the rights, interests and expectations of the individual citizen in a direct and immediate way. Thus a decision to impose a rate or a decision to impose a general charge for services rendered to ratepayers, each of which indirectly affects the rights, interests or expectations of citizens generally does not attract this duty to act fairly. This is because the act or decision which attracts the duty is an act or decision:*

> *"… which directly affects the person (or corporation) individually and not simply as a member of the public or a class of the public. An executive or administrative decision of the latter kind is truly a 'policy' or 'political' decision and not subject to judicial review."*

*(*Salemi v MacKellar (No 2) *(1977) 137 CLR 396 at 452, per Jacobs J.*)'"[36]

(c) " *The applicant's interest must not be remote, indirect or fanciful. The interest must be above that of an ordinary member of the public and must be above that of a mere intermeddler or busybody. …*

Plainly the applicant need not have a legal, financial or proprietary interest in the subject matter of the proceeding. The applicant must establish that he is a person who has a complaint or grievance which he will suffer as a consequence of the decision beyond that of an ordinary member of the public. …"[37]

(6) A person's interests are not assessed by reference to the effect of a decision on other persons but by reference to the effect on him or her:

(a) " *If a decision concerns the affairs of one person alone, other persons may not institute or join in the proceedings merely because it*

[34] (1994) 49 FCR 250; 121 ALR 373; 32 ALD 71 at 272, 395, 91 per Gummow J
[35] *Marrickville Council v Minister for the Environment, Sport and Territories* [1996] FCA 851 per Kiefel J
[36] *Kioa v West* [[1985] HCA 81; [1985] HCA 81; (1985) 159 CLR 550 at 585 per Mason J cited by Davies J in *Alphapharm* (1994) 49 FCR 250, 121 ALR 373, 32 ALD 71 at 261-262; 385; 82
[37] *Right to Life* [1995] FCA 1060; (1995) 56 FCR 50; 128 ALR 238; 37 ALD 357 at [66]; 65; 252; 370 per Lockhart J

would be to their commercial advantage that the person should not receive a benefit or should suffer a disadvantage. …"[38]

Decision-maker's obligation to accord procedural fairness relevant

(7) " *The question of standing is, indeed, related to issues of procedural fairness. If a person has interests which ought to be taken into account in the making of a decision, then ordinarily that person should be entitled to be heard. Mason CJ expressed the principle of natural justice in these terms in* Kioa v West *(1985) 159 CLR 550 at 584:*

> *'The law has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according to procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention.*
>
> *…*"[39]

(8) A person who has a right to be heard in the decision-making process leading to the decision under review may be regarded as a person whose interests are affected by it, whether or not that person exercised that right to be heard at the earlier time.[40]

(9) Where an enactment has not expressly conferred upon a person a right to be heard during the decision-making process or on review, the enactment must be examined to determine whether that right is implicit having regard to its object or objects.

(a) This is illustrated in the case of *Alphapharm*, which considered a decision made under the *Therapeutic Goods Act 1989*:

> " *The Act is dominated by public interest concerns. An object is to ensure that drugs which are imported are suitable for use in humans in Australia. Another object is to ensure that drugs which are suitable are registered or listed and become available in Australia for public use as soon as is practicable: see ss 4 and 17 of the Act. The Regulations specify times within which certain evaluations must be made and certain applications decided ,and a remedy in the nature of damages is provided for failure to make certain decisions within the specified time. And, as I have pointed out, the Act and the Regulations set up a structure, including the Australian Drug Evaluation Committee, for the carrying out of the necessary inquiries and for the making of skilled judgments as to the suitability or otherwise of a drug.*
>
> *In this context, it is difficult to see that the Act would recognise the interest which a competitor may have in delaying or hindering the introduction of the drug onto the market. Such an interest is not relevant to the process which the Act establishes or to any decision made under the Act. Such an interest is indeed in conflict with interests which the Act promotes.*"[41]

[38] *Alphapharm* (1994) 49 FCR 250, 121 ALR 373, 32 ALD 71 at 261-262; 385; 82 per Davies J
[39] *Alphapharm* (1994) 49 FCR 250, 121 ALR 373, 32 ALD 71 at 260; 383; 80
[40] *Alphapharm* (1994) 49 FCR 250, 121 ALR 373, 32 ALD 71 at 260-261; 384; 81 per Davies J
[41] *Alphapharm* (1994) 49 FCR 250, 121 ALR 373, 32 ALD 71 at 261; 385; 81-82 per Davies J

Decision-maker's lack of obligation to consult not necessarily definitive

(10) "…[I]*t is appropriate briefly to return to the comments of Mason J in* Kioa*, particularly his reliance on the observations of Jacobs J, to which I have referred. Where, as I think is the case here, a decision which does not attract requirements of procedural fairness is administrative in nature, rather than legislative, it does not follow from those comments, in my view (given the provisions of the ADJR Act, if no other reason) that the decision is not amenable to judicial review. It is by no means inconsistent with a decision that there is no duty to hear persons in relation to a proposed decision to hold also that there are persons 'aggrieved' by such a decision who have standing to impugn it, under the ADJR Act, on other grounds. It is therefore necessary to turn to the other grounds on which the applicants rely.*"[42]

No requirement that effect on interests be adverse

(11) "*… It was submitted that the persons seeking to be joined in these proceedings should not be joined for their interests are not adversely affected by the decision under review. However, interests may be affected by a decision either adversely or beneficially and they may be so affected whether the decision was right or wrong. A person whose interests are affected by a decision is entitled to be joined as a party to proceedings reviewing that decision so as to put forward a view that the decision should not be set aside or changed.*"[43]

49. In light of these principles, I will begin with the context in which s 344(8) provides that applications may be made to the Tribunal. The right to apply is limited to those reviewable decisions that have been confirmed or varied under s 344(4). The only person who was entitled to make the request for the review of the reviewable decision that led to a decision being confirmed or varied under s 344(4) was PSL as the trustee of the SPSF. That follows from s 344(12) when it provides that, other than those reviewable decisions it sets out, a person is taken not to be affected by a reviewable decision unless the person is a trustee of a superannuation entity. A reviewable decision set out in paragraph (e) ("*a decision of the Regulator to give a notice under section 40*") is not one of those set out in s 344(12). Therefore, PSL as SPSF's trustee, was the only person[44] affected by the reviewable decision to give notice under s 40 and so the only person who might make the request under s 44(1).

50. Section 344(12) also applies for the purposes of s 345. Section 345(1) provides for the content of any written notice "*given to a person affected by a reviewable decision*". That notice must tell the person that the reviewable decision has been made and include a statement to the effect that:

[42] *Botany Bay City Council v Minister of State for Transport and Regional Development and Others* [1996] FCA 1507; (1996) 66 FCR 537; 137 ALR 281; 41 ALD 84 at 556; 299; 100 per Lehane J. See [128]-[129] below
[43] *Control Investment* [1980] AATA 78; (1980) 3 ALD 74; 50 FLR 1 at 81; 10
[44] A reference to a "*person*" includes a body politic or corporate as well as an individual: *Acts Interpretation Act 1901*; ss 2B and 2C(1)

"*(a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Regulator in accordance with subsection 344(1); and*

(b) the person may, subject to the Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Regulator upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.*"

51. Section 344(2) goes on to provide:

> "*If the Regulator confirms or varies a reviewable decision under subsection 344(4) and gives to the person written notice of the confirmation or variation of the decision, that notice is to include a statement to the effect that the person may, subject to the* Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.*"

52. The reference to the "*person*" to whom the written notice is given must be a reference to the person who requested the review of the reviewable decision i.e. the person affected by the reviewable decision and, in light of s 345(12), the trustee. That is the same person who is told of the right to make an application to the Tribunal if dissatisfied with the decision.

53. It follows that ss 344 and 345 of the SIS Act have limited the person who may be regarded as a person "*whose interests are affected by the decision*" to the trustee of a superannuation entity. A beneficiary of that superannuation entity is not such a person.

54. I have tested that conclusion by reference to the scheme of the SIS Act. It is a scheme that regulates the trustees of superannuation entities in the management of those entities. It also regulates the actions of others in so far as their actions impinge on superannuation entities. For example, s 34N regulates the manner in which employers must deal with payments and information relating to an employee, for whose benefit a contribution to an eligible superannuation entity is made. Otherwise, it is the trustee upon whom obligations are imposed under the SIS Act to maintain records as required, audit accounts and statements and comply with rules relating to matters such as the acquisition of assets and borrowing.[45] The trustee must notify APRA of the occurrence of any events having a significant adverse effect on the financial position of a superannuation entity.[46] It is not an obligation imposed by s 106 on the beneficiaries. Part 12 sets out additional duties.

55. In the case of notices about complying fund status under Division 2 of Part 5, a notice under s 40 about whether a superannuation entity is, or is not, a complying superannuation fund is given to the trustee and not to the beneficiaries. If that notice were revoked under

[45] See, for example, SIS Act; Part 4, Division 3
[46] SIS Act; s 106

s 40(4), the notice would be given to the trustee and not to the beneficiaries. That is consistent with my understanding of the trustee as the person whose interests would be affected by the decision.

56. I have also tested my conclusion by reference to the rights that a beneficiary of a discretionary trust has in equity and those that are given under the SIS Act. While superannuation funds are necessarily trusts, they give a beneficiary a future contingent interest rather than the expectancy of an interest. When a prescribed event occurs, that future contingent interest crystallises into an actual entitlement. That is to say, a beneficiary holds a beneficial interest under a superannuation fund administered under the SIS Act even though the precise form and quantum of that beneficial interest is contingent on particular events.[47] An expectancy was all that a beneficiary had under the general law.[48]

57. That gives background to the rights of beneficiaries under trusts generally and under superannuation funds regulated under the SIS Act. The rights generally fall into two categories. One category comprises rights that a beneficiary has against the trustee and the other the rights a beneficiary has against a third party who is not the trustee but whose actions are alleged to affect the trust. In summary only, in equity a beneficiary does not have rights falling into the second category. The rights fall into the first category although their exercise may result in actions being taken against third parties whose actions affect the trust. They are rights to bring proceedings against a trustee for the purpose of obtaining an order that the trustee properly perform its duties and powers under the trust. A beneficiary may seek relief for a breach of trust and that relief may include orders against the trustee directed to matters such as its making good any loss arising from the breach. Beneficiaries may petition for the removal of a trustee but this will depend in large measure on the terms of the trust deed. If a beneficiary is to pursue rights of these sorts, access to information about the trust is essential. A beneficiary has such a right. It is a proprietary right to have access to all trust documents and to inspect them because they are trust documents and the beneficiary is a beneficiary.[49]

58. The SIS Act also gives beneficiaries certain rights that fall within, or bear some relationship to, those rights I have described as falling within the first category. Among them is the right to in the case of employer-sponsored funds to have equal numbers of employer

[47] *Finch v Telstra Super Pty Ltd* [2010] HCA 36; (2010) 242 CLR 254 at [30]; 271; French CJ, Gummow, Heydon, Crennan and Bell JJ
[48] *Re Coram; Ex parte Official Receiver in Bankruptcy v Inglis and Others* (1992) 109 ALR 353 at 357 per O'Loughlin J
[49] *O'Rourke v Darbishire* [1920] AC 581 at 626-627 per Lord Wrenbury

representatives and member representatives.[50] In the case of a regulated superannuation fund other than a self managed fund or an approved deposit fund, the trustee must have an internal dispute resolution procedure complying with certain standards and covering complaints other than those made under s 6 of the *Superannuation (Resolution of Complaints) Act 1993*.[51] Trustees must comply with minimum benefit standards prescribed in rr 5.05 to 5.08 of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and may not adversely alter a beneficiary's right or claim to or the amount of benefits already accrued to him or her.[52] The SIS Regulations also prescribe the information that the trustee must make available to a beneficiary.[53]

59. The second category of rights that a beneficiary has under the general law involves those rights to bring an action against third parties when the trustee has not done so. The principle under the general law is that only in exceptional or special circumstances and when the trustee has refused to act in the interests of the trust, may a beneficiary of a trust bring proceedings on behalf of that trust naming the trust as a respondent.[54] In *Lidden v Composite Buyers Ltd*,[55] Finn J thought that a beneficiary's right extended to relief sought under statute, at common law and in equity provided the exceptional or special circumstances existed. He could see no point in principle or policy that would preclude that.[56] Allegations of deceptive and misleading conduct under s 52 of the *Trade Practices Act 1974* and s 42 of the *Fair Trading Act 1987* (NSW) were made by the beneficiaries of a trust. They alleged that the conduct, which included conflicts of interest, had induced the creation of the trust. Finn J found that there were exceptional or special circumstances that warranted beneficiaries acting independently of the trustee of the trust.

60. Putting aside the provisions of s 344(12) for the moment, the very ordered and structured SIS Act leaves no room for any conclusion that this second category of rights has been preserved for a beneficiary who wants to bring an action against a third party, being APRA, when the trustee has declined to do so. The right to request review of a reviewable decision is limited to a person whose interests are affected by APRA's decision to give a notice under s 40 to the trustee. There is no room for an argument that exceptional or special circumstances would permit a beneficiary to be regarded as a person whose interests are affected by APRA's decision to give a notice under s 40 to the trustee. The trustee was the person having statutory responsibility for the management of the superannuation entity. All that the provisions of s 344(12) do is to underline that the right to

[50] See generally, SIS Act; Part 9
[51] SIS Act; s 101 and see also Part 7.10A of the *Corporations Act 2001*
[52] SIS Act; s 31
[53] SIS Regulations; Part 2
[54] *Pearson v Commissioner of Taxation* (2001) 116 FCR 357 at 360 per Tamberlin and Mansfield JJ
[55] (1996) 67 FCR 560; 139 ALR 549
[56] (1996) 67 FCR 560; 139 ALR 549 at 563-564; 552-553

seek review of the decision of the Regulator, or of APRA, is that of the trustee of the superannuation entity alone.

DECISION

61. For the reasons I have given, I have decided that the Tribunal does not have jurisdiction to review APRA's decision to give a notice of non-compliance to PSL as the trustee of SPSF. I have also decided that, even if the Tribunal did have jurisdiction to do so, Dr Nandor Steidler and Dr Chee Steidler are not persons who are entitled to make an application to the Tribunal for review of such a decision.

I certify that the preceding sixty one (61) paragraphs are a true copy of the reasons for the decision herein of Deputy President S A Forgie

[sgd].....
Associate

Dated: 12 March 2019

Heard by telephone:	17 October 2018
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