



Superannuation
Complaints

Tribunal

Annual Report
2001–2002



Superannuation
Complaints

Tribunal

Annual Report
2001–2002

© Commonwealth of Australia 2002

ISSN 1324-8014

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from the Department of Communications, Information Technology and the Arts. Requests and inquiries concerning reproduction and rights should be addressed to:

The Commonwealth Copyright Administration

Intellectual Property Branch

Department of Communications, Information Technology and the Arts

GPO Box 2154

CANBERRA ACT 2601

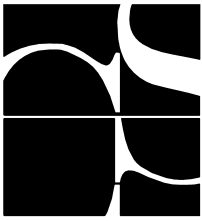
or posted at

<http://www.dcita.gov.au/cca>

The Tribunal would like to acknowledge and thank the author of this Report, Mr Phillip McGrath.

Printed by Digital Information Group T/A Panther Publishing & Printing

Produced for the Commonwealth of Australia by the Superannuation Complaints Tribunal: <http://www.sct.gov.au>



The Hon. Peter Costello, MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

I have pleasure in submitting to you for presentation to the Parliament the eighth Annual Report of the Superannuation Complaints Tribunal for the year ended 30 June 2002, as required by sub-section 67(1) of the *Superannuation (Resolution of Complaints) Act 1993*.

Sub-section 67(2) of the *Superannuation (Resolution of Complaints) Act 1993* obliges you to cause the report to be laid before each House of the Parliament within fifteen sitting days of receiving it.

In addition to my reporting obligations under the *Superannuation (Resolution of Complaints) Act 1993*, this report meets obligations under section 8 of the *Freedom of Information Act 1982*.

Yours sincerely

Graham McDonald
Chairperson

19 September 2002

Highlights of 2001–2002

<p>Complaints Exceed 2,000 per annum</p>	<p>The Tribunal does not welcome the increase in the number of complaints being made to it. The Tribunal is conscious that it is funded via the levy imposed on the superannuation industry and hence is ultimately payable by fund members. It is clearly disadvantageous to the industry, as a whole, if the number of disputed complaints before the Tribunal continues to grow.</p>
<p>Tribunal Upholds More Trustee Determinations</p>	<p>There has been a noticeable rise in cases in which the Tribunal is upholding the determination of the Trustee (and Insurer). If sustained, this is a welcome trend, indicating that Trustees and Insurers are becoming more proactive in applying principles decided by the Tribunal (and by the Federal Court on appeals from Tribunal decisions) in the determination of cases.</p>
<p>Welcome Initiatives by the Minister</p>	<p>Proposals by the Minister, the Hon. Senator Helen Coonan, to introduce legislation permitting the extension of some time limits; the introduction of compulsory conciliation where the Tribunal thinks it appropriate; and the Government's co-operation in the development of a more certain and transparent funding formula for the Tribunal, are all welcome initiatives.</p>
<p>Compromising Claims</p>	<p>The Federal Court held that because the Tribunal stands in the shoes of the decision-maker it has all the powers, obligations and discretions of that decision-maker pursuant to sub-sections 37(1)(a),(b) of the SRC Act. Thus, it is open to the Tribunal, in an appropriate case, to either remit the matter to the Trustee with directions to reconsider recompensing the Complainant; or, to directly order the Trustee to recompense the Complainant—<i>Retail Employees Superannuation P/L v Crocker</i> [2001] FCA 1330 (20 September 2001); <i>United Superannuation Pty Ltd v Harrison</i> [2001] FCA 1468 (19 October 2001).</p>
<p>Development of a Funding Formula</p>	<p>The Tribunal since inception, and currently through the Australian Securities & Investments Commission (ASIC), has been funded from the superannuation levy as allocated to ASIC. In light of the funding arrangements to date, the Tribunal made a submission to the Minister who has approved additional funding to enable the Tribunal to deal with its increased workload as well as the development of a funding formula for case processing for future funding from the levy.</p>

Contents

Letter of Transmittal	iii
Highlights of 2001–2002	v
Introduction.....	1
Chairperson’s Review.....	2
Chapter 1 Overview.....	4
Chapter 2 Jurisdiction and Powers	15
Chapter 3 Performance	23
Chapter 4 Corporate Governance	35
Glossary.....	46
Compliance Index.....	47

Appendices

1. Tribunal Organisation Chart	48
2. Delegations	49
3. 2001–2002 Complaint Resolution Outcomes	52
4. Chairperson’s Procedural Rules & Guidelines	53
5. Freedom of Information Statement.....	58
6. Memorandum of Understanding—SCT & ASIC	61
7. Papers, Presentations and Publications	65
8. Staff Training.....	67
9. Financial Statement.....	68
10. Service Charter	69
11. Tribunal Location & General Information.....	71

Index.....	72
-------------------	-----------

Introduction

The focus of this reporting year, in terms of corporate initiatives and outputs, continued to be upon the disposition of the case backlog resulting from the disruption arising out of the Federal Court decision in the *Breckler* matters, and management of the increasing number of written complaints.

The **Chairperson's Review** summarises the significant issues and developments during the reporting year and overviews the Tribunal's performance and future goals and objectives.

Chapter 1 briefly looks at the establishment, role, objectives and functions of the Tribunal in terms of its corporate profile. The Tribunal's portfolio relationship with the Department of Treasury and its working relationship with the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) are also outlined.

Chapter 2 examines the Tribunal's statutory jurisdiction and powers and sets out the various internal and external scrutiny mechanisms to which the Tribunal is subject.

Chapter 3 statistically details the Tribunal's performance and outcomes measured against its corporate and statutory objectives.

Chapter 4 sets out the Tribunal's corporate plan. It also outlines the Tribunal's short and long-term objectives and the strategies it has developed to give them effect.

The Tribunal's **Financial Statement** was prepared by ASIC—see Appendix 9.

The Tribunal has not published any other major documents relating to its operations.

Chairperson's Review

It is with some relief that the Tribunal has now, with some minor exceptions, embarked on the resolution of current complaints for the year 2001-2. Subject to some unforeseen circumstances, the Tribunal will, in the 2002-3 year, reach its stated target of being able to determine cases on average within the 6 month period of lodgement. Because of statutorily imposed time-limits and the requirements to extend natural justice to all parties, it is unlikely that the Tribunal will be able to average complaint disposition in a lesser time frame. In achieving the disposition of the case backlog resulting from the disruption arising from the Federal Court decision in the *Breckler* matters, the Tribunal is indebted to its dedicated staff and membership whose herculean efforts over the last 2 years, have placed the Tribunal in the best position that it has been in since 1996-7 to address complaints promptly.

Inevitably, as old challenges are overcome, new challenges arise. One such challenge is the increase in the volume of written complaints, now over 2000 per annum. Whilst a lot of these complaints fall outside the Tribunal's remit, largely because internal review of the initial decision has not been completed before the Complainant lodges a complaint with the Tribunal, each written complaint needs to be assessed with respect to jurisdiction. Another noticeable area is an increase in the complexity of the factual and legal issues which have to be addressed in order to determine complaints. It is inevitable as the investment in superannuation increases that people will take a more keen interest in pursuing concerns arising with respect to their superannuation entitlements. In the next year the Tribunal will also face complaints arising from changes to the



Graham McDonald

Family Law Act relating to the splitting of superannuation as part of matrimonial property settlements.

Disputes about total and permanent disablement and the distribution of superannuation death benefits continue to constitute the highest category of case by volume which needs to be addressed by the Tribunal reaching a determination. There is, however, no doubt that the Tribunal's conciliation process under the guidance of the Assistant Director, Mr Patrick O'Dwyer, continues to be a very valuable time - and hence cost-saving mechanism of case disposal. The great advantage of conciliation is that it provides a forum where the parties themselves are able to control the outcome of the case. That control is lost when the Tribunal is required to determine cases.

There has been a noticeable rise in cases in which the Tribunal is upholding the determination of the Trustee (and Insurer). If sustained, this is a welcome trend, indicating that Trustees and

Insurers are becoming more proactive in applying principles decided by the Tribunal (and by the Federal Court on appeals from Tribunal decisions) in the determination of cases. However, the trend needs to accelerate and the Tribunal would like to see it reach 80+% rather than the current 60%.

The Tribunal does not welcome an increase in the number of complaints being made to it. The Tribunal is conscious that it is funded via the levy imposed on the superannuation industry and hence is ultimately payable by fund members. It is clearly disadvantageous to the industry, as a whole, if the number of disputed complaints before the Tribunal continues to grow. While the Tribunal acknowledges the difficulty Trustees face in conducting internal reviews, i.e. that the Trustees who reach the first decision are of necessity the same as those that carry out the subsequent internal review, the process needs to be carried out rigorously.

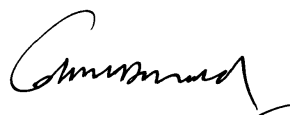
The introduction of medical privacy legislation in some States and the legal requirement that medical reports obtained by an Insurer adverse to the interest of a Complainant, must be communicated to the Complainant in order to allow the Complainant to consider and respond to the medical reports before a decision is made, combine to favour Trustees being more open with information provided to Members. The more information a Member has from the Trustee, the less likely the Member is to appeal to this Tribunal (or to a Court) because the Member will have all the relevant facts before him/her and be placed in a better position to accept a decision of a Trustee. In as far as the law states that a Trustee does not necessarily have to disclose the reasons for its decision or the material on which the decision was based to a Member, it should be remembered that the law sets a minimum standard and it is always within the Trustee's discretion to raise the barrier in relation to those standards. Raising the barrier should

reduce the volume of complaints.

It is too early to assess with any certainty but it seems likely that the introduction of the *Financial Services Reform Act* 2001 (Cwlth.) (FSRA) will be unlikely to lead to much increase in the Tribunal's workload. That Act is designed to regulate conduct and advice whereas the *Superannuation (Resolution of Complaints) Act* 1993 (Cwlth.) is limited to the consideration of decisions. However, the effect of the introduction of the FSRA will be monitored for its effect on the Tribunal's workload.

Proposals by the Minister, the Hon. Senator Helen Coonan, to introduce legislation permitting the extension of some time limits; the introduction of compulsory conciliation where the Tribunal thinks it appropriate; and the Government's co-operation in the development of a more certain and transparent funding formula for the Tribunal, are all welcome initiatives. The rejection of the Productivity Commission's recommendation that the Tribunal should become an industry-funded dispute resolution scheme, rather than a statutory scheme was decided by the Government with the support of both the industry and consumers.

I pay a special thanks to the ongoing dedication of the staff, the Deputy Chair and the Members, all of whom play integral roles in achieving the resolution of complaints. Without the effort of each and every one of the people mentioned, the high number and ever-increasing complexity of cases coming to the Tribunal could not have been so expeditiously addressed.



Graham McDonald
Chairperson

September 2002

Overview

Role

The Tribunal was established by the *Superannuation (Resolution of Complaints) Act 1993* (Cwlth)(the SRC Act) following upon a recommendation of the Senate Select Committee on Superannuation (the SSCS) in June 1992. The Tribunal commenced operation on 1 July 1994 and held its first review meeting on 15 December 1994.

The Tribunal is an independent, dispute resolution body which deals with a diverse range of superannuation-related complaints and offers a free, ‘user-friendly’ alternative to the court system. The Tribunal is empowered to deal with complaints relating to the decisions and/or conduct of trustees, insurers, retirement savings accounts (RSA) providers, superannuation providers and other relevant decision-makers in relation to regulated superannuation funds, approved deposit funds, life policy funds, annuity policies, RSAs and the surcharge contributions tax. The Tribunal does not, however, have an unlimited jurisdiction to deal with all superannuation-related grievances. Very stringent jurisdictional and standing provisions have been built into the SRC Act in the form of mandatory time limits and statutory ‘interests’ to ensure that the Tribunal may only deal with those matters which can ‘fairly’ be dealt with in an economic, informal and quick manner according to its statutory objectives.

Objectives And Functions

The Tribunal’s statutory objectives are set out in section 11 of the SRC Act and require that the Tribunal provide mechanisms that are ‘fair, economical, informal and quick’ for the purposes of inquiring into, conciliating, and reviewing complaints. The Tribunal’s statutory functions are enumerated in section 12 of the SRC Act. Sub-sections 12(1)(a) & (b) of the SRC Act provide that the Tribunal is to inquire into a complaint and try to resolve it by conciliation. If conciliation is unsuccessful, the Tribunal must review the complaint. The Tribunal is also empowered under sub-section 12(1)(c) of the SRC Act to carry out any other functions conferred on it ‘by or under any other Act.’

Organisational Structure

The definition and the establishment sections of the SRC Act implicitly refer to the ‘Tribunal’ as constituted for review. However, pursuant to sub-section 59(1), the Tribunal’s inquiry and conciliation functions are exercisable ‘on behalf of the Tribunal’ by the Chairperson, the Deputy Chairperson and/or by members of the ‘staff’ of the Tribunal who have been so authorised by the Chairperson. Importantly, the Tribunal’s review powers are reposed directly in the Tribunal as constituted for review and may not be delegated. Nor may the Tribunal Members, other than the Chairperson and the Deputy Chairperson, exercise any powers under the SRC Act other than the powers of review. Sub-section 59(2)(a) of the SRC Act lists certain specific powers which are

exercisable only by the Chairperson; and, sub-sections 59(2)(b) and (c) list specific powers which are exercisable only by the Chairperson and/or the Deputy Chairperson.

Tribunal Chairperson

Mr Graham McDonald is the Chairperson of the Tribunal and commenced a three year term of appointment on 14 March 2000. Mr McDonald has a legal and public policy background. He has experience as a solicitor in private practice, a barrister, a Commissioner of Corporate Affairs, a Presidential Member of the Federal Administrative Appeals Tribunal, and as Australia's inaugural Banking Industry Ombudsman.

The Chairperson is the executive officer of the Tribunal and is responsible for the overall operation and administration of the Tribunal's powers and functions in accordance with its statutory objectives pursuant to sections 7A and 59(1) of the SRC Act. The Chairperson is also the repository of a range of specific, non-delegable powers and responsibilities such as formulating written guidelines for the allocation of work among the Tribunal Members—sub-sections 7A(2)(b),(3); and formulating guidelines setting out the way in which the Tribunal is to be constituted for the purposes of dealing with different classes of complaints—sub-section 9(2A). The Chairperson is also responsible for the constitution and reconstitution of the Tribunal at review; the selection of Members for review panels; and for the establishment of procedural rules for the conduct of review meetings pursuant to section 9.

Tribunal Deputy Chairperson

Ms Nicole Cullen is the Deputy Chairperson of the Tribunal and commenced a three year term of appointment on 21 February 2000. Ms Cullen brings to the Tribunal experience in commercial dispute resolution from both a litigation and alternative dispute resolution (ADR) perspective.

Ms Cullen has a law/arts degree from Monash University and practised in the Commercial Litigation department of Arthur Robinson & Hedderwicks for several years. She then worked for five years as a corporate lawyer resolving disputes through litigation, mediation and negotiation for the Commonwealth Bank of Australia. For two



Nicole Cullen

years Ms Cullen managed a national Complaints Resolution Scheme operating in the financial services industry. Ms Cullen has also actively participated in the ADR movement, becoming a mediator herself in 1996. She is a member of the ADR Committee of the Victorian Law Institute and is a Victorian Executive Director of LEADR.

In addition to chairing review meetings at the Tribunal, Ms Cullen's role involves providing assistance to the Chairperson in relation to a range of Tribunal matters—including ongoing communication with Tribunal Members, the Tribunal's conciliation program, public awareness issues and communication with consumer and industry bodies.

Director

Ms Margaret McDonald is the Director of the Tribunal and has occupied this position since January 1996. Ms McDonald came to the Tribunal with considerable experience in complaints handling, having previously worked at the Commonwealth Ombudsman's office for four years as a Senior Investigations Officer. Ms McDonald also worked in the Victorian Public Service for many years, principally in the Premier's Department and in social policy areas.

Ms McDonald manages the inquiry, conciliation and review functions of the Tribunal. She also has responsibility for the corporate management of the Tribunal and assists the Chairperson in policy matters and in liaison with ASIC, Treasury, the superannuation industry, and diverse professional and consumer organisations.



Margaret McDonald

Two Assistant Directors, Ms Fiona Power and Mr Patrick O'Dwyer support the Director.



Patrick O'Dwyer & Fiona Power

Review

Sub-section 7(1) of the SRC Act provides that the membership of the Tribunal for the purposes of review consists of the Chairperson, the Deputy Chairperson and not fewer than 7 Members.

The *Financial Sector Legislation Amendment Act (No.1) 2000* (Cwlth), which commenced operation on 18 January 2001, amended s.7 of the SRC Act to remove the upper limit of

10 members. In relation to a particular complaint, the Tribunal at review will, as far as possible, be constituted by 3 Members as selected by the Chairperson, after taking into account their 'qualifications, experience and suitability having regard to the nature of that complaint' as required under sub-section 9(2).

The Chairperson and the Deputy Chairperson are appointed by the Governor-General and hold office on a full-time basis. The Members are appointed by the Minister; and, two of the Members are appointed only after consultation with the Minister for Consumer Affairs—sub-section 8(4) of the SRC Act.

Profiles of The Tribunal Members

The Members of the Tribunal are variously drawn from superannuation, insurance, government, law, medical and actuarial backgrounds.

Mrs Jane Abbott (20 April 2001–19 October 2002)

Mrs Abbott has worked in corporate superannuation for over 20 years as an administrator, consultant and trustee. She has been involved with the Association of Superannuation Funds of Australia's education program for over 10 years. She is currently a superannuation consultant with NSP Buck Pty Ltd providing advice to Trustee Boards on legislative and member issues.

Ms Katy Adams (5 August 1997–3 April 2003)

Ms Adams is a lawyer who has, since 1989, worked in corporate, tax and superannuation related areas in both the United Kingdom and Australia. She has recently taken a year's secondment with the Regulatory Policy Branch of the Australian Securities & Investments Commission. Currently, she works at Mercer Human Resource Consulting Pty Ltd in Melbourne.

Mrs Jennifer Batrouney S.C. (20 April 2001–19 October 2002)

Mrs Batrouney is a Senior Counsel at the Victorian Bar.

Mr Michael Baume AO (3 October 2001–3 April 2003)

By profession a finance journalist, Mr Baume spent 20 years as a member of federal parliament, occupying senior roles in government and opposition, including Parliamentary Secretary to Treasurer John Howard. His several shadow ministries included Health and he was a member of a number of Senate committees and enquiries, particularly relating to expenditure and the examination of statutory authorities. Mr Baume recently retired after nearly five years as Australia's Consul-General in New York and is now a regular columnist for the Australian Financial Review, of which he was previously Investment Editor before becoming a director of public companies.

Mr Ross Christie (1 December 1998–1 July 2002)

Mr Ross Christie is currently a financial planner holding his Proper Authority from Industry Fund Services Pty Ltd. His previous experience has been as a trustee of Public Sector, Local Government and University superannuation schemes. Mr Christie is a former General Manager of the State Superannuation Office (SA), Chief Executive of the Local Government Superannuation Board (Vic), and Federal Councillor of the Association of Superannuation Funds of Australia.

Mr Kenneth Dance (8 July 1997–7 July 2002)

Mr Dance is a consulting actuary and a past Federal President and Life Member of the Association of Superannuation Funds of Australia. He holds fellowships with actuarial, company director and management associations and is recognised under Corporations law as a financial planner and securities dealer. He frequently provides expert reports and testimony in matrimonial, civil and accident compensation cases.

Dr Catherine Dean (20 April 2001–19 October 2002)

Dr Catherine Dean is a physiotherapist with expertise in rehabilitation. She has extensive clinical experience and has also undertaken rehabilitation research in both Australia and North America. She currently works at an academic institution and is involved in teaching, research and clinical education.

Mr Richard Fayle (20 April 2001–19 October 2002)

Mr Fayle is currently a part-time Senior Member of the Administrative Appeals Tribunal (Cwlth). He was formerly an Associate Professor and Head of the Accounting & Finance of the Department of the University of Western Australia where he taught taxation aspects of superannuation at post graduate level.

Mr Colin Grenfell (4 April 2000–3 April 2003)

Mr Grenfell is an actuary with wide experience in superannuation. He is an Associate Director of SuperEasy Pty Ltd and, until January 2002, was a director and trustee of the AXA Australia Staff Superannuation Plan and a director of N.M. Superannuation Pty Ltd. Mr Grenfell is a director of the Association of Superannuation Funds of Australia (ASFA) and is a member of the ASFA Disclosure, Marketing and Licensing Committee. Until 1996 he held various managerial, superannuation, actuarial and investment roles with National Mutual (now AXA Australia) and from 1997 to 1998 he worked as a superannuation consultant and actuary for William M Mercer.

Mr Damyon Lill (4 April 2000–3 April 2003)

Mr Lill is currently a partner of PriceWaterhouseCoopers Legal. He gained experience in a smaller firm as both Plaintiff and Defendant including working as a solicitor advocate. Mr Lill also gives advice in relation to occupational health and safety. He has written journal articles on workers' compensation and employment law.

Ms Pamela McAlister

(8 July 1997–7 July 2002)

Ms McAlister is a lawyer with specialist experience in superannuation and trust law. She is currently a partner of Freehills and for many years was a Principal of William M Mercer Pty Ltd, culminating in her appointment as joint National Practice Leader of the Legal Group. Ms McAlister has a longstanding interest in legal education. She has instructed for the Leo Cussen Institute, the Association of Superannuation Funds and the Securities Institute. From 1997 to 1999 Ms McAlister held an academic position at Monash University teaching Equity & Trusts, Administrative Law and Superannuation Law and Practice. She is a regular contributor to various professional journals and a frequent speaker at superannuation events.

Dr Diana Olsberg

(20 April 2001–19 October 2002)

Dr Diana Olsberg is Director of the University of New South Wales Research Centre on Ageing & Retirement and a senior lecturer in economic sociology in the School of Sociology at UNSW. She is well-respected and widely published for her research on Australia's superannuation system. Diana was named Trustee of the Year for 2002 at the Conference of Major Superannuation Funds. She has been an employee elected Trustee of one of Australia's largest superannuation funds, Unisuper, for 10 years and chairs the Membership Committee of Unisuper. In 1996/97 she served as Executive Director of the Australian Institute of Superannuation Trustees.

Mr Robert Putnam

(1 December 1998–1 July 2002)

Mr Putnam is a past Federal President and a Life Member of the Association of Superannuation Funds of Australia. He retired as Manager Superannuation, CSR Limited, in November 1995. He is a Certified Practising Accountant.

Dr Carolyn Re

(4 April 2000–3 April 2003)

Dr Carolyn Re is a medical practitioner who has worked in private general practice for over 17 years. She is currently a part-time member of the Commonwealth Social Security Appeals Tribunal, a member of the Victorian Casino and Gaming Authority, writes regularly on medical issues for the fortnightly publication 'Medical Observer' and works as a freelance medical writer.

Miss E Anne Shanahan

(20 April 2001–19 October 2002)

Miss E A Shanahan is a Thoracic Surgeon practising in both the public and private hospital spheres. In addition she has a B.Sc. in Pathology and is a Barrister and Solicitor admitted to practice in the Supreme Court of Victoria in 1990. She is a part-time Member of the Commonwealth Administrative Appeals Tribunal. She was a Fullbright Scholar in 1969-1970.

Mr Brian Sharpe

(8 July 1997–7 July 2002)

Mr Sharpe is a specialist designer of compliance systems. He is a solicitor and was formerly General Counsel of AMP, where he gained wide knowledge of life insurance and superannuation. He is co-author of *Wickens: Law of Life Insurance in Australia* (Law Book Company) and the *Official Guide To Australian Standard AS3806—Compliance Programs*. He is also author of *Making Legal Compliance Work* (CCH), and has published in New Zealand, the United States of America and South Africa.

Ms Marita Wall

(3 August 1994–1 July 2002)

Ms Wall is a superannuation / funds management lawyer whose career includes a period in the corporate legal area with National Mutual and her current role as a consultant with Mallesons Stephen Jacques, Solicitors. She has been involved in discussions, drafting recommendations and appearing before various bodies, including the SSCS, the Australian Law Reform Commission and the Attorney-General's Department. Ms Wall has also lectured at the Leo Cussen Institute and is a regular contributor to various professional journals.

Members of the Tribunal



**L–R: J Abbott, R Putnam, D Olsberg, D Lill, C Dean, P McAlister, R Christie,
J Batrouney
(seated) C Grenfell, M Wall, G McDonald, N Cullen, C Re, M Baume
(absent – K Dance, R Fayle, K Adams, A Shanahan)**

Review Support

Review Support is headed by Mr Ken Jacobs who is assisted by two review officers and five administrative officers—including the Chairperson’s Personal Assistant, Ms Angela Livy and the Deputy Chairperson’s Personal Assistant, Ms Lauraine Mackay. Review Support assists the Tribunal in the conduct of its review meetings by facilitating procedural preparation and document exchanges, and by coordinating review materials for the Tribunal Members.



Ken Jacobs

Review Support is also responsible for listing review meetings and for ensuring that the Tribunal's determinations are issued to the parties and that anonymous versions are distributed for publication. The team also coordinates with the Tribunal’s legal adviser, Ms Carol Foley, in providing documents to the Federal Court of Australia in matters under litigation.

Inquiry And Conciliation

The Inquiries and Conciliation Section is the largest section of the Tribunal. Sub-section 59(1) of the SRC Act provides that the Chairperson, Deputy Chairperson and any authorised member of the ‘staff’ of the Tribunal may exercise the various listed powers relating to the inquiry and conciliation functions—see Appendix 2. The Director heads the Inquiries and Conciliation Section supported by two Assistant Directors and by 17 Case Officers—see Appendix 1.

The case officers are divided into two teams, each headed by a team leader – Mr Frank Stasiak and Mr Philip Laird. Case Officers are also responsible for handling the Tribunal’s telephone enquiry hotline on a roster basis.

The inquiry process empowers the Tribunal to obtain documents and information so that threshold decisions as to jurisdiction, standing, grounds and representation may be made. Complaint Reports are prepared by the case officers as part of this process and are used as a basis for determining whether the particular complaints should be treated as withdrawn or alternatively, proceed to the conciliation / review stages as relevant in the particular case. The

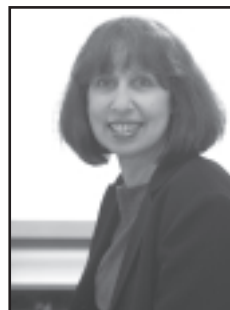


Frank Stasiak and Philip Laird

conciliation process which follows provides a valuable opportunity for parties to communicate and consensually resolve their differences under the aegis of an experienced conciliator. The conciliation process is the trigger which, if unsuccessful, activates the review function of the Tribunal.

Legal Adviser

Senior Lawyer, Ms Carol Foley, is responsible for the management of any Tribunal matters before the courts, undertakes research on legal and policy issues and prepares/presents papers, articles, reports and information seminars. Ms Foley also provides FOI, Privacy and Archives advice.



Carol Foley

Ms Foley is a public law and superannuation lawyer, with experience in both private practice and government. She taught Administrative Law and Constitutional Law at Monash University for a number of years and has instructed in Administrative Law at the Leo Cussen Institute. She has also written a number of journal articles and presented several conference papers and seminars on behalf of the Tribunal.

Administration

The Tribunal is supported by an Administration Section comprising three officers who report to Assistant Director, Mr Patrick O'Dwyer. Administration deals with the day-to-day operation of administrative matters, processes the initial receipt of complaints, and assists in the practical facilitation of the inquiry, conciliation and review functions.



Administration

National Operation

The Tribunal is located in Melbourne, Victoria and so most conciliations and reviews are held at the Tribunal's Melbourne office. Where necessary, the Tribunal has discretionary powers under sub-sections 29 and 35 of the SRC Act and rule 4 of the *Procedural Rules* to determine that conciliations and reviews may be conducted by telephone, closed-circuit television or by 'any other means of communication'. The Tribunal does not have its own closed circuit television system, so presently conducts most conciliation conferences via audio conferencing. Reviews are generally conducted solely 'on the papers'.

Relationship With ASIC

The Tribunal's relationship with the Australian Securities and Investments Commission (ASIC) commenced on 1 July 1998. ASIC is an independent Commonwealth body that enforces and administers the Corporations Law and regulates the advising, selling and disclosure of all financial products and services to consumers, except credit. Providing consumers with access to efficient and fair mechanisms to resolve their complaints and overseeing all the complaints handling bodies in the financial sector forms part of ASIC's purpose.

Memorandum of Understanding

A *Memorandum of Understanding* (MOU) was concluded between the Tribunal and ASIC on 6 May 1999—see Appendix 6. The purpose of the MOU is to facilitate cooperation between the Tribunal and ASIC in accordance with the relevant statutory provisions, whilst at the same time recognising the independence of each body. The MOU is not intended to be legally binding.

Service Level Agreement

The Tribunal and ASIC have developed a mutual *Service Level Agreement* (SLA). The SLA outlines each agency's responsibilities in relation to information technology; learning and development; finance; human resource management/payroll; and office services. As with the MOU, the SLA is not legally binding.

Budget

The Tribunal's budget comes within ASIC's budget allocation. The Tribunal negotiates its budget with ASIC and, where necessary, both bodies make joint submission to Government for budget supplementation. ASIC provides the Tribunal with budget allocations on an annual basis with a review mechanism in December of each year. See Appendix 9—Financial Statement; and Chapter 4.

Staff

ASIC has a statutory responsibility pursuant to sub-s.62(2) of the SRC Act to provide staff to the Tribunal to enable it to perform its functions.

Referral Of Complaints

The Tribunal is legislatively required to provide ASIC with certain particulars in respect of complaints pursuant to sections 64, 64A, 65 and 31(2) of the SRC Act.

Sections 64 and 64A of the SRC Act

The Chairperson is required to report the contravention, or suspected contravention, of 'any law' or of 'the governing rules of a fund' to ASIC 'as soon as practicable'—sub-s.64(b) of the SRC Act. The Chairperson is likewise required to report the breach of any terms and conditions relating to an annuity policy, a life policy or an RSA—sub-s.64A(b) of the SRC Act. This reporting year, eleven matters were referred to ASIC under sub-s.64(b); no matters were referred under sub-s.64A.

Section 65 of the SRC Act

Upon becoming aware that a party to a complaint has refused or failed to give effect to a determination made by the Tribunal, the Chairperson must give particulars to ASIC ‘as soon as practicable’ under sub-s.65(1)(b) of the SRC Act. There was one breach this reporting year.

Section 31(2) of the SRC Act

The Tribunal has the discretionary power to give details of a conciliation settlement to the ‘Regulator’ if it thinks that further investigation is required. According to Note 2 of sub-s.3(2) of the SRC Act, the ‘Regulator’ is as defined in sub-s.10(1) of the *Superannuation Industry (Supervision) Act 1993* (Cwlth) (SIS). The ‘Regulator’ may be either ASIC or APRA, depending upon whether sub-s.31(2) is, or is being applied for the purposes of, a provision that is administered by ASIC or APRA—as relevant. No settlement details were given to ASIC this reporting year.

Relationship With APRA

The Australian Prudential Regulation Authority (APRA) is responsible for the prudential supervision of banks, non-bank financial intermediaries, life and general insurance companies and superannuation funds excluding self-managed funds. APRA is also responsible for collecting an annual levy on superannuation entities under the *Superannuation (Excluded Funds) Taxation Act 1987* (Cwlth). This levy is paid into Consolidated Revenue and the operating cost of the Tribunal is appropriated by Parliament as part of the ASIC appropriations as described above.

Referral Of Complaints

The only provision in the SRC Act which deals with the referral of complaints to APRA is sub-s.31(2) which is cast in terms of the ‘Regulator’—as discussed above in relation to ASIC. No matters were referred to APRA this reporting year.

The Responsible Minister

Under the SRC Act, certain statutory powers are reposed in the Minister. These powers are primarily concerned with various appointment and administrative matters concerning the Chairperson, the Deputy Chairperson and the Members. The Minister does not have any statutory powers of direction over the Tribunal in the exercise of its s.12 functions.

The Tribunal's Portfolio Minister is the Treasurer, the Hon. Peter Costello MP. The Treasurer can allocate Ministerial responsibility for the Tribunal to the Parliamentary Secretary to the Treasurer, Senator the Hon. Ian Campbell, or to the Minister for Revenue and Assistant Treasurer, Senator the Hon. Helen Coonan. The Tribunal's enabling Act, the SRC Act, is administered by the Department of the Treasury.

Jurisdiction and Powers

New Legislation

This reporting year four enactments have been passed which will impact in varying degrees upon the Tribunal's operations: the *Financial Services Reform Act 2001* (Cwlth); the *Financial Services Reform (Consequential Provisions) Act 2001* (Cwlth); the *Treasury Legislation Amendment (Application of Criminal Code) Act (No 2) 2001* (Cwlth); and, the *Statute Law Revision Act 2002* (Cwlth).

Financial Services Reform Act 2001 (Cwlth) and the Financial Services Reform (Consequential Provisions) Act 2001 (Cwlth)

The *Financial Services Reform Act 2001* (Cwlth) (FSRA) commenced operation on 11 March 2002. The FSRA establishes an integrated regulatory framework for all financial services and products and includes the setting in place of a dispute resolution system to ensure that a consistent standard of consumer protection is available. To this end, the FSRA imposes obligations upon financial services licensees, certain product issuers and other regulated persons including superannuation trustees to provide their retail clients with access to a complying dispute resolution system. A complying dispute resolution system must consist of an internal dispute resolution procedure that complies with standards and requirements made or approved by ASIC in accordance with the regulations; and, it must also provide access to one or more external dispute resolution schemes. Importantly, the external dispute resolution body(ies) concerned must be capable of handling the full range of complaints that may arise in connection with all the services or products that the provider is licensed to offer. In some cases this may mean that a provider will have to be a member of more than one external dispute resolution body to ensure complete coverage.

So far as the Tribunal is concerned, where a provider engages only in those activities that come within the Tribunal's jurisdiction, there will be no requirement that the provider be a member of any other external dispute resolution body. However, where only a part of the provider's services/products are covered by the Tribunal, the provider will also be required to be a member of an external dispute resolution body capable of handling complaints not covered by the Tribunal.

To facilitate the Tribunal's role in this regard, the *Financial Services Reform (Consequential Provisions) Act 2001* (Cwlth) amended the definition of a 'life insurance broker' in sub-s.3(2) of the SRC Act.

Treasury Legislation Amendment (Application of Criminal Code) Act (No 2) 2001 (Cwlth)

Schedule 1 of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No 2) 2001* (Cwlth) amended the SRC Act so as to bring it in line with the *Criminal Code Act 1995* (Cwlth) which aims, so far as is possible, to introduce consistency into federal

legislation with regard to criminal offences. The changes to be brought about by the *Code* reflect the view that proof of a 'guilty mind' is generally necessary before a person can be found guilty of an offence. The *Code* establishes four basic fault elements: intention, knowledge, recklessness and negligence. The *Code* does not, however, prevent an offence from specifying an alternative fault element, but it indicates that the default fault element will apply in the absence of another specified fault element. The SRC Act contains a mix of absolute, strict and subjective, fault-based offences as commensurate with their perceived seriousness.

Statute Law Revision Act 2002 (Cwlth)

Schedule 1 of the *Statute Law Revision Act 2002 (Cwlth)* made very minor amendments in terms of punctuation to sub-s.59(1) of the SRC Act.

Proposed New Bills

Amendments to the SRC Act—Financial Sector Legislation Amendment Bill (No.2) 2002 (Cwlth)

Schedule 7 of the *Financial Sector Legislation Amendment Bill (No 2) 2002 (Cwlth)* (FSLAB), which was introduced into the House of Representatives and read a second time on 26 June 2002, will, when passed, amend the SRC Act so as to:

- introduce flexibility into the time limits relating to total and permanent disability (TPD) complaints so as to acknowledge the difficulty in assessing medical conditions over time and give the Tribunal discretion to waive the time limits. The Tribunal will also be required to issue guidelines indicating the kinds of circumstances in which it would ordinarily exercise this discretion;
- strengthen, modernise and improve the conciliation powers of the Tribunal by enabling it to require attendance at conciliation conferences instead of the current voluntary system. The Tribunal will also be required to issue guidelines indicating the kinds of circumstances in which it would ordinarily require persons to attend conciliation conferences;
- enable part-time appointments to be made in relation to the offices of Chairperson and Deputy Chairperson;
- remove all references to the Tribunal's now defunct arbitration function;
- implement minor technical amendments which will have the effect of streamlining the application of the SRC Act.

Schedule 6 of FSLAB will amend the *Superannuation Industry (Supervision) Act 1993 (Cwlth)* (SIS) so as to allow for the recognition of arbitration awards previously made by the Tribunal which are still in force, even though the Tribunal's arbitral powers are now defunct.

New Executive Action

Regulations

There have been no amendments to the Tribunal's Regulations this reporting year.

Jurisdictional Limits

The Tribunal does not have jurisdiction to deal with the following complaints:

- complaints where the complainant has not first lodged a complaint with the fund / RSA provider via its internal complaints resolution arrangements under s.101 of SIS or s.47 of the *Retirement Savings Accounts Act 1997* (Cwlth) (the RSA Act) (as relevant) before coming to the Tribunal—section 19 SRC Act;
- exempt public sector superannuation scheme (EPSSS) complaints which are not deemed to be 'regulated' by section 4A of the SRC Act, or prior to being so deemed;
- total and permanent disability complaints which do not comply with the requirements of sub-sections 14(6A)–(6D), 15F(5)–(8) or 15J(5)–(8) of the SRC Act;
- 'management of the fund as a whole' complaints—sub-sections 14(6), 15F(4) or 15J(4) of the SRC Act;
- complaints about decisions of trustees of 'regulated' superannuation funds and 'approved' deposit funds made before the fund was regulated. See the judgment of Merkel J in *Briffa & Ors v. Hay* (1997) 147 ALR 226;
- 'excluded complaints' and complaints concerning 'excluded subject-matter' as declared in the SRC Regulations. Nil so declared as at 30 June 2002;
- 'self-managed superannuation funds' (SMSFs) which are regulated by the Australian Taxation Office (ATO);
- complaints about decisions made by decision-makers who are not specifically caught by the SRC Act;
- complaints where the subject-matter of the complaint is currently the subject of court proceedings—section 20 SRC Act;
- complaints where the statutory standing requirements have not been met by the complainant(s).

Largest Categories of Written Complaints Outside Jurisdiction

Once again, complaints which failed to comply with section 19 of the SRC Act—i.e. complaints where the complainant had failed to lodge a section 101 complaint with the trustee prior to lodging a complaint with the Tribunal—comprised the largest category of

written complaints found to be outside jurisdiction. This year, 49.1 per cent of all such written complaints fell into this category, up from 37 per cent last reporting year. Once again, this indicates that there is still much educative work to be done in this area to apprise members of the statutory requirements.

This reporting year, the second largest category of written complaints outside jurisdiction was 'disablement time limits' at 14.6 per cent. Last reporting year, the second largest category of written complaints outside jurisdiction was 'management of the fund as a whole' at 18 per cent.

Powers

The SRC Act provides the Tribunal with a wide range of powers to facilitate its operations. This reporting year the Federal Court of Australia addressed the following issues in relation to the Tribunal's powers and procedures.

Asking the Right Question in TPD Cases

The Federal Court stressed that the question for the Tribunal in the determination of TPD cases was not whether or not the Complainant was totally and permanently disabled; but, whether or not the operation of the Trustee/Insurer decision was fair and reasonable in relation to the Complainant in the circumstances—per sub-section 37(6) of the SRC Act: *Alcoa of Australia Retirement Plan P/L v Thompson* [2002] FCA 256 (15 March 2002); *Haematite Pty Ltd v Ristevski* [2002] FCA 408 (9 April 2002); *The National Mutual Life Association of Australasia Ltd v Scollary* [2002] FCA 695 (31 May 2002).

Compromising Claims

The Federal Court held that because the Tribunal stands in the shoes of the decision-maker it has all the powers, obligations and discretions of that decision-maker pursuant to sub-sections 37(1)(a),(b) of the SRC Act. Thus, it is open to the Tribunal, in an appropriate case, to either remit the matter to the Trustee with directions to reconsider recompensing the Complainant; or, to directly order the Trustee to recompense the Complainant—*Retail Employees Superannuation P/L v Crocker* [2001] FCA 1330 (20 September 2001); *United Superannuation Pty Ltd v Harrison* [2001] FCA 1468 (19 October 2001).

Internal Scrutiny

As in previous years, the Tribunal continues to operate according to a 'team' model. Scrutiny of Tribunal processes is routinely carried out at all levels by staff commensurate with their seniority and experience. More complex issues, such as jurisdictional issues, are dealt with by the Director, Assistant Directors, and/or the Senior Lawyer and, where necessary, in consultation with the Chairperson.

External Scrutiny

The external scrutiny of the Tribunal is carried out by the Parliament; various parliamentary committees; the courts; and certain Commonwealth departments and statutory bodies.

Parliament

The Parliament scrutinises the operation of the Tribunal by way of the legislative process; the tabling of regulations; and the tabling of the Tribunal's Annual Report. This reporting year, the Tribunal again provided a biannual indexed list of files to be tabled before the Senate in accordance with the requirements of Senate Order No 5.

Parliamentary Committees

The Tribunal has not been the subject of scrutiny by any parliamentary committee this reporting year.

Courts

The jurisdiction, powers and operations of the Tribunal are open to judicial scrutiny via statutory appeal and judicial review. Specifically, the Tribunal is subject to judicial scrutiny by the Federal Court of Australia pursuant to sections 39 and 46 of the SRC Act. This reporting year 18 appeals from Tribunal determinations were lodged with the Federal Court pursuant to section 46. No questions of law have been referred to the Federal Court pursuant to s.39 of the SRC Act; and, one application has been made to the Federal Court for judicial review pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) (AD(JR) Act) and s.39B *Judiciary Act 1903* (Cwlth).

Section 46 Federal Court Appeals Lodged 2001–2002

- *Davis v Rio Tinto Staff Superannuation Fund P/L* (No T24 of 2001);
- *The Colonial Mutual Life Assurance Society Ltd v Holmes & St John Ambulance Superannuation Fund P/L* (No N 1168 of 2001);
- *Alcoa of Australia Retirement Plan P/L v Thompson* (No WAG 351 of 2001);
- *Leggett v Atlas Copco Australia Staff Superannuation P/L & AMP Life Lrd* (No N285 of 2001);
- *PSS Board v Anderson* (No V621 of 2001);
- *Brown v The Coal Industry Superannuation Board* (No W464 of 2001);
- *Hourn v Farm Plan P/L* (No W421 of 2001);
- *Colonial Mutual v Harris & RES P/L* (No N1585 of 2001);
- *Military Superannuation & Benefits Board No 1 v Batt* (No V1209 of 2001);
- *Local Government Superannuation Board v Thorne* (No S216 of 2001);
- *Cameron v Board of Trustees (Superannuation State Public Sector) Act* (No V1273 of 2001);

- *McGrath v MLC Nominees P/L* (No N104 of 2002);
- *The Colonial Mutual Life Assurance Society v Brayley & SACH VMO Fund P/L* (No N391 of 2002);
- *Kelly v Nulis Nominees (Australia) Ltd* (No V271 of 2002);
- *Kelly-Pearce v Kelly* (No V276 of 2002);
- *Barghoutbi v ING Life Ltd & PlesTel P/L* (No N505 of 2002);
- *Hornsby v Superannuation Complaints Tribunal* (No D8 of 2002);
- *CSS Board v Kitching* (No V377 of 2002).

Federal Court Appeals Lodged Under the AD(JR) Act & s.39B Judiciary Act 2001–2002

- *Evans v Superannuation Complaints Tribunal* (No A 71 of 2001).

Federal Court Judgments Handed Down 2001–2002

- *PSS Board v Anderson* (No V621 of 2001) (16 July 2001);
- *Sommer v NM Superannuation P/L* [2001] FCA 923 (20 July 2001);
- *Retail Employees Superannuation P/L v Crocker* [2001] FCA 1330 (20 September 2001);
- *United Superannuation Pty Ltd v. Harrison* [2001] FCA 1468 (19 October 2001);
- *Flexiplan Australia Ltd v. Pankhurst* [2001] FCA 1535 (31 October 2001);
- *Hovitt-Steven v. Unisuper* [2001] FCA 1599 (15 November 2001);
- *Evans v Superannuation Complaints Tribunal* [2002] FCA 79 (8 February 2002) [matter as to procedure resolved; substantive case continues];
- *Alcoa of Australia Retirement Plan P/L v Thompson* [2002] FCA 256 (15 March 2002);
- *Davis v Rio Tinto Staff Superannuation Fund P/L* [2002] FCA 376 (4 April 2002);
- *National Mutual Life Association of Australasia Ltd v. Scollary* [2002] FCA 695 (31 May 2002);
- *Haematite Pty Ltd v. Ristevski* [2002] FCA 408 (9 April 2002);
- *Constantinides v. Du Pont Superannuation Fund Pty Ltd & Hannover Life Re of Australasia Ltd* [2002] FCA 534 (30 April 2002);
- *Military Superannuation and Benefits Board No 1 v. Stanger* [2002] FCA 671 (31 May 2002).

Federal Court Appeals Settled/Discontinued 2001–2002

- *The Colonial Mutual Life Assurance Society Ltd v Holmes & St John's Ambulance* (No N 1168 of 2001);
- *Leggett v Atlas Copco Australia Staff Superannuation P/L & AMP Life Ltd* (No N285 of 2001);
- *Brown v The Coal Industry Superannuation Board* (No W464 of 2001);

- *Conway v. Westscheme Ltd* (No W193 of 2000);
- *PSS Board v. Wedgwood* (No W946 of 2000);
- *Bloom v Craig (c/o Ors) as Trustees for Stevedoring Employees Retirement Fund Pty Ltd* (No V174 of 2001);
- *Milanovic v. Colonial Mutual Superannuation Pty Ltd and Colonial Mutual Life Assurance Society Ltd* (No N954 of 2001);
- *McGrath v MLC* (No N104 of 2002).

Federal Court Matters Pending At 30 June 2002

Based upon information obtained from the Federal Court, the following matters were still pending in the Federal Court as at the end of the reporting year:

- *Alderson v. Regis Nominees Pty Ltd c/o Citicorp Life Insurance Ltd* (No V922 of 2000);
- *Royal c/o Sun Alliance Financial Services Australasia Ltd v Kim & HESTA* (No N844 of 2001);
- *Military Superannuation c/o Benefits Board No 1 v Drake* (No V691 of 2001);
- *Hourn v Farm Plan P/L* (No W421 of 2001);
- *Colonial Mutual v Harris c/o RES P/L* (No N1585 of 2001);
- *Military Superannuation c/o Benefits Board No 1 v Batt* (No V1209 of 2001);
- *Local Government Superannuation Board v Thorne* (No S216 of 2001);
- *Cameron v Board of Trustees (Superannuation State Public Sector) Act* (No V1273 of 2001);
- *Evans v Superannuation Complaints Tribunal* (No A71 of 2001);
- *The Colonial Mutual Life Assurance Society v Brayley c/o SACH VMO Fund P/L* (No N391 of 2002);
- *Kelly v Nulis Nominees (Australia) Ltd* (No V271 of 2002);
- *Kelly-Pearce v Kelly* (No V276 of 2002);
- *Barghoutbi v ING Life Ltd c/o PlesTel P/L* (No N505 of 2002);
- *Hornsby v Superannuation Complaints Tribunal* (No D8 of 2002);
- *CSS Board v Kitching* (No V377 of 2002).

Commonwealth Departments

Attorney-General's Department

The Tribunal has submitted all relevant information to the Attorney-General's Department as required under s.9 and sub-s.93(2) of the *Freedom of Information Act 1982* (Cwlth).

Australian Archives

The Tribunal submitted a report to Australian Archives on 11 June 1997 outlining its file management system. No response has been received.

Department of the Treasury

The Tribunal comes within the Treasury portfolio—see Chapter 1.

Statutory Bodies

The Ombudsman

Two informal inquiries were made by the Ombudsman under the *Ombudsman Act 1976* (Cwlth) this reporting year as follows:

- The first inquiry related to the Tribunal's approach to procedural fairness at both conciliation and review; and, to the weighting the Tribunal placed upon certain pieces of evidence in a particular case. The Ombudsman accepted the Tribunal's explanation.
- The second inquiry related to a decision by the Chairperson of the Tribunal not to provide a Complainant with details of all other complaints the Tribunal had received in relation to a particular Trustee and the names of all the other Complainants. The Chairperson decided that to provide such information to the Complainant would be in breach of s.63 of the SRC Act (the secrecy provision). The Ombudsman accepted this explanation and agreed that s.63 of the SRC Act prevented the Tribunal from providing that information.

The Privacy Commissioner

No reports have been made by the Privacy Commissioner under the *Privacy Act 1988* (Cwlth) in respect of the Tribunal during this reporting period.

The Productivity Commission

In February 2001, the then Assistant Treasurer referred a list of legislation and associated regulations relating to superannuation to the Productivity Commission. The Commission was to focus on those parts of the legislation that restricted competition, imposed costs or conferred benefits on business. As part of this inquiry, the Commission was asked to review the *Superannuation (Resolution of Complaints) Act 1993*.

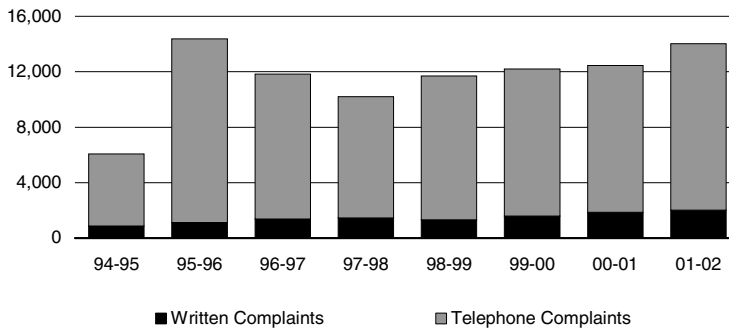
The Productivity Commission's recommendation that the Tribunal should become an industry-funded dispute resolution scheme, rather than a statutory scheme, was rejected by the Government.

Performance

Statistical Overview

Section 11 of the SRC Act requires that the Tribunal must provide fair, economical, informal and quick mechanisms for carrying out its statutory functions of inquiry, conciliation and review. This reporting year, 11,993 (2000-2001 - 8,733) telephone enquiries and 2,023 (2000-2001 - 1,856) written complaints were received by the Tribunal. These statistics show a 37.3 per cent increase in the number of telephone enquiries received, and a 9.0 per cent increase in the number of written complaints received compared with the 2000–2001 reporting year. There was also a 130 per cent increase in the number of website sessions.

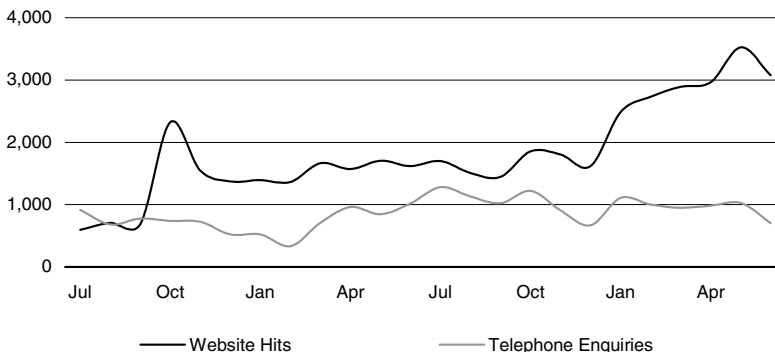
Fig. 1: Annual Complaint Trends 1994–2002



Enquiries

As mentioned above, the Tribunal received 11,993 telephone calls this reporting year and dealt with a wide range of enquiries. The most popular questions were employer related enquiries, early release of benefits, disablement and general enquiries concerning the Tribunal.

Fig. 2: Monthly Enquiries 2000–2002



Written Complaints

The Tribunal received 2,023 (2000-2001 - 1,856) written complaints this reporting year. Of these, 1,069 (52.8 per cent) complaints were within jurisdiction (2000-2001 – 883, 47.6 per cent) and 954 (47.2 per cent) outside jurisdiction (2000-2001 – 973, 51.1 per cent). The Tribunal actually dealt with 1,974 (2000-2001 - 1,839) written complaints during the reporting year (which includes some complaints carried over from the previous reporting year). Of these, 990 (50.2 per cent) were within jurisdiction (2000-2001 – 853, 46.4 per cent) and 984 (49.8 per cent) were found to be outside jurisdiction (2000-2001 – 986, 53.6 per cent). Of the 986 complaints closed as outside jurisdiction, 484 (49.1 per cent) were s.101 referrals closed pursuant to s.19 of the SRC Act. (2000-2001 – 366, 37 per cent) At the end of the reporting year 925 (2000-2001 – 908) complaints remained open. This represents an increase of 1.9 per cent over the previous reporting year, which is a very pleasing result given the 9.0 per cent increase in the overall number of written complaints received this reporting year.

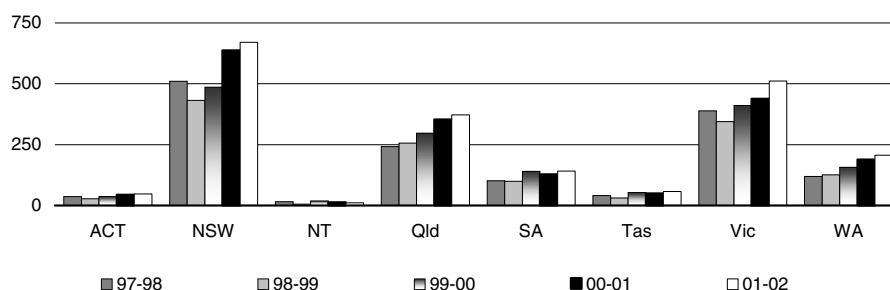
Distribution By State and Territory

Table 1 shows the origin of the 2,023 written complaints made to the Tribunal during the reporting period by State and Territory. This gives an indication of the number of complaints received relative to the respective populations in each State/Territory, so that any significant disparities over time may be charted. Figure 3 shows that no significant disparities have occurred this reporting year.

Table 1: Written Complaints by State / Territory

State / Territory	Number of Complaints	
	2000–2001	2001–2002
Australian Capital Territory	44	47
New South Wales	637	671
Northern Territory	13	11
Queensland	353	372
South Australia	128	141
Tasmania	50	57
Victoria	438	511
Western Australia	189	207
Other	4	6
Total	1,856	2,023

Fig. 3: Annual Written Complaint Trends by State / Territory 1997–2002



Distribution By Age And Gender

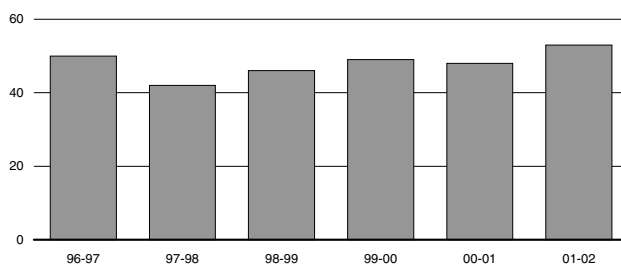
As in the previous year, 65.0 per cent of all written complaints made to the Tribunal were from men, which, as in all previous reporting years, indicates that men are over-represented.

Of the 2,023 written complaints received by the Tribunal, 1,325 complainants provided their date of birth. Based on these statistics, the average age of complainants is 49 (2000-2001 – 47) years and 33 per cent of complainants are aged 55 years or over (2000-2001 – 29 per cent). The oldest complainant was 93 (2000-2001 – 86) years. These figures are essentially the same as previous reporting years and once again indicate that the older age groups are highly represented because many complaints arise out of the payment of retirement benefits. The older age factor also helps to explain the gender disparity, because men comprise a greater proportion of the over 55 age group of fund members.

Written Complaints Within Jurisdiction

Of the 2,023 new written complaints received by the Tribunal this reporting year, 1,069 (52.8 per cent) were within jurisdiction. Last reporting year, of the 1,856 written complaints received, 883 were within jurisdiction (47.6 per cent). Fig. 4 below shows the annual complaint trends in respect of written complaints within jurisdiction received from 1996–1997 to 2001–2002.

Fig. 4: Annual Trends—Written Complaints Within Jurisdiction (%)



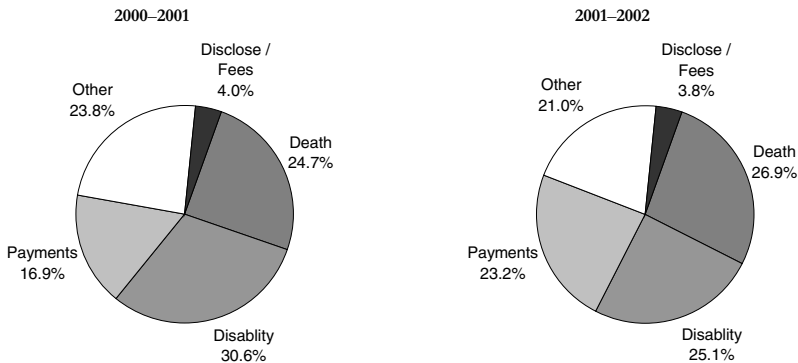
Nature of Written Complaints Within Jurisdiction

Once again, the majority of these complaints have fallen into four of the six major categories of complaints received, i.e. 'Death', 'Disability', 'Payments' and the 'catch-all' category of 'Other'. For the first time, 'Death' complaints comprise the largest category of all written complaints received within jurisdiction—26.9 per cent (2000-2001 – 24.7 per cent). This year, 'Disability' complaints make up the second-largest category at 25.1 per cent (2000-2001 – 30.6 per cent), followed by 'Payments' at 23.2 per cent (2000-2001 – 16.9 per cent). Note that 'Administration' complaints, at 17.9 per cent (2000-2001 – 20.3 per cent), comprise almost all of the 'Other' category.

Table 2: Nature of Written Complaints Within Jurisdiction

Nature of Complaint	Number Of Complaints Within Jurisdiction			
	No	%	No	%
Disclosure / Fees			40	3.8%
Agent Misrepresentation	21	2.0%		
Fees & Charges	19	1.8%		
Death			288	26.9%
Death – distribution	250	23.3%		
Death – other	38	3.6%		
Disability			268	25.1%
Disability – medical	170	15.9%		
Disability – other	98	9.2%		
Payments			248	23.2%
Payment Delay	91	8.5%		
Account Balance	129	12.1%		
Release of Benefits / Preservation	28	2.6%		
Other			225	21.0%
Administration	192	17.9%		
Statement error	2	0.2%		
Surplus Distribution	4	0.4%		
Trustee misrepresentation / malpractice	15	1.4%		
Other	8	0.7%		
Employer-related	0	0.0%		
Surcharge	3	0.3%		
Investment Returns	1	0.1%		
Total	1,069	100.0%	1,069	100.0%

Fig. 5: Nature of Written Complaints Within Jurisdiction

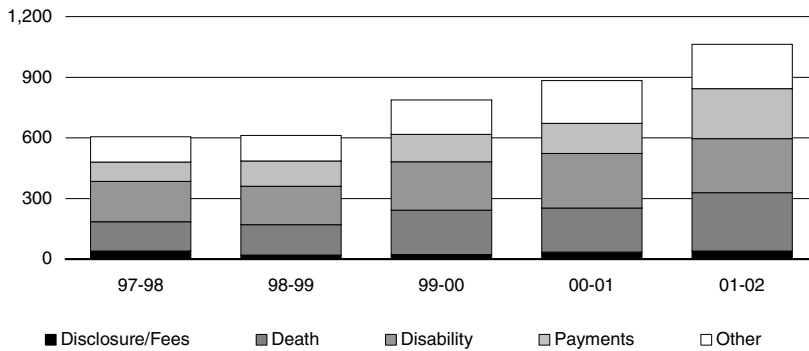


The proportional distribution of complaint types across all categories remains more or less consistent with the distribution statistics in previous reporting years, with the exception of the 1994–95 inaugural reporting year. Note, however, that there has been a 66.4 per cent rise in the number of ‘Payments’ complaints this reporting year—see Table 3 and Fig. 6.

Table 3: Annual Trends: Nature of Written Complaints Within Jurisdiction 1994–2001

Reporting Year	Disclosure & Fees	Death	Disability	Payments	Other	Total (actual no)
1994-1995	20.0%	8.0%	14.0%	20.0%	38.0%	881
1995-1996	5.0%	21.0%	28.0%	22.0%	24.0%	487
1996-1997	10.0%	24.0%	27.0%	16.0%	23.0%	694
1997-1998	7.0%	23.5%	33.0%	16.0%	20.5%	609
1998-1999	3.0%	24.5%	31.5%	20.0%	21.0%	609
1999-2000	2.3%	27.5%	30.8%	17.4%	22.0%	782
2000-2001	4.0%	24.7%	30.6%	16.9%	23.8%	883
2001-2002	3.8%	26.9%	25.1%	23.2%	21.0%	1,069

Fig. 6: Annual Complaint Trends by Nature of Complaints Within Jurisdiction 1997–2002 (actual numbers)



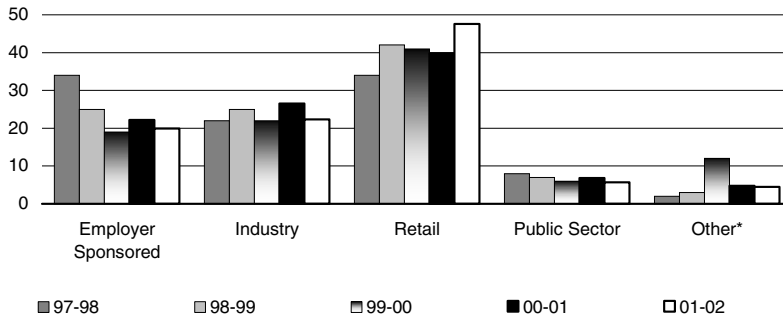
Written Complaints Within Jurisdiction By Fund Type

The Tribunal has identified four fund types for reporting purposes—employer-sponsored (corporate) funds; industry funds; retail funds (life office and other non-industry public offer); and public sector funds. The total number of written complaints received within jurisdiction in relation to each fund-type is shown in Table 4. Once again this reporting year, the greatest number of such complaints received related to retail funds – 509 (47.6 per cent)—up from 351 complaints last reporting year (39.8 per cent) – see Fig. 7.

Table 4: Total Written Complaints Within Jurisdiction by Fund Type

Fund Type	Number of Complaints Received		Percentage of Total	
	2000-2001	2001-2002	2000-2001	2001-2002
Employer Sponsored	196	213	22.2%	19.9%
Industry	234	238	26.5%	22.3%
Retail	351	509	39.8%	47.6%
Public Sector	60	61	6.8%	5.7%
Other *	42	48	4.8%	4.5%
Total	883	1,069	100.0%	100.0%

Fig. 7: Annual Complaint Trends by Fund Type 1997–2002 (%)



Note: The 'Other' category in Table 4 and Fig. 7 above includes complaints received towards the end of the reporting period where Fund Type had yet to be determined.

Member Complaint Ratio By Type Of Fund

The graph at Fig. 8 below shows the number of written complaints for each fund type as a proportion of the total number of members in each fund type. It therefore provides a basis for an overall comparison of the number of complaints received for each fund type. As in previous years, the statistics show that members from employer-sponsored funds are far more likely to lodge complaints with the Tribunal than members from other fund types. There may be good reasons for this and the Tribunal is working with the Corporate Superannuation Association to identify the reasons. It likewise remains the case that members from public sector funds are less likely to lodge complaints than any other members. However, as a substantial number of public sector funds are 'exempt' from the Tribunal's jurisdiction, this factor should be taken into account to avoid distorting the outcomes.

The statistics also show that the number of complaints received per million members has decreased by 2.9 per cent this reporting year in relation to industry funds and remained stable in relation to public sector funds while complaints from members of employer-sponsored funds have risen by 13.1 per cent and complaints from retail funds have risen by 32.3 per cent.

Fig. 8: Member Complaint Ratio by Fund Type (per million members)

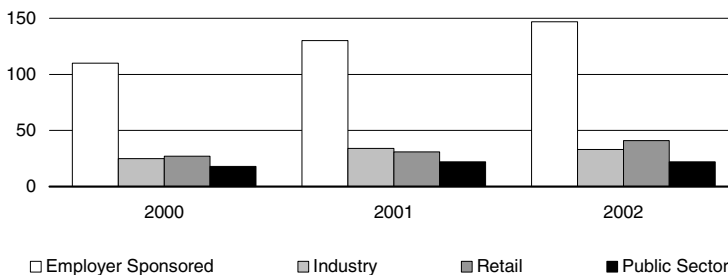
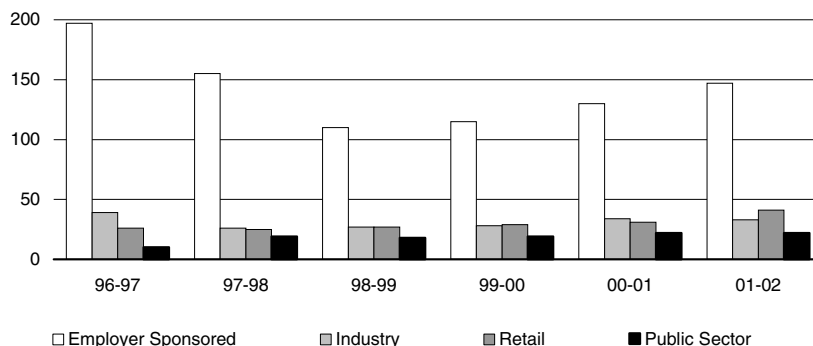


Fig. 9: Annual Trends Member Complaint Ratio by Fund Type 1997–2002
(per million members)



Note: Figures 8 and 9: (1) Most public sector funds are EPSSS, so their members are excluded from lodging complaints with the Tribunal. (2) Statistics based upon *APRA Superannuation Trends* March 2002, Table 2a Superannuation Fund Members

Complaints Resolved / Withdrawn In The Reporting Period

This reporting year, a total of 986 written complaints were resolved or withdrawn. Comparatively, last reporting year, 853 written complaints were resolved or withdrawn.

Table 5: Complaints Resolved / Withdrawn

Withdrawn by the Tribunal	Number of Complaints	%
s.22(1)	135	
s.22(3)(a),(b)	219	
s.22(3)(c),(d),(e)	12	
	366	37.1%
Withdrawn by Complainant		
pre conciliation conference	204	
post conciliation conference	152	
	356	36.2%
without resolution	25	
	25	2.5%
Resolved by Tribunal at Review		
decision affirmed	141	
decision remitted	13	
decision varied	6	
decision set aside/substituted	79	
decision no jurisdiction	0	
	239	24.2%
Total	986	100.0%

This year, 961 (2000-2001 – 807) complaints were resolved at inquiry, conciliation and review (97.5 per cent) and 25 (2000-2001 – 46) complaints were withdrawn by their respective complainants without resolution (2.5 per cent). The Tribunal is pleased to note that the number of complaints withdrawn by complainants without resolution had fallen from 5.4 per cent to 2.5 per cent.

This reporting year, 75.8 per cent of all complaints resolved/withdrawn were resolved/withdrawn at the inquiry and conciliation stages compared with 65 per cent last reporting year. The number of complaints resolved at review decreased from 35 per cent last year to 24.2 per cent this year.

This reflects the fact that the Tribunal has completed the backlog of cases that had built up prior to the High Court’s decision in *Breckler’s* case and more matters were withdrawn.

Conciliation Conferences

This reporting year the Tribunal conciliated 222 complaints compared with 200 complaints last reporting year (an increase of 11.0 per cent). This figure represents the largest number of complaints dealt with by conciliation since the Tribunal's inception—see Table 6 below. The April – June quarter had the highest number of cases for a quarter with 62.

Overall, 213 cases (95.9 per cent) were concluded at the end of the year, up from 183 cases (91.5 per cent) in the last reporting year. Of these 213 cases, 131 were settled, a settlement rate of 61.5 per cent, down slightly on the settlement rate of 63.9 per cent in the last reporting year. At the end of the reporting year, 9 cases remained pending (4.1 per cent of cases, as against 9 per cent in the previous year).

Table 6: Conciliation Conference Outcomes 2001–2002

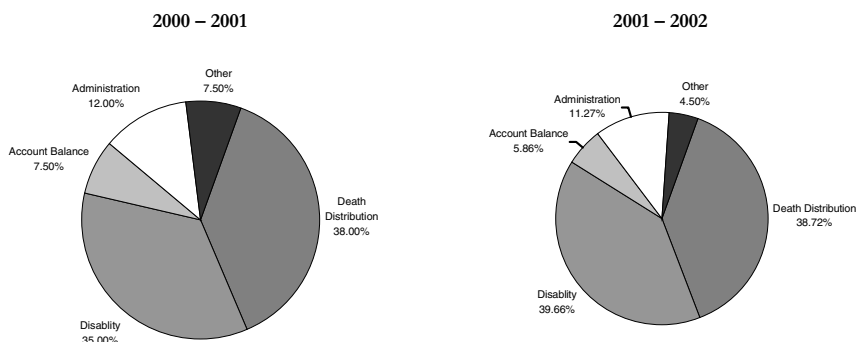
Quarter	No. of Cases		Pending		Settled		Not Settled	
	2000-01	2001-02	2000-01	2001-02	2000-01	2001-02	2000-01	2001-02
Jul – Sep	34	52	1	0	15	33	*18	19
Oct – Dec	59	61	5	1	34	34	20	26
Jan – Mar	42	47	3	2	24	30	15	15
Apr – Jun	65	62	8	6	44	34	13	22
Total	200	222	17	9	117	131	66	82

* no jurisdiction in one case

Nature Of Conciliation Cases

This reporting year, the largest single category of conciliation cases was ‘disability’ — 88 cases (40.0 per cent), of which 50 of the 86 finalised cases were settled (58.1 per cent). ‘Death benefit distribution’ cases constituted the second-largest category— 87 cases (39.2 per cent), of which 48 of the 82 finalised cases were settled (58.5 per cent). In comparison with last reporting year, the resolution rate in respect of finalised death benefit distribution cases has dropped from 74 per cent to 58.5 per cent, while the resolution rates in respect of finalised disability cases has dropped from 61 per cent last reporting year to 58.1 per cent this reporting year.

Fig. 10: Nature of Conciliation Cases



Mode Of Conciliation Conferences

This reporting year, the Tribunal conducted conciliation conferences by teleconference, by person-to-person meeting, by correspondence and by videoconference. Table 7 below shows that 195 conferences (87.8 per cent) were held by teleconference, 14 conferences (6.3 per cent) by person-to-person meeting, 12 conferences (5.4 per cent) by correspondence and 1 conference by videoconference (0.5 per cent). Overall, 187 conciliations were finalised by teleconference. Of these, 114 were resolved (61.0 per cent). Comparatively, 14 conciliations were finalised by person-to-person meeting. Of these, 9 were resolved (64.3 per cent).

Table 7: Mode of Conference and Outcomes 2001 - 2002

Mode of Conference	No. of Cases		Pending		Settled		Not Settled	
	2000-01	2001-02	2000-01	2001-02	2000-01	2001-02	2000-01	2001-02
Teleconference	168	195	13	8	98	114	57	73
Meeting	27	14	1	0	18	9	8	5
Correspondence	3	12	2	1	0	7	1	4
Videoconference	2	1	1	0	1	1	0	0
Total	200	222	17	9	117	131	66	82

The Tribunal has also been monitoring the resolution outcomes of teleconferencing vis à vis person-to-person meetings since the 1995–1996 reporting year. Table 8 below shows that person-to-person meetings have resulted in a higher rate of resolutions. The Tribunal will continue to monitor outcomes to determine whether or not, as a general trend, person-to-person meetings promote a more effective, and therefore a fairer outcome. The statistics to date indicate that this appears to be the case. This year the overall disparity between the two conferencing modes remains close after narrowing markedly in recent years—see Fig. 11.

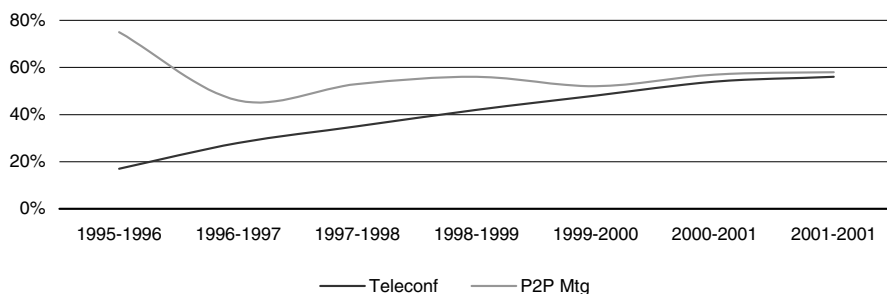
Table 8: Teleconference & Person-To-Person Meeting Resolutions 1995–2002

Reporting Years	Teleconference Held	Teleconference Resolved	%	P2P Meetings Held	P2P Meetings Resolved	%
1995 – 1996	18	3	17%	8	6	75%
1996 – 1997	35	12	34%	18	6	33%
1997 – 1998	41	18	44%	8	6	75%
1998 – 1999	58	31	53%	7	5	71%
1999 – 2000	92	53	58%	9	3	33%
2000 – 2001	155	98	63%	27	18	67%
2001 – 2002	187	114	61%	14	9	64%
Total	586	329	56%	91	53	58%

Table 9: Teleconferencing / Meeting Cumulative Resolutions 1995–2002 (%)

Reporting Years	Teleconferences Resolved	Person-to-Person Meetings Resolved
1995 – 1996	17%	75%
1996 – 1997	28%	46%
1997 – 1998	35%	53%
1998 – 1999	42%	56%
1999 – 2000	48%	52%
2000 – 2001	54%	57%
2001 – 2002	56%	58%

Fig 11. Teleconferencing / Meeting Cumulative Resolutions 1997–2002 (%)



Projected Initiatives To Improve the Conciliation Process

- The integration and enhancement of the recording of conciliation activity in the case management system (CMS) in January has resulted in better data collation for the future management of cases.
- The promotion of the conciliation process continued through the year in liaison activities with industry bodies, insurers and consumer groups.
- An integrated communications system was installed in June that will enable telephone conferencing to be conducted in a more efficient and economic manner in the future.
- The government's commitment to the conciliation process, to remove uncertainty about the Tribunal's right to compel parties to attend, is the subject of a welcome amendment to the SRC Act currently before the Parliament. The Tribunal recognises not all cases are suitable for conciliation and if the proposed amendment is passed, the Tribunal will issue guidelines to assist trustees and insurers to determine which cases are suitable.

Review Meetings

In the 2001–2002 reporting year, 239 (2000–2001 – 301) matters were determined at Review. Of these, the Tribunal affirmed 141 trustee decisions (59.0 per cent); set aside 79 trustee decisions (33.1 per cent); remitted 13 decisions back to the trustee (5.4 per cent) and varied 6 decisions (2.5 per cent)—see Table 10 below. The Tribunal actually conducted 294 review meetings this reporting year (2000–2001 – 325); however, because a determination is not finalised until it has been made ‘in writing’, the remaining 55 determinations had not been ‘made’ as at 30 June 2002, so will be carried over into the next reporting year.

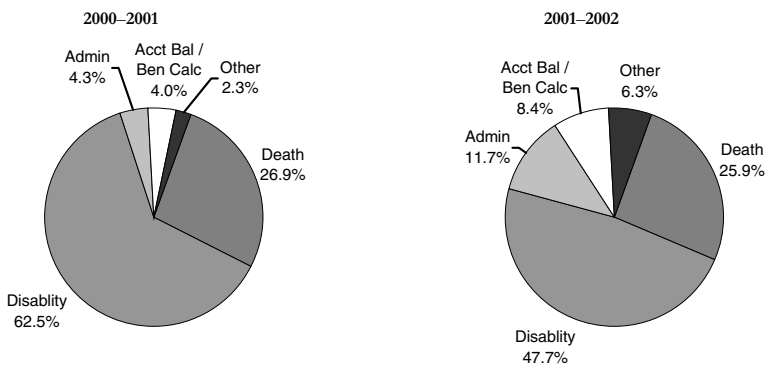
Table 10: Review Determination Outcomes for 2001 – 2002 Reporting Period

Decision Affirmed s.37(3)(a)	Decision Remitted s.37(3)(b)	Decision Varied s.37(3)(c)	Decision Set Aside s.37(3)(d)	No Jurisdiction to Determine	Total No.
141	13	6	79	0	239

Nature of Review Determinations

This reporting year the largest category of complaints determined at review was medical disability—93, (38.9 per cent). Death benefit distribution complaints made up the second largest category—50, (20.9 per cent). Comparatively, in the 2000–2001 reporting year 56.1 per cent of complaints determined at review were medical disability cases, and 22.6 per cent were death benefit distribution matters—see Fig. 12 below.

Fig. 12: Nature of Review Determinations 2000 – 2002





Review Support

Service Charter

The Tribunal has undertaken to deliver a high quality service to all parties and to seek fair outcomes in a manner that is, at all times, fully accessible to the community. The Tribunal is pleased to report that the statistics show that this undertaking has been borne out this reporting year. The quality of the Tribunal's service is also borne out in terms of its external scrutiny record—see Chapter 2.

The Tribunal's Service Charter is reproduced in full at Appendix 10.

Corporate Governance

Corporate Plan

The Tribunal's Corporate Plan—the *Superannuation Complaints Tribunal 1999 Business Plan*—was finalised in April 1999 at a time when the Tribunal's future was uncertain due to the constitutional issues surrounding its review function. Notwithstanding the difficulties of that time, the strategies set in place have been examined and found (with some minor amendments), to be appropriate to the current environment.



Mission Statement

The SCT is a Commonwealth statutory alternative dispute resolution body, whose purpose is to inquire into and resolve complaints about certain decisions of Trustees, insurers, RSA providers and other relevant decision makers in relation to regulated superannuation funds, approved deposit funds, Retirement Savings Accounts and annuity policies.

We are charged with performing this service in a fair, economical, informal and quick manner. We value and reward the contributions of our committed and highly trained staff for their knowledge of the fields of operation and sensitivity and regard to the particular needs of our stakeholders.

Corporate Objectives

Short to Medium Term Objectives—6 to 12 Months

In the short to medium term the Tribunal aims to:

- successfully implement changes to its legislation and procedures;
- continue to improve its procedures for resolving complaints to ensure that they are as fair, economical, informal and quick as possible;
- continue to take steps to ensure that its role is better understood, accepted and appreciated by the superannuation industry, Government and the wider Australian community.

Overview of Outputs

The Tribunal's achievements over the past 12 months comprised:

Management of the Increasing Number of Written Complaints

- Targeted management of the increasing number of written complaints as evidenced by:
 - 961 written complaints being finalised in the year by inquiry, conciliation and Review;
 - 222 conciliation conferences being held;
 - 294 complaints dealt with at Review Meetings; and
 - 225 determinations issued for the year.
- The completion of the Case Management System (CMS) project, providing better tracking and management of cases at the different levels of disposal.
- Implementation of case management procedures involving the dedication of senior and experienced staff to elevate cases to conciliation level at the earliest opportunity following jurisdiction assessment.
- Continued engagement of temporary staff at the inquiry and conciliation level to progress cases. This has resulted in 736 disposals without review determinations, the highest number of case closure at this level since inception.
- The selection and installation of an integrated telecommunications system to enable improved response times to all telephone inquiries.

Professional Development of Staff

- The participation of all staff in time management training with the emphasis on disparate cases and their management.

Stakeholders

- The provision of seminars for trustees and administrators on death benefit distribution cases.
- The attendance by the Chairperson, Deputy Chairperson and Director at industry and consumer forums and regulator liaison groups.

The Future and Objectives - 1 To 3 Years

The longer term objectives as outlined previously remain unchanged and are as follows:

- Timely resolution of complaints by inquiry, conciliation and review determination.
- Legislative enhancements to improve the effectiveness and reach of the objectives of the SRC Act.
- Promotion of the complaints resolution service in the superannuation community and the community at large.
- Engagement of qualified staff and their development.

Future Funding of the Tribunal

The Tribunal since inception, and currently through the Australian Securities & Investments Commission (ASIC), has been funded from the superannuation levy as allocated to ASIC. This method of funding has been inadequate for many years with the Tribunal making application for supplementary funding directly through ASIC and the Additional Estimates process as dealt with by Treasury.

The Tribunal has made a submission to the Minister who has approved additional funding to enable the Tribunal to deal with its increased workload as well as the development of a funding formula for case processing for future funding from the levy. In the expectation of an agreed funding model, the Tribunal expects to deal with matters as outlined below.

Case Management

- The establishment of best practice timeframes for resolution of complaints.

Systems and Procedures

- Changes to procedures to be implemented to deal with:
 - amendments arising from the Family Law Act as it impacts on the division of superannuation between separating/divorcing couples;
 - superannuation issues arising from disclosure requirements under the Financial Services Reform Act.
- The government's proposed changes to the SRC Act to:
 - provide power to the Tribunal to compulsorily require parties to attend conciliation;
 - change the time limits imposed in sections 14(6A) - 14(6D) of the SRC Act to provide the Tribunal with a discretion if a party has valid reasons for not lodging his/her complaint with the Tribunal within 12 months of the Trustee's original decision.

Systemic Issues Affecting the Superannuation Community

Maintain close links with APRA, ASIC, industry and consumer bodies to ensure vigilance in the prompt detection and notification of systemic detrimental traits affecting members' interests. Arrange regular meetings of the Consultative Committee to assist in this process.

Public Awareness

The national requirement to upgrade to the international Integrated Services Digital Network (ISDN) system has required the Tribunal to change its fax numbers and staff contact numbers. The inquiry line number is unaffected. As a consequence of this and legislative changes impacting on the operations of the Tribunal, it is intended to redraft and publish the Memorandum as required by section 13 of the SRC Act, as well as other information brochures.

The newly acquired integrated telecommunications system will be monitored to provide enhanced data on telephone inquiries. It is expected through the course of the year that adjustments will be made to cater for variations in demand as well as inquirers' needs of the Tribunal.

Human Resources

- The engagement and retention of ongoing skilled staff to efficiently deal with the exponential increase in complaints.
- Provision of professional training for new and existing staff.
- Biannual meetings of Tribunal Members' for the purpose of maintaining communication standards and consistency in decisions.

Corporate Strategies

The Tribunal has in place a range of corporate strategies in three areas to give effect to its objectives. These areas are Senior Management, Policy/Legal and Team Leaders.

Senior Management

<p>Liaison</p>	<p>Industry: Ongoing liaison by the Chairperson and senior managers with industry to promote conciliation, and with the Consultative Committee consisting of Trustee, Insurer and Consumer representatives which provides useful feedback to the Tribunal on its operations.</p> <p>Government: Ongoing liaison by the Chairperson with the Minister to keep him apprised of the progress of the Tribunal's functions. Ongoing liaison with Treasury.</p> <p>ASIC: Continued liaison, principally by the Chairperson and the Director, with ASIC in relation to matters that fall under the MOU and the SLA.</p>
<p>MOU & Related Documents</p>	<p>Observance of the MOU and the continuing development and implementation of the underlying Operational Procedures and SLA by the Director.</p>
<p>Information to Staff</p>	<p>Exchange of information with staff to keep them apprised of developments in respect of the Tribunal's functions and future. Review of communication mechanisms in consultation with staff.</p>
<p>Learning and Development</p>	<p>Management recognises the potential benefits for staff and the Tribunal of the Performance Management Program and is committed to its successful implementation and will ensure that adequate time and resources are provided for the training of managers and staff.</p> <p>Senior managers will also seek to ensure that appropriate learning and development opportunities are available to staff and to integrate this with the Performance Management Program.</p>
<p>Structure and Procedure</p>	<p>Management continues to monitor the Tribunal's structure and procedures in consultation with staff to ensure that the Tribunal continues to operate in the most efficient and effective manner possible.</p>
<p>Public Education</p>	<p>Management is committed to a public education initiative to achieve its long-term objective of ensuring that the Tribunal's role is better understood, accepted and appreciated by all stakeholders.</p> <p>Management is also committed to improving access to the Tribunal in accordance with the Government's access and equity strategy by extending its public education program.</p>
<p>Information Technology</p>	<p>A new Case Management System (CMS) was designed with technical assistance and support from ASIC and was implemented in January 2001. The Tribunal's website provides information and facilitates the electronic lodgement of complaints. It is also being enhanced to provide access to the Tribunal's determinations.</p>

Budget and Administration	The Tribunal is required to adhere to ASIC budget policy which reflects the Government's expectations on service delivery and costs. To this end, management will continue monitoring and responding to changes relative to the immediate financial effect on the current and future budgets. Budget and administration will be dealt with through the Chairperson and management group with briefing through the Assistant Director and Administration Supervisor.
Public Relations	Management will maintain appropriate links with the media and with ASIC and APRA to facilitate the Tribunal's participation in public debate. This is to ensure that accurate information is made available to the industry and the public. The Public Education and Media Liaison Officer will assist with this task.

Policy / Legal

General	The primary task is to ensure that senior management is aware of and addresses the messages from Government, the judiciary, the industry and the consumer movement in a way that is consistent with its statutory role.
Legislation	<p>To support effective liaison with the Minister's Office, Treasury and ASIC with respect to any relevant proposed legislation.</p> <p>To monitor all new legislation with implications for the Tribunal and to make appropriate policy responses</p> <p>To advise the Tribunal on the interpretation of existing legislation relevant to matters before the Tribunal or issues of Tribunal administration.</p>
Casework	There is an ongoing requirement for the provision of legal advice to the Tribunal in relation to individual cases and other aspects of the SRC Act and the Tribunal's procedures.
Litigation	<p>To support any litigation in which the Tribunal is a party in line with the principle in <i>The Queen v ABT; Ex parte Hardiman</i> (1980) 144 CLR 13.</p> <p>To comply with court requests for documentation in accordance with the SRC Act and to keep a watching brief on all court cases with relevance to the Tribunal and interpret the significance of outcomes for Tribunal policy.</p>
Annual Report	The Director will ensure that the operations and functions of the Tribunal are appropriately monitored and statistically recorded in a consistent manner from year to year to facilitate the accurate compiling of the Annual Report.

Team Leaders

<p>Information Flow</p>	<p>Team leaders will facilitate the flow of information between different areas of the Tribunal by conducting regular team meetings and providing feedback to senior managers.</p> <p>Team leaders will also participate in regular management meetings, providing input to the development of corporate goals and Tribunal procedures and structures.</p>
<p>Team Building</p>	<p>Team leaders are committed to build on the good morale of the teams by maintaining cohesive teams focused on corporate goals. Team leaders act as mentors to junior staff and provide regular performance feedback to staff. They aim to uphold the Tribunal's commitment to valuing staff by supporting flexible working hours and two-way communication in the office.</p>
<p>Performance Management</p>	<p>Team leaders recognise the potential benefits for staff and the Tribunal of the Performance Management Program and are committed to its successful implementation. Team leaders will participate in relevant training and devote the necessary time to the development of Performance Management Agreements with their staff.</p>

Program Strategies

The Tribunal has also put a range of program strategies in place to give effect to its objectives. The programs focus on review; inquiry and conciliation; and budget and administration.

Strategies For Review

<p>Members</p>	<p>The <i>Financial Sector Legislation Amendment Act (No.1) 2000</i> (Cwlth) commenced operation on 18 January 2001. Schedule 4 amended s.7 of the SRC Act to remove the upper limit of 10 members. As a consequence, the cap of 10 Members was removed and to date there are 17 Members.</p> <p>Apart from the larger pool of Members available to share the workload, delays and difficulties in listing cases for Review due to conflict of interest issues among Members will be markedly reduced.</p>
-----------------------	--

Strategies For Inquiry And Conciliation

<p>Delegations and Complaint-Handling Procedures</p>	<p>The Tribunal continues to review complaints handling procedures and delegations to identify areas of greater efficiency and avoid unnecessary 'double-handling'.</p>
<p>Reducing Inconsistency</p>	<p>The Tribunal will continue to develop strategies to identify inconsistencies between the senior staff in the reviewing of Complaint Reports.</p>

<p>Case Allocation, Inquiry and Conciliation</p>	<p>The Tribunal's two stage case allocation system continues to operate very effectively. After an initial check that the Tribunal can deal with the complaint, cases are allocated to a case officer to issue the s.17 notices required to collect information from the parties.</p> <p>When this information is received, the Tribunal again confirms its ability to deal with the complaint and the case is allocated to a conciliator. If the case is not suitable for conciliation or is not resolved by conciliation it is returned to the case officer who completes the inquiry into the complaint and prepares a Complaint Report.</p> <p>This procedure is under constant review to ensure its effectiveness.</p>
<p>Staffing</p>	<p>Prior to the High Court's decision in <i>Breckler's</i> case, the uncertainty of the Tribunal's future necessitated the replacement of exiting permanent staff with short-term contract staff as an interim measure. Now that a favourable decision has been handed down, this problem has been largely addressed by the recruitment of some permanent staff supplemented by temporary staff, pending finalisation of a future funding formula for the Tribunal.</p> <p>The 'team model' restructuring undertaken by the Tribunal in the 1996-97 reporting year continues to perform well and will be retained.</p>

Strategies For Budget And Administration

<p>Administration</p>	<p>Financial system processing: The Tribunal works within ASIC's financial processing system, fully embracing accrual accounting practices.</p> <p>Records Management: This year the Tribunal continued archiving records in accordance with its archiving policy.</p> <p>Business Continuity Plan: The Administration Unit is responsible for the ongoing monitoring and updating of the Business Continuity Plan.</p>
<p>Budget</p>	<p>Purchasing: The Tribunal undertakes its purchasing responsibilities in accordance with Commonwealth Government Procurement Guidelines and ASIC purchasing procedures.</p> <p>Assets Management: The Tribunal possesses a number of assets valued in excess of \$2,000, together with portable and attractive assets. While the Tribunal maintains its own assets records, formal responsibility for managing assets rest with the Victorian Regional Office of ASIC.</p> <p>Consultants and Competitive Tendering and Contracting: The Tribunal let the following contracts during the year:</p> <ul style="list-style-type: none"> • one consultancy contract to assess and advise on the Tribunal's telecommunications needs, valued at \$3,265; • one contract for the supply and installation of an integrated telecommunications system, valued at \$43,400.

Staff	Staff in Administration provide support to the Tribunal's core functions of complaint resolution.
--------------	---

General Strategies

At a more general level, the Tribunal has in place a range of strategies that apply across all sections of the Tribunal and cover the areas of: staff; workplace diversity; occupational health and safety; environmental awareness; freedom of information; privacy; and social justice & equity.

Staff

The Tribunal continues to maintain the following measures in order to provide attractive working conditions for its staff:

- The Tribunal, through ASIC Corporate Services, will continue to make the Employee Assistance Program available to staff. The service offers free, confidential counselling services to staff and their immediate family members.
- All staff complete a training and development plan with their supervisors and opportunities are made available where possible for staff to attend external training or to take advantage of in-house opportunities, such as special projects, to develop new skills.
- In line with operational requirements the Tribunal allows its staff to take advantage of the flexible working arrangements available through the ASIC certified agreement. Staff are generally able to arrange their working hours around family and study arrangements, within the limits imposed on an office that deals with the general public.
- Managers at the Tribunal are making use of the ASIC Performance Management Program to provide feedback to staff on their performance and opportunities for development.

Workplace Diversity

The Tribunal participates in ASIC's Workplace Diversity program and has a Workplace Diversity Officer and an Harassment Contact Officer. Workplace Diversity includes and builds upon the basic principles of equal employment opportunity (EEO) by promoting the contributions that can be made by a diverse workforce.

In furtherance of this program, the Tribunal has adopted 'family friendly' work practices and flexible work arrangements for staff; promoted and maintained a harassment-free workplace; developed recruitment and promotion practices that support workplace diversity; and provided training opportunities to staff in related areas—see Appendix 8. Table 10 below sets out the number of Tribunal staff in the various target groups as at 30 June 2002.

**Table 10: Superannuation Complaints Tribunal—Workplace Diversity Target Groups
(as at 30 June 2002)**

	Total Staff	Target Groups				
		NESB1	NESB2	ATSI	PWD	Women
EO	4	0	0	0	0	3
ASICO	25	2	4	0	0	14
Total	29	2	4	0	0	17

Key EO Executive Officer NESB1 Non English-speaking background, 1st generation
ASICO ASIC Officer NESB2 Non English-speaking background, 2nd generation
ATSI Aboriginal and Torres Strait Islander PWD Person with a disability

Occupational Health & Safety

The Tribunal has an Occupational Health and Safety Officer and two trained First Aid Officers. No compensation claims were made this year. There were eleven incidents of work-related injuries.

Freedom Of Information

The Tribunal is subject to the operation of the FOI Act and has two authorised FOI Officers. The Tribunal did not receive any freedom of information applications this reporting year.

Upon receiving an FOI request, the Tribunal, as a general rule, first seeks permission from the provider of the information to release the information to the applicant pursuant to sub-s.63(3)(b) of the SRC Act. If the information provider agrees, this mechanism usually provides a faster, cheaper and more satisfactory result for all concerned. It also accords with s.14 of the FOI Act which encourages the provision of information access outside the FOI regime where proper or required by law. If the information provider does not agree to the release of the information, the Tribunal then proceeds with the FOI application in the normal way within the requisite statutory time frame.

Requests for access to documents in the possession of the Tribunal may be made in accordance with the requirements of the FOI Act—see Appendix 5.

Privacy

The Tribunal continues to comply with the requirements of the *Privacy Act 1988* (Cwlth) in relation to collecting, processing, storing, using and disclosing personal information. The Tribunal has also developed guidelines for the assistance of staff.

Environmental Awareness

The Tribunal continues to observe its programs of recycling and energy conservation.

Social Justice And Access & Equity

The Tribunal remains committed to the Government's policies of access & equity and social justice and applies the Standards Australia Committee on Complaints Handling (SACCH) 'best practice' Australian Standard procedures in respect of its complaint-handling functions as follows:

- maintaining a 'Hotline' telephone service;
- public education program—providing a range of information materials free of charge to interested persons and bodies upon request;
- providing guidelines and 'model letters' to assist complainants in making complaints to their funds;
- accessibility of staff at all levels to discuss either general or specific matters, whether in relation to particular complaints, ongoing cases, or general information;
- regularly updating practices and procedures to ensure that complaints are dealt with as efficiently as possible;
- assisting complainants, where necessary, to formulate their complaints in writing;
- communicating with complainants, where necessary, by way of the Translating and Interpreting Services (TIS).

Case Officers—Inquiry & Conciliation



Glossary

ADR	Alternative Dispute Resolution
APRA	Australian Prudential Regulation Authority
ASFA	Association of Superannuation Funds of Australia Ltd
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CMS	Case Management System
EPSSS	Exempt Public Sector Superannuation Scheme
FOI	Freedom of Information
FSI	Financial Systems Inquiry
LEADR	Lawyers Engaged (in) Alternative Dispute Resolution
MOU	Memorandum of Understanding
OH & S	Occupational Health & Safety
RSA	Retirement Savings Account
SACCH	Standards Australia Committee on Complaints Handling
SAF	Small APRA Fund
SCT	Superannuation Complaints Tribunal
SIS	<i>Superannuation Industry (Supervision) Act 1993</i> (Cwlth)
SLA	<i>Service Level Agreement</i>
SMSF	Self-managed superannuation fund
SRC Act	<i>Superannuation (Resolution of Complaints) Act 1993</i> (Cwlth)
SSCS	Senate Select Committee on Superannuation
SSCSFS	Senate Select Committee on Superannuation & Financial Services
TIS	Translating and Interpreting Services
TPD	Total and Permanent Disability
Tribunal, the	Superannuation Complaints Tribunal

Compliance Index

This Report complies with the *Guidelines for the content, preparation and presentation of annual reports by statutory authorities* as set out in the Senate Hansard of 11 November 1982, p.2261. The Tribunal is not bound to comply with the *Requirements for Departmental Annual Reports*—June 2001, but has had regard to them in so far as is it relevant and reasonable. The Tribunal is not required to comply with either the *Commonwealth Authorities and Companies Orders for Report of Operations*—August 1998; or with the *Financial Management & Accountability Act 1997* (Cwlth).

Advertising & Market Research	n/a
Chairperson's Review	2
Consultancies	Chapter 4, 42
Contact Officer	71
Environmental performance	Chapter 4
External Scrutiny	Chapter 2
Financial performance	Chapter 4, Appendix 9
Financial Statement	Appendix 9
Freedom of Information Statement	Appendix 5
Glossary	46
Human Resources Management	Chapter 4
Index	72
Internet Homepage Address and for Annual Report	71
Judicial & Tribunal Decisions	Chapter 2
Letter of Transmittal	iii
OH&S	Chapter 4
Organisational Structure	Chapter 1, Appendix 1
Outcome and Output Structure	Chapters 1 & 3
Overview description of Tribunal	Chapter 1
Performance—against Service Charter	35
Performance—in relation to outputs and outcomes	Chapter 3
Performance—narrative discussion & analysis	Chapter 4
Purchasing against core policies and principles	Chapter 4, 42
Role and Functions	Chapter 1
Social Justice & Equity impacts	Chapter 4, 45
Staffing Statistics	Appendix 1
Table of Contents	vi

Appendix 1

Tribunal Organisation Chart

(as at 30 June 2002)

Classification	Ongoing				Non-Ongoing				Total
	Full-Time		Part-Time		Full-Time		Part-Time		
	F	M	F	M	F	M	F	M	
Chairperson		1							1
Dep Chairperson	1								1
Exec 2	1								1
Exec 1 (Legal)	1								1
Exec 1	1	1							2
ASIC 4		4	1						5
ASIC 3	5	2			3	1	2		13
ASIC 2	1	1			1		1		4
ASIC 1					1	1		1	3
Total	10	9	1		5	2	3	1	31

Appendix 2

Delegations

Sub-Section 59(1) *Superannuation (Resolution Of Complaints) Act 1993*
(as at 30 June 2002)

Section	E2	EL1	E1	ASIC4	ASIC3	ASIC2
s12(1)(a) inquire into complaint & try to resolve it by conciliation	●	●	●	●	●	●
s13 to issue memorandum	●	●	●			
s16 to help complainants to make complaints	●	●	●	●	●	●
s17 cause written notice to be given when complaint received	●	●	●	●	●	●
s17A cause written notice to be given re joinder of parties	●	●	●	●	●	●
s18(1)(c)(d)(e), (2)(c)(d),(3)(c), (3A)(c)(d)(e), (3B)(c)(d)(e) allow certain persons to be made party to complaint	●	●	●	●	●	●

Section	E2	EL1	E1	ASIC4	ASIC3	ASIC2
s19 not to deal with complaint unless made to trustee and not settled	●	●	●	●	●	●
s22(1)(2) discretion to treat complaint as withdrawn (complainant doesn't intend to proceed)	●	●	●	●	●	●
s22(3)(4) discretion to treat complaint as withdrawn (other reasons)	●					
s22A discretion to refer complaint to other complaint-handling bodies	●	●	●	●	●	●
s23(2)(3) discretion to allow complainant to be represented by an agent	●	●	●	●		
s24 require trustee, insurer, RSA provider or other person to lodge documents	●	●	●	●	●	●
s24AA require superannuation provider to lodge documents	●	●	●	●	●	●
s24A discretion to join parties to a complaint	●	●	●	●	●	●

Section	E2	EL1	E1	ASIC4	ASIC3	ASIC2
s24A discretion to extend 28 day notice period re death benefit notification by trustee/insurer	●	●	●			
s25(1),(2) & (3) power to obtain information & documents	●	●				
s27 inquire into complaint & try to settle it by conciliation	●	●	●	●	●	●
s28 request persons to attend conciliation conference	●	●	●	●	●	●
s29 discretion as to manner in which conciliation conference to be conducted	●	●	●	●	●	●
s31(1) to implement settlements	●	●	●			

Key

E2
EL1
E1
ASIC4
ASIC3
ASIC2

Director (Executive 2)
Senior Lawyer (Executive 1 (Legal))
Assistant Director (Executive 1)
Senior Inquiries & Conciliation Officer
Inquiries & Conciliation Officer
Inquiries & Conciliation Officer

Graham McDonald
Chairperson
March 2000

Appendix 3

2000–2001 Complaint Resolution Outcomes (As at 30 June 2002)

Fund Type	Tribunal Unable to Deal With		Withdrawn by Tribunal			Withdrawn by Complainant				Review				Total
	Non-Compliance with s.19	Outside Jur'n	s.22(1)	s.22(3)(a)(b) [see Note 1]	s.22(3)(c)(d)(e) [see Note 2]	Resolution Without Conference	Resolution With Conference	Without Resolution	After Hearing Before Determ'n	Decision Affirmed	Remit to Trustee	Decision Varied	Decision Set Aside	
Retail	192	192	66	110	7	97	73	12	0	49	1	3	20	822
Employer	71	70	22	38	4	44	38	4	1	43	7	2	29	373
Industry	71	95	28	56	3	49	41	9	1	24	4	1	20	402
Public Sector	17	50	4	10	0	7	0	3	0	25	1	0	10	127
Other	134	92	10	5	2	7	0	0	0	0	0	0	0	250
Total	485	499	130	219	16	204	152	28	2	141	13	6	79	1,974

Notes:

Note (1) Withdrawn because 12 months old; or after inquiry because it is trivial, vexatious, misconceived or lacking in substance.

Note (2) Other remedy has been sought; already dealt with by Tribunal or other Statutory authority; could be dealt with by other Statutory authority or complaint-handling body.

Appendix 4

Chairperson's Procedural Rules & Guidelines

Sub-Sections 9(2A) & (4) *Superannuation (Resolution Of Complaints) Act 1993*

1. The Constitution Of The Tribunal For A Review Meeting

- (1) The Tribunal is required under s. 9(1) to be constituted for Review by 'one or more, but not more than 3 Tribunal Members' as selected by the Chairperson, after taking into account their 'qualifications, experience and suitability having regard to the nature of that complaint' as required under s. 9(2).
- (2) As far as possible, the Tribunal will be constituted by 3 Members. In the event of circumstances where a limited number of Members are available to sit, the following guidelines will be applied :
 - (i) The Tribunal will be constituted by 3 Members where:
 - large sums of money are at issue; and/or
 - the matters to be determined are particularly complex; and/or
 - a wide range of qualifications and experience is required on the Tribunal.

Typical classes of such complaints would be:

- Total and Permanent Disability Benefit disputes involving many conflicting medical and work-capability reports;
- the issue of whether the member was insured at the relevant time;
- complex disputes over the allocation of large sums of money for a death benefit.

(ii) The Tribunal will be constituted by 2 Members where:

- large sums of money are at issue; and/or
- the matters to be determined are moderately complex; and/or
- more than one type of qualification or experience was required on the Tribunal

Typical classes of such complaints would be:

- Total and Permanent Disability Benefit disputes where there was only limited and/or relatively consensual medical and work-capacity reports;

- death benefit allocation disputes without excessive complexity or large sums involved;
- a complaint where legal and actuarial skills were required in a dispute about the calculation of a significant benefit.

(iii) The Tribunal will be constituted by only one member where:

- the sums of money at issue are small; and/or
- the matters to be determined are relatively straightforward; and/or
- either one specific qualification or a person with general superannuation experience is required on the Tribunal.

Typical classes of such complaints would be:

- complaints about a failure to provide information;
- disputes involving minor adjustments to member balances;
- complaints about the failure to pay interest.

2. Commencement, Adjournment And Conclusion Of Review Meetings

- (1) The Review Meeting shall be taken to commence at the time stated under s.32(1) when the Chairperson formally constitutes the Tribunal under s.9.
- (2) The constituting of the Tribunal for Review shall be done by the Chairperson in writing, signed and dated, and shall occur at a reasonable time before the scheduled time of commencement.
- (3) When the scheduled Review Meeting has been held, that Review Meeting is taken to stand adjourned under s.42 unless it is re-convened, at the direction of the Presiding Member, for further deliberation.
- (4) The Review Meeting concludes when the Presiding Member signs and dates the Determination and Reasons. The Presiding Member shall be the last Member to sign the Determination, which is dated at the time of his/her signature being added. That is the date on which the Determination is made.
- (5) The date of signing, which is the date of the Determination, is to be indicated at the end of the Determination. The date on which the originally notified Review Meeting was held, and the date(s) of any re-convened Meeting(s) for further deliberations shall be listed on the cover page.

3. Exchange Of Papers Between The Parties

- (1) All material submitted by the parties in relation to the complaint shall, otherwise than in exceptional circumstances, be exchanged with all the other parties, insofar as is required to ensure that procedural fairness is observed.
- (2) All such exchanges are considered to be 'for the purposes of [the] Act' under s.63(2). The Tribunal Chairperson or Deputy Chairperson may also, under

s.38(3), exercise discretion in giving directions prohibiting or restricting the disclosure of documents or information relating to a Review Meeting.

- (3) The Tribunal shall not, other than in exceptional circumstances, consider material that is not so exchanged.
- (4) The Tribunal Chairperson shall decide, in all the circumstances of the particular matter, what constitutes 'exceptional circumstances'.
- (5) The Parties shall be given the opportunity to respond only once to the material so exchanged from the other Parties, to give effect to the Tribunal's statutory objectives of economy and quickness. Such responses should not include new evidence that has not been made available to the other Parties.
- (6) The Chairperson, or Presiding Member, may direct that such responses be further exchanged between the parties only where, in his/her opinion, such an exchange is necessary on the grounds of procedural fairness. (If the Chairperson and the Presiding Member differ in their opinion on this issue, then the opinion of the Chairperson shall prevail.)

4. Oral Submissions

- (1) Where, in exceptional cases, an order is made by the Chairperson under s.34(2) to allow oral submissions, the parties shall still be expected to present written submissions prior to the Review Meeting.
- (2) Such additional oral submissions shall be presented in an order determined by the Presiding Member, who shall provide the opportunity for reply as procedural fairness requires.
- (3) At a hearing the Presiding Member shall allow parties to raise questions through the chair and shall also allow questioning by all Tribunal Members.
- (4) No Determination shall be made at the Review hearing. The Act specifies that a Determination and the Reasons shall be in writing.

5. Duties Of The Tribunal For Review

- (1) All Members constituting the Tribunal shall be given the opportunity to become familiar with the material exchanged and the Response submissions before commencing the Review. All Members shall accept the responsibility to brief themselves before the Review Meeting.
- (2) Each Review Meeting scheduled should consider, as preliminary matters, jurisdiction, standing and grounds.
- (3) The Chairperson may, at his own discretion or at the request of the Presiding Member, request any other Member to draft and finalize the wording of a Determination and Reasons. The Tribunal will endeavour to prepare a draft Determination within one week of the final Review Meeting for signing off within 4 weeks of the final Review Meeting.

- (4) All Determinations and Reasons should basically follow the outline in the pro-formas approved from time to time by the Chairperson. Such pro-formas will include a layout for the cover pages and final signature at the rear. The pro-formas may include standard sub-headings which may assist both Members and staff undertaking word processing. The pro-formas will *not* include standard form paragraphs because each Tribunal must turn its mind to the particular requirements and circumstances of each individual complaint in the context of the relevant law(s).
- (5) The Determination and Reasons must be worded in such a way that, after substituting an alternative cover page, the document may be made available to the public without enabling the identification of the parties. This is to conform with the secrecy provisions under s.63 of the Act.

The use of generic terms like Complainant, Trustee, Member, Deceased, Insurer, Employer, Infant Son, Daughter, Spouse, Defacto Spouse etc., are generally preferred to initials which appear to cause greater difficulty for the reader.

- (6) The written Reasons required under s.40 shall accord with the requirements under s. 25D of the *Acts Interpretation Act 1901* (Cwlth.) as follows:

Where an Act requires a Tribunal, body or person making a decision to give written reasons for the decision, the instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

Thus, any statement of reasons must contain three components:

- (i) Findings on material questions of fact. (These should be set out in an identifiable way, though not necessarily in the form of a separate list.)
- (ii) Reference to the evidence or other material on which those findings are based. (It is not necessary to provide the actual evidence itself as long as it is referred to in some identifiable way.)
- (iii) The reasons for the decision set out in such a way as to show that the process of reasoning flows logically from the findings of fact to the conclusions reached.

6. Duties Of The Presiding Member

- (1) The Presiding Member shall ensure that the views of all Members are heard and considered at the Review Meeting(s), and that all reasonable steps are taken to achieve agreement to the Determination and Reasons.
- (2) The Presiding Member shall ensure that requirements of the Tribunal in properly exercising its inquisitorial role under s.36(c) of the Act are executed quickly, fairly, informally and economically.
- (3) The Presiding Member shall exercise the power to adjourn Review Meetings under s. 42 and to re-convene them.
- (4) The Presiding Member shall seek to ensure that the gap between the notified

or re-convened Review Meeting date, (whichever is the later), and the signing of the Determination and Reasons is no longer than 4 weeks.

7. Where The Determination Is Not Unanimous

- (1) In signing a Determination the Member is endorsing the contents of the document.
- (2) Where a Tribunal is constituted with three Members and they disagree on the Determination then the decision of the majority is taken to be the decision of them all.
- (3) Where the Tribunal is constituted with two Members and they disagree on the Determination then the decision of the Presiding Member is taken to be the decision of both of them.
- (4) Where a Member dissents from the majority or prevailing view, the Member concerned may draft and sign a dissenting statement which, if provided, will be attached to and distributed with the Determination and Reasons.
- (5) Dissent to some of the reasoning but not to the Determination may, by agreement, be acknowledged from time to time *within* the wording of the Reasons.

Graham McDonald
Chairperson
30 June 2002

[N.B. All section references are to the *Superannuation (Resolution of Complaints) Act 1993*]

Appendix 5

Freedom Of Information Statement

This statement is published to meet the requirements of section 8 of the *Freedom of Information Act 1982* (Cwlth)(the FOI Act). It is correct as at 30 June 2002.

Establishment

The Tribunal is an independent statutory authority which was established by the *Superannuation (Resolution of Complaints) Act 1993* (Cwlth)(the SRC Act) to resolve complaints about certain decisions or conduct of trustees, insurers, RSA providers, superannuation providers and certain other decision-makers in relation to regulated superannuation funds, approved deposit funds, life policy funds, annuity policies and RSAs.

Functions

The functions of the Tribunal are:

- to inquire into a complaint and to try to resolve it by conciliation; and
- if the complaint cannot be resolved by conciliation—to review the decision of the trustee to which the complaint relates; and
- any functions conferred on the Tribunal by or under any other Act.

Powers

The Tribunal is empowered under the SRC Act to require decision-makers to provide relevant documentation and information to the Tribunal to enable it to proceed with its inquiry. The Tribunal may also request the parties to attend a conciliation conference to try to settle the complaint. If this is unsuccessful, the complaint must proceed to review where the Tribunal has the power to implement a range of remedies and may:

- affirm the decision;
- remit the matter to the trustee, insurer, RSA provider or other decision maker for reconsideration of its decision in accordance with the directions of the Tribunal;
- vary the decision;
- set aside the decision and substitute its own;
- set aside the whole or part of the policy / RSA as it applies to the complainant;
- vary the terms of the policy / RSA as they apply to the complainant;
- require any party to the policy / RSA to repay monies received under the policy / RSA with appropriate interest as prescribed by the Regulations;

- require one or both the complainant and the trustee to repay monies received in relation to the fund with the appropriate interest as prescribed by the Regulations;
- cancel the complainant's membership of the fund;
- vary the governing rules of the fund as they apply to the complainant.

If the Tribunal determines that the decision/conduct complained of was unfair and/or unreasonable, it may only exercise its powers for the purpose of placing the complainant, as nearly as possible, in such a position that the unfairness/unreasonableness no longer exists. Alternatively, if the Tribunal is satisfied that the decision in its operation in relation to the complainant was fair and reasonable in all the circumstances, then the Tribunal must affirm the decision. The Tribunal's decision must not be contrary to law, the governing rules of the fund, the terms of the insurance contract, or the terms and conditions of the RSA (as relevant). The Tribunal cannot award costs or damages.

Categories Of Documents Held By The Tribunal

Documents Available To The Public Free Of Charge

(Category: sub-ss.8(1)(a)(iii),(6)(c) of the FOI Act)

- **Brochure:** *How to resolve a complaint with your superannuation.*
- **Memorandum:** *Superannuation Complaints Tribunal—How it can help you.*
- **Bulletin:** *SCT Quarterly Bulletin.*
- **Information Sheets:**
 - *Superannuation Complaints Tribunal—Please read carefully before making your complaint to the fund;*
 - *Conciliation Conference Guide for Complainants;*
 - *Conciliation Conference Guide for Trustees & Insurers;*
 - *Information about Review Meetings;*
- **Guidelines:**
 - *Procedural Rules & Guidelines Established by the Chairperson for the Constitution of the Tribunal and the Conduct of Review Meetings Under sub-sections 9(2A) & 9(4) of the SRC Act 1993.*
- **Registration of Complaint Form.**
- **Information Kit** containing a number of the above.

Documents Made Available To The Public For A Fee

(Category: sub-ss.8(1)(a)(iii), (6)(b) of the FOI Act)

- **Annual Reports:** *Superannuation Complaints Tribunal Annual Report* (available for purchase from the Tribunal or from Commonwealth Government Bookshops);
- **Superannuation Complaints Tribunal Procedures Manual:** Available for purchase from the Tribunal.
- **Review Determinations:** Available for purchase from Commonwealth Government Bookshops.
- **Papers** given by the Tribunal Chairperson, Deputy Chairperson and other members of the Tribunal staff are available for purchase from the Tribunal. (See the 2001–2002 list of available papers in Appendix 7.)

The documents listed in the above categories are available from the office of the Tribunal which is located on the **8th Floor, 60 Collins Street, Melbourne**, or by telephoning **1300 884 114** (for the cost of a local call).

How To Make An FOI Request To The Tribunal

Requests for access to documents should be made in accordance with s.15 of the FOI Act:

- must be in writing;
- must identify the document(s) the person wishes to access;
- must provide a return address in Australia to which notices may be sent;
- must be accompanied by a \$30 application fee; and
- must be sent by post or delivered to the Tribunal to:

- **The FOI Officer**
Superannuation Complaints Tribunal
Locked Bag 3060
GPO Melbourne
VICTORIA 3001

Appendix 6

Memorandum Of Understanding

SCT & ASIC

1. Objective

- 1.1 This MOU recognises that co-operation between the parties is essential to the effective and efficient performance of their respective duties and responsibilities within the terms of relevant statutory provisions.
- 1.2 This MOU is not intended to create binding obligations on either organisation and the parties may by agreement vary its terms at any time.

2. Responsibilities

- 2.1 ASIC is responsible for the administration and enforcement of the national scheme laws, being laws of the Commonwealth, States and Territories in relation to Australian companies, securities and futures markets; and for monitoring and promoting market integrity and consumer protection in relation to the Australian financial system, the provision of financial services and the payments system.
- 2.2 The SCT was established under the *Superannuation (Resolution of Complaints) Act 1993* (SRC Act), as an independent disputes resolution body which enables certain superannuation- related complaints to be dealt with where they have not been satisfactorily resolved with the superannuation entity. The functions of the SCT are to provide for the fair, economical, informal and quick resolution of complaints by inquiry, conciliation and, if necessary, by review.

3. Mutual Assistance

- 3.1 The parties agree to provide each other with reasonable assistance in relation to their respective functions as is consistent with relevant laws and this MOU.

4. Information Sharing

- 4.1 Information available to one party which is relevant to the other in terms of legislation or this MOU will be provided as soon as is reasonably practicable, with due regard to the urgency of doing so, subject to relevant law, operational considerations and any conditions which the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege.

- 4.2 The parties will bear their own costs in relation to referred and requested matters outlined in this MOU.
- 4.3 The SCT will provide ASIC with copies of reports, media releases and other similar documents (other than documents specifically created for ASIC or for the purpose of a particular complaint) as soon as practicable after they are provided to a third party. ASIC will provide copies of Policy Statements and media releases relevant to the SCT's functions as soon as practicable after their release.

5. Referrals to ASIC

- 5.1 The SCT may refer to ASIC details of a settlement that it thinks may require investigation under subsection 31(2) of the SRC Act and the Tribunal Chairperson is obliged to report to ASIC the following matters under sections 64, 64A and 65 of the SRC Act :
- a) a contravention of any law or the governing rules of a fund that may have occurred ;
 - b) a breach in the terms and conditions relating to an annuity policy, or a retirement savings account ; and
 - c) the refusal or failure of a party to a complaint to give effect to a determination made by the SCT.
- 5.2 Referrals will be made as soon as practicable after the SCT or the Tribunal Chairperson, as the case may be, becomes aware of the contravention, possible contravention, breach or refusal or failure to give effect to a determination and in accordance with times and standards agreed with ASIC under separate operational procedures.
- 5.3 The SCT acknowledges that ASIC will form its own opinion as to whether, on the basis of the information provided, it has reason to suspect a contravention of the legislation for which it has jurisdiction, or reason to take any regulatory action, and that ASIC cannot form any such opinions solely on the basis of any opinion of the SCT.
- 5.4 Where the SCT believes that a particular person may have information which may assist ASIC in relation to a referral, the SCT may nominate that person as a possible source of additional information when making the referral.
- 5.5 After the commencement of any action in respect of a referred matter, ASIC will advise the SCT of the contact details of an officer to whom inquiries can be made by the Tribunal Chairperson or his appropriately authorised delegate.
- 5.6 Subject to any relevant law, ASIC will on completion of all action in relation to a particular referral, inform the SCT of the outcome of ASIC's actions.

6. Requests by ASIC

6.1 ASIC may request information or production of a document under subsection 63(3) of the SRC Act. The request:

- a) will be made in a written form and in accordance with such operational procedures as may be agreed from time to time between ASIC and the SCT; and
- b) will be signed either by:
 - i) the National Director, Regulation, or
 - ii) the Program Manager, Corporate Finance and Managed Funds, or
 - iii) such other person as may be advised in writing by the Program Manager, Corporate Finance and Managed Funds or by the National Director, Regulation.

6.2 Any requests by ASIC under subsection 63(3) of the SRC Act will be kept confidential by the SCT, subject to any relevant law.

6.3 ASIC acknowledges that information and documents provided by the SCT under section 63 of the SRC Act will be subject to the provisions of section 127 of the ASIC Act 1989.

7. Referrals to the SCT

7.1 Complaints within the jurisdiction of the SCT may be referred by ASIC to the SCT (by the Financial Complaints Referral Centre (FCRC) or otherwise) in accordance with operating procedures agreed between the parties.

8. Confidentiality

8.1 When one party receives information from the other party in accordance with this MOU, it will take all reasonable steps to ensure that the information is dealt with in accordance with applicable laws and consistently with the purposes for which it was obtained, or as otherwise authorised by the other party. In such case the parties must keep each other fully informed.

9. Liaison Between the Parties

9.1 The parties agree that there will be regular liaison:

- (a) at least annually between the Chairman of ASIC and the Tribunal Chairperson in relation to matters of common interest.
- (b) at least once every two months between relationship managers as appointed by the parties from time to time, in relation to more immediate operational matters which may arise under this MOU, and

- (c) on an “as needed” basis between contact officers specified in the operating procedures and service level agreement in relation to matters arising in respect of ASIC’s responsibilities to make available staff and facilities to the SCT under the SRC Act.

10. Staff and Facilities

- 10.1 Staff required to assist the Tribunal in the performance of its functions are appointed or employed by ASIC under the Public Service Act 1922 and are answerable to the Tribunal Chairperson. They are subject to ASIC human resources policies, as determined by ASIC from time to time.
- 10.2 ASIC will also make available certain facilities to support the SCT’s functions within terms of a service level agreement to be agreed between ASIC and the SCT and reviewed in conjunction with the annual determination of the SCT’s budget allocation.
- 10.3 The SCT is funded from the same budget allocation as ASIC. The SCT budget preparation, allocation and, where appropriate, review, will be carried out in conjunction with ASIC’s procedures, as determined from time to time.

11. Disputes

- 11.1 Where there is dispute over any matter dealt with in this MOU, the parties will seek to resolve the issue by negotiation between the National Director, Regulation and the Tribunal Chairperson. If resolution cannot be achieved, then negotiation will be between the Tribunal Chairperson and the ASIC Chairman.

12. Review of the MOU

- 12.1 The parties will keep the operation of this MOU under continual review and will consult with each other with a view to improving its operation and resolving any matters which may arise.

13. Termination

- 13.1 A party may only terminate this MOU by written notice. The MOU will terminate 45 days after the date upon which such notice is received by the other party.

Dated this6th.....day of.....MAY.....1999

A CAMERON
(then Chairman)
Australian Securities and
Investments Commission

NEIL WILKINSON
(then Chairperson)
Superannuation
Complaints Tribunal

Appendix 7

Papers, Presentations and Publications

Papers & Presentations

The following papers are available from the Tribunal for a fee of \$10.00 each.

Cullen, N	'Dispute Resolution – Beyond the Standard and Into Action', Homebush Bay, 17 October 2001
Cullen, N	'The Superannuation Complaints Tribunal' AIST Training Session, Melbourne, 10 April 2002
Foley, C	'TPD' AIST Training Session, Melbourne, 14 November 2001
Foley, C	'The Super Tribunal', <i>Law Institute Journal</i> , December 2001, pp.66-69
Foley, C	'Legal Issues in Death Benefits', January 2002
Foley, C	'Assessing TPD and Death Benefit Claims', 12 th Annual Conference of Major Superannuation Funds, Royal Pines Hotel, Ashmore, Queensland, 14 March 2002.
McDonald, G.	'Assessing TPD Issues', Gerling Global Life Reinsurance Workshop, Sydney, 19 July 2001
McDonald, G.	'Assessing Death Benefit Claims', AIST Training Session, Melbourne, 8 August 2001
McDonald, G.	'Assessing Death Benefit Claims', AIST Training Session, Sydney, 30 August 2001
McDonald, G.	'SCT Approach to TPD Cases', IFSA Seminar, Sydney, 30 August 2001
McDonald, G.	'Case Discussion' & Panel, ASFA Conference Cairns, 19 – 21 September 2001
McDonald, G.	'SCT Tips, Traps & Implications', AIST Training Session, Perth, 25 October 2001
McDonald, G.	'Assessing Death Benefit Claims', ASFA Seminar, Perth, 26 October 2001
McDonald, G.	'SCT/FICS' Presentation, Sydney, 14 May 2002
McDonald, G.	'SCT/FICS' Presentation, Melbourne, 21 May 2002

Publications

The following publications are available from the Tribunal free of charge. Interested persons may also request to be placed on the Tribunal's mailing list in order to receive the quarterly *SCT Quarterly Bulletin* at no cost.

SCT Quarterly Bulletin

- Issue No 21 1 July 2001–30 September 2001
- Issue No 22 1 October 2001–31 December 2001
- Issue No 23 1 January 2002–31 March 2002
- Issue No 24 1 April 2002–30 June 2002

Superannuation Complaints Tribunal—How it can help you

(Memorandum: updated insert—June 2000)

How to resolve a complaint about your superannuation

(Brochure: updated—March 2000)

Information sheets

- *Superannuation Complaints Tribunal—Please read carefully before making your complaint to the fund;*
- *Conciliation Conference Guide for Complainants;*
- *Conciliation Conference Guide for Trustees & Insurers.*
- *Information about Review Meetings* (updated March 2000);

Registration of Complaint Form

- May be used to lodge a complaint with the Tribunal.

Rules & Guidelines

- *Procedural Rules & Guidelines Established by the Chairperson for the Constitution of the Tribunal and the Conduct of Review Meetings Under sub-sections 9(2A) & 9(4) of the SRC Act 1993.*

Contact

Mr Frank Stasiak
Public Education & Media Liaison
Telephone: (03) 8663 5530
Facsimile: (03) 8663 5588

Appendix 8

Staff Training

Training	Provider	Staff
21 st Century Ageing	COTA	1
Access to Superannuation for Departing Non-Residents	SCT	Inquiry / Senior Staff
Accounting – Trust Accounts & Costs Law	Monash University	2
ASFA Conference 2001	ASFA	3
BI/Query User	SPSInfoquest	1
Complaints Other Than Under Section 14	SCT	Inquiry / Senior Staff
Dividing Super on Marriage Breakdown	SCT	Inquiry / Senior Staff
Early Release of Benefits	SCT	Inquiry / Senior Staff
Emergency Procedures	SCT	All Staff
Government Co-Contributions for Low Income Earners	SCT	Inquiry / Senior Staff
Government Policy & Regulatory Framework	SCT	Inquiry / Senior Staff
Issues of Member Communication	SCT	Inquiry / Senior Staff
Legal Issues – Death	SCT	Inquiry / Senior Staff
Legal Issues – Disablement	SCT	Inquiry / Senior Staff
Peoplesoft	ASIC	All Staff
Privacy Obligations	SCT	Inquiry / Senior Staff
Project Management	PSMPC	1
Reporting to Fund Members	SCT	Inquiry / Senior Staff
Tax on Death Benefits Paid to Children	SCT	Inquiry / Senior Staff
Time Management	Successtechnologies	All Staff
Workers' Compensation	SCT	Inquiry / Senior Staff

Formal Studies	Provider	Staff
Staff undertaking part-time studies at tertiary institutions	Various	6

Appendix 9

Financial Statement

Financial And Staffing Resources Summary 2001–2002

The following is a summary of the direct cost of the Superannuation Complaints Tribunal for 2001–2002. These figures are derived from the audited statements of the Australian Securities and Investments Commission.

	(2001–2002) \$(000)
ACCRUAL BASIS	
Employee expenses	2,222.7
Suppliers expenses	543.0
Net Cost	<u>2,765.7</u>
TOTAL ASSETS	130.7
TOTAL LIABILITIES	371.5
STAFFING	
Average Staffing	30.5
MEMBERS FEES	
	384.3

Appendix 10

Service Charter

This charter sets out the standard of service you can expect from us and what we expect from you

Our objective

To inquire into and resolve superannuation related complaints in a manner that is fair, economical, informal, and quick.

To achieve this objective we will:

- deliver high quality service to complainants and the superannuation industry;
- seek fair outcomes;
- make our service accessible to the community.

The Tribunal's role

The Tribunal will impartially inquire into complaints about decisions made by superannuation providers.

The term 'superannuation providers' in this charter includes: trustees of Regulated Superannuation Funds and Approved Deposit Funds; Retirement Savings Account providers; and Life Companies providing annuity policies.

Where possible, the Tribunal will try to resolve a complaint by conciliation. Where that is unsuccessful the matter will be referred to review for a determination

Our undertaking to you

If you have a complaint about a decision made by a trustee or life company in the circumstances described above, we will give it careful attention.

We will do whatever we can to help you within our powers and resources.

If it is something we can and should deal with, we will do this as quickly as possible, acting fairly and independently.

If we cannot deal with your complaint, we will explain why. If we can suggest another way to solve your problem, we will tell you.

What you can expect from us

- a fee-free service;
- courteous, polite attention;
- assistance in making a complaint;
- acknowledgment of every written complaint within seven working days;
- a contact name and telephone number on all our letters;
- careful assessment of every complaint;
- individual case officers for matters we are able to deal with;
- independent and impartial inquiry;
- a process that abides by the rules of procedural fairness;
- respect for the privacy of confidential information;
- telephone access to the staff at the Tribunal for the cost of a local call from anywhere in Australia;
- access to interpreter assistance;
- referral to the appropriate organisation when we cannot help; and reasons for any decision we make.

What you can do to help us

Before you lodge your complaint with us, you must have made the complaint to your superannuation provider and given them an opportunity to resolve the complaint. Certain time limits apply, particularly if your complaint concerns a disability benefit or the distribution of a death benefit.

For further details please refer to our booklet "*Superannuation Complaints Tribunal: How it can help you*" or call one of our telephone inquiry officers for further details.

When you lodge your complaint, provide us with any documents which relate to your complaint, such as correspondence between yourself and your fund, medical reports, and benefit statements/accounts.

Suggestions or complaints about our service

Because we are committed to improving our service to the community, we welcome your views. If you want to make a suggestion or if you want to complain about our service, please write to the address below and the matter will be carefully considered by a senior officer.

The Chairperson
Superannuation Complaints Tribunal
Locked Bag 3060
GPO Melbourne VIC 3001
Facsimile: (03) 8663 5588

People from all around Australia can call the Tribunal on **1300 884 114** for the cost of a local call.

Appendix 11

Tribunal Location & General Information

Location:

The Superannuation Complaints Tribunal is located at **Level 8, 60 Collins Street, Melbourne, Victoria.**

Telephone: Enquiries and Complaints **1300 884 114** (toll free)
Administration (03) 8663 5500

Fax: (03) 8663 5588

Postal address: Locked Bag 3060, GPO Melbourne, Victoria, 3001.

Internet: <http://www.sct.gov.au>

Readers With Enquiries About The Tribunal Or This Report Should Contact:

Mr Frank Stasiak
Public Education & Media Liaison
Locked Bag 3060
GPO Melbourne
Victoria 3001

Telephone: (03) 8663 5500

Facsimile: (03) 8663 5588

Access To Review Determinations:

The full text of determinations awards are electronically available free of charge at **<http://www.sct.gov.au>** (the Tribunal's website)—under the heading More Information > Determinations. Hard copies of review determinations are also available for purchase from Commonwealth Government Bookshops. [Note: For privacy reasons, the names of the parties have been omitted.]

INDEX

A

Administration, 12
arbitration, 16
Australian Prudential Regulation
Authority (APRA), 14
Australian Securities and Investments
Commission (ASIC), 14

B

'backlog', v, 1–2, 30

C

Case Management System (CMS), 32, 36,
39, 46
Chairperson, 5
Commonwealth Departments,
scrutiny by, 21
community education, 45
complaints,
age and gender, by, 25
death, 25–7
disability, 25–7
disclosure/fees, 25–7
fund type, by, 27–9
outside jurisdiction, 16–7, 24
payments, 25–7
resolution outcomes, 52
section 101, 17, 24, 52
state/territory distribution, 24
statistical overview of, 23
surplus distribution, 25–7
withdrawn, 29–30, 52
within jurisdiction, 24–9
written, 24–9
conciliation, 11–2, 30–3
consultants, 42
corporate objectives, 35–7
corporate plan, 35
corporate strategies, 38–42

courts, scrutiny by, 17–21

D

delegation of powers, 4–5, 49–51
Deputy Chairperson, 5–6
determinations, *see* review
Director, 6

E

environmental awareness, 44
establishment of Tribunal, 4
excluded complaints, 17
excluded subject matter, 17
exempt public sector superannuation
schemes (EPSSS), 16, 29
external scrutiny of the Tribunal, 18–20

F

*Financial Sector Legislation Amendment Bill
(No 2) 2002* (Cwlth), 16
Financial Services Reform Act 2001 (Cwlth),
15
*Financial Services Reform (Consequential
Provisions Act 2001* (Cwlth), 15
freedom of information (FOI), 44, 58–60
functions of Tribunal, 4
funding of Tribunal, v, 37, 68

G

general strategies, 43–45

I

Inquiry & Conciliation, 11–2
internal scrutiny of Tribunal, 18

J

jurisdiction of Tribunal, 15–17

Index

L

Legal Adviser, 12

M

management of fund as a whole, 17

Memorandum, 59, 66

Memorandum of Understanding
with ASIC (MOU), 13, 61–4

Minister, *see* Responsible Minister

N

national operation of Tribunal, 12

O

objectives of Tribunal, 4

Occupational Health and Safety
(OH&S), 44

Ombudsman, scrutiny by, 21

P

Parliament, scrutiny by, 21

Parliamentary committees, scrutiny
by, 18

Part-time Tribunal Members, v, 2, 7–10

powers of Tribunal, 17–20

Procedural Rules & Guidelines, 53–7

privacy, 44

Privacy Commissioner, scrutiny by,
22

program strategies, 41–3

Q

Quarterly Bulletin, 59, 65

R

Records management, 42

referral of complaints to APRA, 14

referral of complaints to ASIC, 13

Regulations, 16

Responsible Minister, 14

review, 7, 33, 52

Review Support, 11

role of Tribunal, 4

S

Service Charter, 34, 69–70

social justice and access & equity, 45

staff of Tribunal, 13, 42, 43, 48, 67

Statute Law Revision Act 2002 (Cwlth), 16

structure of Tribunal, 4–12

*Superannuation (Resolution of
Complaints) Regulations* (Cwlth), 16

T

telephone enquiries, 23

training, staff, 67

Translating & Interpreting Service
(TIS), 45

Treasury, Department of, 14

*Treasury Legislation Amendment (Application
of Criminal Code) Act (no 2) 2001*
(Cwlth), 15

W

website, 23, 71

withdrawal of complaints, 29–30, 52

workplace diversity, 43