

Tuesday, 1 November 2022

Case Note

***MetLife Insurance Limited v Australian Financial Complaints Authority Limited and Brian Ronald Edgecombe* [2022] FCAFC 173 (27 October 2022)**

1 This decision concerned statutory interpretation.

Background

2 The first provision of Subdiv A of Div 3 in Pt 7.10A of the *Corporations Act 2001* (Cth), being s 1053(1), relevantly provides:

Subdivision A—When complaints relating to superannuation can be made under the AFCA scheme

1053 When complaints relating to superannuation can be made under the AFCA scheme

(1) A person may ... make a complaint relating to superannuation under the AFCA scheme only if the complaint is a complaint: [ten categories are then set out in paragraphs (a) to (j)]

...

(3) A complaint made in accordance with subsection (1) of this section is a ***superannuation complaint*** [emphasis in original].

3 MetLife had issued an insurance policy to the trustee of a superannuation fund. Under the policy, MetLife would pay the trustee a benefit if a fund member satisfied the definition of total and permanent disability.

4 Mr Edgecombe was a fund member. He made a complaint to AFCA against MetLife regarding the non-payment of such a benefit under the policy (the 2018 Complaint).

5 The underlying issue was whether AFCA had jurisdiction to determine the 2018 Complaint.

Summary of the contest

6 MetLife contended that AFCA did not have jurisdiction to determine the 2018 Complaint whereas AFCA contended that it did. The contest arose from the competing interpretations of s 1053, extracted above.

7 MetLife contended as follows:

- a. by reason of the “ordinary” meaning of the text, “a complaint relating to superannuation” in s 1053(1) referred to a wider class of complaints than the ten types of complaints identified in paragraphs (a) to (j);
- b. section 1053(1) may be regarded as an “exclusionary provision” pursuant to which a complaint may be made under the AFCA scheme “only if” the complaint falls into one of the ten categories;
- c. as the 2018 Complaint was not of a kind specified in paragraphs (a) to (j), AFCA did not have jurisdiction to determine the 2018 Complaint; and
- d. the heading of s 1053 supported MetLife’s interpretation.

8 AFCA, on the other hand, contended as follows:

- a. the dispute resolution service which preceded AFCA would have held jurisdiction to determine the 2018 Complaint and, when establishing AFCA, there was no legislative intention to afford AFCA with less jurisdiction than the predecessor. Accordingly, the context supported an interpretation which afforded AFCA jurisdiction sufficient to determine the 2018 Complaint; and
- b. “a complaint relating to superannuation” is to be construed to mean nothing wider than the 10 kinds of complaints listed in s 1053(1)(a) to (j). Accordingly, the 2018 complaint was not “a complaint relating to superannuation” for the purposes of s 1053(1) and AFCA could determine the 2018 Complaint under its non-superannuation jurisdiction rather than AFCA’s superannuation jurisdiction. In this respect, regardless of s 1053(1), once the 2018 Complaint was made, the AFCA Rules formed a contract which bound the parties and AFCA had jurisdiction to determine the 2018 Complaint under such contract.

Consideration by and decision of the Full Court

9 The Full Court of the Federal Court (Middleton, Jackson and Halley JJ) unanimously upheld MetLife’s argument. Namely, that, on the proper construction of s 1053, AFCA did not have authority to determine the 2018 Complaint.

10 The Court re-affirmed that: “[t]he principles of statutory construction require consideration of the statutory text, purpose and context of the legislative provisions in issue”.¹ Such consideration “must begin and end, however, with the statutory text.”²

11 On that basis, the Court said that “[t]he starting point is therefore a textual analysis, followed by a historical contextual analysis in order to ascertain whether (the historical contextual analysis) either confirms or produces any different conclusion to the primary textual analysis.”

Text

12 The Court, on consideration of the “textual meaning” of s 1053(1), said “[t]he grammatical and ordinary sense of the words in the chapeau to s 1053(1) is that a complaint that relates to superannuation can only be made under the AFCA Scheme if it falls within the 10 types of complaints specified in sub-ss 1053(1)(a)-(j). This conclusion is reinforced by the heading to Subdiv A of Div 3 ...”

13 The Court rejected AFCA’s contention that “a complaint relating to superannuation” is to be construed to mean nothing wider than the 10 kinds of complaints listed in s 1053(1)(a) to (j). Such an interpretation would: deprive the words “only if” of any meaning or effect; and render s 1053(3) to be redundant. The Court affirmed, in this regard, “[i]t is a well-established principle of statutory construction that, if possible, all words in legislation must be given some meaning or effect.”³

¹ *Project Blue Sky Inc and Others v Australian Broadcasting Authority* (1998) 194 CLR 355 at [69] (McHugh, Gummow, Kirby and Haydon JJ).

² *Thiess v Collector of Customs and Others* (2014) 250 CLR 664 at [22] (French CJ, Hayne, Kiefel, Gageler and Keane JJ). See also *SZTAL v Minister for Immigration & Border Protection and Another*; *SZTGM v Minister for Immigration and Border Protection and Another* (2017) 262 CLR 362 at [14] (Kiefel CJ, Nettle and Gordon JJ) and, most recently, *Paula Susan Chapple as Executor of the Estate of Robert Hastings Hitchcock v Goldspan Investments Pty Ltd* [2021] WASCA 205 at [31]-[35] (Buss P and Mitchell JA).

³ *Commonwealth v Baume* (1905) 2 CLR 405 at [414] (Griffith CJ).

14 The Court observed that “AFCA scheme” is defined in s 761A to be the “external dispute resolution scheme for which an authorisation under Part 7.10A is in force”. The Court, accordingly, concluded that the text of s 1053(1) afforded “no room” for a construction that a complaint “relating to superannuation” that falls outside sub-ss 1053(a)-(j) may be made under AFCA’s non-superannuation jurisdiction (ie AFCA’s general jurisdiction) rather than AFCA’s superannuation jurisdiction.

Statutory context

15 The Court considered s 1053 to be an integral provision regarding the determination of complaints relating to superannuation.

16 The Court rejected AFCA’s contention that MetLife’s interpretation of s 1053(1) would preclude complaints, which were able to be made to AFCA’s predecessor, from being made to AFCA. Here, but for the breach of the time limitation period, the 2018 Complaint could have been made against the trustee under s 1053(1)(a) and AFCA could then have joined MetLife to the complaint.

17 The Court also observed that the statutory context expressly excluded some other complaints relating to superannuation such as complaints regarding self-managed superannuation funds: s 1053(4).

Extrinsic materials

18 The Court concluded that the extrinsic materials reinforced the Court’s view of the correct textual construction of s 1053(1).

19 The Court said that an “example” set out in the Revised Explanatory Memorandum to the Bill to establish AFCA revealed a relevant legislative intention.

20 The Court considered that there was significance with respect to the amendments to the Exposure Draft, which was released after the publication of the Ramsay Report and before the introduction of the AFCA Establishment Bill into Parliament. The amendments to s 1053(1) introduced the expressions “relating to superannuation” and “only if”. By reason of the amendments, the provision expressly provided that only superannuation complaints that fall within sub-ss 1053(1)(a)-(j) could be made under the AFCA scheme. The Court said that the intention behind the drafting change could be inferred from the terms of the

amendments and that the drafting changes could not simply be dismissed as a matter of speculation.

Particular characteristics of superannuation complaints

21 The Court considered that any construction of s 1053(1) that had the consequence that a complaint relating to superannuation could be made in the non-superannuation jurisdiction of AFCA would be antithetical to the explanations in the extrinsic materials that the particular characteristics of superannuation complaints require different procedures to non-superannuation complaints.

Section 1053(1) vs the AFCA Rules

22 The AFCA Rules notably, contained a definition of “Superannuation Complaint”, different to s 1053(3).

23 AFCA contended that the parties had agreed that the 2018 Complaint could be determined by AFCA under the AFCA Rules.

24 The Court concluded that the contractual provisions in the AFCA Rules could not be expanded beyond the statutory defined limits and “[t]o the extent that the AFCA Rules purport to operate inconsistently with the statutory framework for the establishment and operation of the AFCA Scheme in the Corporations Act, they have no effect.”

Comment

25 The decision constitutes a recent unanimous re-affirmation from the Full Court as to the principles of statutory interpretation including the requirement to analyse: the statutory text; the statutory purpose; and historical context of the legislative provisions in issue. The decision also illustrates the role that extrinsic materials can play when interpreting statutes.

J Harrison

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