



**Superannuation  
Complaints**

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**Tribunal**

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The Hon Chris Bowen, MP  
Minister for Financial Services, Superannuation and Corporate Law  
& Minister for Human Services  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I have pleasure in submitting to you for presentation to the Parliament the fifteenth Annual Report of the Superannuation Complaints Tribunal for the year ended 30 June 2009, 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

Jocelyn Furlan  
Chairperson

11 September 2009

## Highlights 2008 – 09

<b>Statistics</b>	<p>Written complaints received by the Tribunal remained at the higher levels experienced in the previous year, rising by 1.9%.</p> <p>Complaints relating to administration issues, (about disclosure, fees, insurance premiums, investment option changes, and payment delays) rose to comprising 62.4% of all complaints within the Tribunal's jurisdiction.</p> <p>The number of complaints withdrawn by the Tribunal increased by 20%.</p>
<b>General</b>	<p>Implementation of electronic document management for trust deeds and insurance policies was completed.</p> <p>On 30 June 2009, the Tribunal launched its new website, with extensive enhancements to the look, the categorisation of information and the search facility on determinations.</p> <p>The Tribunal updated its Service Charter and published it on the website.</p>

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## Introduction

The focus of this reporting year, in terms of corporate initiatives and outputs, continued to be on the resolution 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 major documents relating to its operations other than this report.

## Chairperson's Review

### Activity

The Tribunal's activities in 2008/09 were dominated by the impact of the global economic crisis. The number of complaints received by the Tribunal remained at the higher levels experienced in the previous year, rising by 1.9% during the year.

The change this year was the higher proportion of complaints relating to administration issues, including complaints about disclosure, fees, insurance premiums, investment option changes, and the time taken to process rollovers and benefit payments. Complaints about these issues comprised 62.4% (2007/08 – 54.1%) of all complaints that were within the Tribunal's jurisdiction.



These complaints are often more complex than complaints about distribution of death benefits and disability cases because they involve calculations of hypothetical financial positions and considerations of disclosures, and possible changed behaviours by complainants in reliance on the disclosures. The increased complexity has put pressure on the Tribunal's objective of resolving complaints quickly.

Accordingly, a focus of the Tribunal this year has been on developing a framework for analysis of these types of complaints so that they are dealt with in a consistent manner and appropriate and relevant enquiries are made of complainants and trustees.

Once again, the number of complaints proceeding to review reduced, by 30%. Whilst the number of complaints resolved through the Tribunal's conciliation process remained steady, the number of complaints withdrawn by the Tribunal increased by 20%. This is consistent with the higher proportion of complaints relating to the indirect impact of negative investment returns, where complainants are aggrieved about a transaction on their superannuation not meeting their expectations, but may not be able to establish that their loss is as a result of an unfair or unreasonable decision by a trustee or other decision-maker.

### Initiatives

During the year, the Tribunal completed a number of initiatives aimed at enhancing its efficiency and effectiveness.

The implementation of electronic document management for trust deeds and

insurance policies was completed and all trust deeds, insurance policies and disclosure material provided by trustees and insurers have been scanned into the Tribunal's electronic document library. Staff at the Tribunal now have access to these documents at their desk and the material is provided to part-time members of the Tribunal on disk. This initiative has significantly reduced the Tribunal's paper and printer usage, as well as postage and other delivery costs.

On 30 June 2009, the Tribunal launched its new website, designed to be informative and easy to navigate. The new website includes an online complaint form with drop down boxes providing information and suggestions to assist complainants. The online complaint form asks complainants to confirm that they have first complained to the relevant fund, with the objective of reducing the number of complaints received by the Tribunal that are outside its jurisdiction because the complainant has not first complained to the fund.

Extensive enhancements have also been made in terms of the look, the categorisation of information, and the search facility on determinations.

I am grateful for the efforts of all of the staff involved over a considerable period of time in accomplishing this important project.

### **Service Charter**

During the year the Tribunal updated its Service Charter with the aim of enhancing the transparency and accountability of the Tribunal's procedures and decision-making processes. The Charter is included on the Tribunal's website, and provides information about complainants' rights if they have a complaint about the Tribunal's services or a Tribunal decision (such as a decision about its jurisdiction or a decision to withdraw a complaint).

### **Tribunal Members**

On 8 August 2008, the Hon. Cheryl Edwardes resigned as a member of the Tribunal to take up a position as Special Counsel for climate change with a large law firm. The Tribunal is grateful to Cheryl for her contribution, in particular her thoughtful views in discussions at review meetings.

During the year the appointments of all of the Tribunal's part-time members fell due. As a result, Senator the Hon Nick Sherry, former Minister for Superannuation and Corporate Law, announced the appointments of two new part-time members and the reappointment of 17 part-time members to the Tribunal.

The Tribunal welcomed Michaela Anderson and Brian Lacey who have each been appointed as new members for a three-year period. Michaela was formerly the Deputy CEO and Director of Policy and Research at ASFA and Brian is a consultant to the CEO of the Financial Planning Association and

was formerly a senior policy consultant at the Investment and Financial Services Association.

Jane Abbott, Katy Adams, Colin Cassidy, Ross Christie, Noel Davis, Catherine Dean, Ella de Rooy, Scott Ellis, Colin Grenfell, John Hart, Jeff Humphreys, Paul Kierce, Janet Martin, Diana Olsberg, Carolyn Re, Anne Shanahan and David Thomas have each been reappointed for further three-year periods.

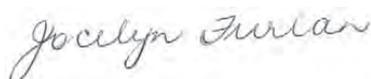
Each of these members has made a substantial contribution to the Tribunal over a number of years, and we are delighted that they have agreed to continue their involvement.

Bill Hassell's appointment expired, and the Tribunal thanks Bill for his contribution to the Tribunal during the term of his appointment. His input at hearings and in drafting determinations was always well considered and fair.

### **Staff**

Superannuation is frequently in the news and public awareness of its importance and relevance continually grows. The Tribunal plays an essential role in this industry. As in any organisation, the achievements of the Tribunal are only as good as the commitment and dedication of the staff and members of the Tribunal. I am grateful for the excellent work of staff who have seen an increase in their workload as complaints become more complex. My gratitude also to panel members for their conscientious work in the determination of complaints proceeding to hearings.

Looking forward, the Tribunal will continue its commitment to delivering its statutory objectives in the best manner possible and strive to continuously evolve and improve its processes and efficiency.



Jocelyn Furlan  
Chairperson

September 2009

# 1 Overview

## Role

The Tribunal was established by the *Superannuation (Resolution of Complaints) Act 1993* (Cwlth) (the SRC Act) following 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 account (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 the Tribunal to 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) and (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-section 59(2)(b) lists specific powers which are exercisable only by the Chairperson and/or the Deputy Chairperson.

## Chairperson

**Ms Jocelyn Furlan** was appointed as Chairperson of the Tribunal for a five year term on 4 June 2009. Prior to her appointment as Chairperson she was the Acting Chairperson from 8 September 2007 and she was appointed as the Deputy Chairperson in March 2006.

Ms Furlan, who holds law and commerce degrees, has in excess of 25 years' experience in the superannuation industry. Previous roles include Executive Manager Corporate of the Victorian Superannuation Board and its predecessor the State Superannuation Board, Company Secretary of VicSuper and acting as Secretary to the Victorian Parliamentary Contributory Superannuation Fund. Most recently Ms Furlan was the Compliance Manager of legalsuper, previously the Legal Industry Superannuation Scheme.

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 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.

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).

## Acting Deputy Chairperson

**Ms Katy Adams** was appointed as Acting Deputy Chairperson on 8 September 2007.

Ms Adams has practised as a solicitor in corporate, tax and superannuation law related areas in the United Kingdom and Australia since 1989.

After graduating with a Bachelor of Laws (Honours) from the London School of Economics, she completed her articles with Clifford Chance, in London and Hong Kong, before working as a solicitor in the tax and pensions department. Following a year travelling in Australia and New Zealand, she returned to England to lecture at the College of Law, where she taught tax, wills and probate, and business law.



In 1994 she emigrated to Australia, and since then has worked in private practice, as in-house counsel for superannuation fund administrators, and as a senior lawyer at the Australian Securities and Investments Commission, including as a superannuation specialist in the regulatory policy branch during the introduction of the financial services reform legislation.

She was first appointed as a Member of the Tribunal in 1997. After acting in the position of Legal Counsel for two years, Ms Adams was appointed to that role in 2007. She is currently on leave from that position during her appointment as Acting Deputy Chairperson.

## Director

**Ms Fiona Power** became Director of the Tribunal in March this year. Prior to this, Ms Power held the position of Assistant Director with the Tribunal and occupied this position since 2000. Ms Power has considerable experience in complaints handling, having originally joined the Tribunal in 1994, the year it was established.

Ms Power 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 liaison with ASIC, Treasury, the superannuation industry and diverse professional and consumer organisations.





Assistant Director Mr Patrick O'Dwyer and Acting Assistant Director Mr Joe Faife support the Director.



## 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 or part-time basis. The members are appointed by the Minister; and two of the members are appointed 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**

(13 November 2008 - 12 November 2011)

Mrs Abbott has worked in corporate superannuation for over 20 years as an administrator, consultant and trustee. She provided advice to trustee boards on legislative, administrative and member issues. She has been involved with the Association of Superannuation Funds of Australia's (ASFA) education program for 18 years.

### **Ms Katy Adams**

(27 April 2009 – 26 April 2012)

Ms Adams is currently the Tribunal's Acting Deputy Chairperson.

**Dr Michaela Anderson** (10 November 2008 – 9 November 2011)

Michaela Anderson worked in the Australian superannuation industry for 23 years. She was the Director, Policy and Research at ASFA from 1994 to June 2007 and, prior to this, Manager of Policy Advice to the trustees for superannuation funds for NSW public sector employees. She was an inaugural member of the Board of Guardians of New Zealand Superannuation. She represented ASFA on the ASX Corporate Governance Council from its inception in 2003 to 2007 and she is currently on the board of the Responsible Investment Association Australasia.

**Mr Colin Cassidy** (1 December 2008 - 30 November 2011)

Mr Cassidy has been in the finance sector for over 34 years, principally in the superannuation and life insurance industries. He has been a qualified underwriter, claims assessor and worked in management with a number of insurance companies. For the past 15 years, Mr Cassidy has worked in the superannuation industry in a number of both administrative and trustee roles and more recently as Acting Chief Executive Officer and Company Secretary for an industry superannuation fund. He also provides consultancy advice to a number of superannuation funds.

**Mr Ross Christie** (27 April 2009 – 26 April 2012)

Mr Christie worked as a financial planner until December 2002 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) (now called Vision Super) and Federal Councillor of ASFA.

**Mr Noel Davis** (1 December 2008 - 30 November 2011)

Mr Davis is a Sydney barrister specialising in superannuation. He has practised in that area for in excess of 30 years.

He is a director of a large superannuation trustee and of a large superannuation administrator. He is also a director of a public financial services company and is chairman of 3 compliance committees. He was formerly a director of ASFA and has a distinguished service award from it.

He is the author of the book *The Law of Superannuation in Australia*, which he first published in 1985, and is editor of *The Australian Superannuation Law Bulletin*.

**Dr Catherine Dean** (13 November 2008 - 12 November 2011)

Dr 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.

**Ms Ella de Rooy** (27 April 2009 – 26 April 2012)

Ms de Rooy worked as an independent superannuation consultant until 2006, providing technical, compliance and best practice advice and services to superannuation funds and industry organisations such as ASFA. Her 21 years of superannuation experience spans public sector, industry and corporate funds including senior management roles in technical advice and business development as well as fund secretarial and trustee functions. She was previously a full-time member of the State Compensation Board (NSW - now WorkCover) and started her working life as an economist.

**Mr Scott Ellis** (1 December 2008 - 30 November 2011)

Mr Ellis is a barrister at Francis Burt Chambers in Perth. He practises in the areas of commercial, employment and construction law and as an arbitrator, mediator and adjudicator. Prior to becoming a barrister, he was a partner in Freehills for a number of years.

**Mr Colin Grenfell** (27 April 2009 – 26 April 2012)

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 Proprietary Limited. Mr Grenfell is a former director of ASFA and is a member of the ASFA Victorian Legislation Discussion Group. Colin is a member of the Institute of Actuaries of Australia Benefit Projections Working Group.

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.

**Professor John Hart** (10 November 2008 - 9 November 2011)

Associate Professor John Hart is an Orthopaedic Surgeon based in Melbourne. He was Head of the Orthopaedic Unit at the Alfred Hospital from 1980 until 2003 and is a Clinical Associate Professor in the Department of Surgery at Monash University. He has published numerous articles relating mainly to joint replacement and joint resurfacing. He was President of the

Australian Orthopaedic Association from 1988 to 1999 and was awarded the L.O. Betts gold medal of the Association in 1997. He was President of Sports Australia in 1985-86 and Chairman of the international Girdlestone Orthopaedic Society from 1995 to 1996. He is an Honorary Member of the Australian College of Sports Physicians, the North American Knee Society and the North American Association for Arthroscopy. He is a Life Member of Sports Australia and the Arthroplasty Society of Australia. He is a past Patron in Chief of the Green Maroon and Black Patrons' Club and is president of the Melbourne High School Foundation.

**Mr Jeff Humphreys**

(1 December 2008 - 30 November 2011)

Mr Humphreys is an actuary with 21 years' experience consulting to superannuation trustees, employers and employee organisations. He is also a specialist in the group risk market. He is a presenter at seminars and conferences, including ASFA and Conference of Major Superannuation Funds (CMSF), and has written Sessional papers for The Institute of Actuaries and had several articles published in superannuation industry magazines. Mr Humphreys is an active participant in The Institute of Actuaries of Australia and is a member of the Superannuation and Employee Benefits Practice Committee. He was Convener of the Education Subcommittee and Faculty Chair of the Superannuation and Planned Savings professional course from inception to 2006. Mr Humphreys assists ASFA from time to time on Best Practice papers and occasional issues.

**Mr Paul Kierce**

(10 November 2008 - 9 November 2011)

Mr Kierce has been an Orthopaedic Surgeon in active rural practice in Victoria for 37 years. He was Head of Orthopaedic Surgery at Ballarat Health Services and Director of Surgery at St. John of God Hospital Ballarat. He was also Orthopaedic Surgeon to the Portland Hospital for 13 years and Hamilton Hospital for 3 years.

While in Ballarat he was involved in the training of orthopaedic surgeons.

He ceased active surgical practice in 2007. Since then he has been fully employed as an Orthopaedic Medicolegal Consultant.

**Mr Brian Lacey**

(10 November 2008 - 9 November 2011)

Mr Lacey is a lawyer with over 30 years experience in in-house general counsel roles, mainly in the financial services and superannuation areas. He has acted as independent director of several funds management companies and approved trustees. He currently consults to financial services organisations and industry bodies such as the Investment and Financial Services Association Limited (IFSA) and the Financial Planning Association (FPA) and is a panel member of the Financial Ombudsman Service (formerly Financial Industry Complaints Service).

**Mrs Janet Martin** (13 November 2008 - 12 November 2011)

Mrs Martin is a farmer and lawyer in country practice. Until October 2003, she was Registrar of the Supreme Court of Western Australia for 12 years. Previously, she spent 5 years lecturing at the Law School of the University of Western Australia in property, civil procedure, corporate governance and agency and was the Sub-Dean.

In over 30 years in the legal profession, Mrs Martin has practised on her own account and held senior positions with the Legal Aid Commission and the Department of Corporate Affairs (WA) as well as being a member of the Parole Board of Western Australia and the Social Security Appeals Tribunal.

**Dr Diana Olsberg** (13 November 2008 - 12 November 2011)

Dr Olsberg is a Senior Research Fellow in the School of Social Sciences & International Studies at the University of New South Wales.

She is well respected and widely published in Australia and overseas for her research on Australia's superannuation system and on issues concerning Australia's ageing population. Dr Olsberg was named Trustee of the Year for 2002 at the CMSF. She served as an employee elected Trustee and Deputy Chair of one of Australia's largest superannuation funds, UniSuper, for 17 years. She has served as Executive Director of the Australian Institute of Superannuation Trustees (AIST).

**Dr Carolyn Re** (27 April 2009 - 26 April 2012)

Dr Re is a medical practitioner who has worked in private general practice for over 17 years. She currently works as a senior lecturer at the Rural Clinical School, University of New South Wales. She was a part-time member of the Federal Administrative Appeals Tribunal (1995-2001), the Social Security Appeals Tribunal (2002-2005) and a member of the Victorian Casino and Gaming Authority (2001-2004).

**Miss E Anne Shanahan** (13 November 2008 - 12 November 2011)

Miss Shanahan is a Thoracic Surgeon (retired) having practised 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 and the Victorian Civil Administrative Tribunal. She was a Fulbright Scholar in 1969-1970.

**Dr David Thomas** (1 December 2008 - 30 November 2011)

Dr Thomas has doctorates in Law and Economics. He is admitted to legal

practice in Victoria and New South Wales and is currently a Member of the Migration and Refugee Review Tribunals. He was previously a member of the Victoria Law Foundation and formerly Head of the Department of Economics and Law at Swinburne University of Technology.



The Chairperson, Acting Deputy Chairperson and Executive Officers

## Review Support

Review Support is headed by the Director, supported by Mr Ken Jacobs who manages two Review Officers and five Administrative Officers – including the Chairperson’s Personal Assistant, Ms Angela Livy and the Acting 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.



Review Support is also responsible for listing review meetings and for ensuring that the Tribunal’s determinations are issued to the parties and subsequently distributed for publication (with names of parties deleted).

The team also coordinates the provision of 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 22 staff including 14 Complaints Analysts – see Appendix 1. The day-to-day work of the Complaints Analysts is managed by Mr Frank Stasiak.



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 Complaints Analysts 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 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 Counsel

Eva Karakostas is a lawyer. Since 1994, she has worked in tax, financial services and superannuation related areas both in Australia and the United Kingdom. Her experience includes various roles in the public sector, larger corporates and consulting firms. Eva's most recent role was with the Super Funds team at the Australian Securities & Investments Commission. She joins the Tribunal as Legal Counsel on secondment from ASIC.



## Administration

The Tribunal is supported by an Administration Section comprising four officers.

The Administration Section comprises Information & Communications Technology (ICT) and Finance and General Administration. The section has responsibility for the provision of all administration and technical support services for the day-to-day operation of the Tribunal.

## 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 sections 29 and 35 of the SRC Act and rule 4 of the *Chairperson's Procedural Rules & Guidelines* (Appendix 4) 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 teleconferencing. Reviews are generally conducted solely 'on the papers'.

## Relationship with ASIC

The Tribunal's relationship with 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 financial products and services to consumers. Section 62(2) of the SRC Act requires ASIC to make available to the Tribunal such staff and facilities as are necessary or desirable to enable the Tribunal to perform its functions.

## **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**

As noted above, ASIC has a statutory responsibility pursuant to sub-s.62(2) of the SRC Act to provide the Tribunal with resources to enable it to perform its functions.

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**

Under section 62(1) of the SRC Act, the staff of the Tribunal are engaged under the *Public Service Act 1999* (Cwlth).

## **Referral of Complaints**

The Tribunal is legislatively required to provide ASIC and/or the Australian Prudential Regulation Authority (APRA) 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 and/or APRA – 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, no matters were referred to APRA under sub-s.64(b)(i) and two matters were referred to ASIC under sub-s.64(b)(ii). No matters were referred under sub-s.64A.

## **Section 65 of the SRC Act**

On 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 and/or APRA under sub-s.65(1)(b) of the SRC Act. There were no particulars given 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 or APRA this reporting year.

## **Relationship with APRA**

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 *Financial Institutions Supervisory Levies Collection Act 1998* (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.

## **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. Wayne Swan MP. The Treasurer has allocated ministerial responsibility for the Tribunal to the Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law & Minister for Human Services. The Tribunal's enabling Act, the SRC Act, is administered by the Department of the Treasury.

## 2 Jurisdiction and Powers

### 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 or RSA provider via its internal complaints resolution arrangements under section 101 of SIS or section 47 of the *Retirement Savings Accounts Act 1997* (Cwlth) (the RSA Act) (as relevant) before coming to the Tribunal - section 19 SRC Act;
- complaints relating to exempt public sector superannuation schemes 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. No subject matter has been declared as excluded as at 30 June 2009;
- 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 (eg employers);
- complaints where the subject-matter of the complaint is currently the subject of court proceedings – section 20 SRC Act; and
- complaints where the statutory standing requirements have not been met by the complainant(s).

### Largest Categories of Written Complaints Outside Jurisdiction

40% of written complaints received this reporting year were outside jurisdiction. Once again, complaints that 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 complaints outside jurisdiction.

This year, 64% of all outside jurisdiction complaints fell into this category (last year 67%). The second largest category of written complaints outside jurisdiction were complaints that related to the 'management of a fund as a whole' at 7% (last year 3%).

## **Scrutiny of the Tribunal**

### **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, where necessary, in consultation with Legal Counsel, the Acting Deputy Chairperson and Chairperson.

### **External Scrutiny**

The Parliament, various parliamentary committees, the courts and certain Commonwealth departments and statutory bodies carry out external scrutiny of the Tribunal.

#### **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 Standing Order No 6.

#### **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 and under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) and section 39B of the *Judiciary Act 1903* (Cwlth). This reporting year no questions of law have been referred to the Federal Court pursuant to section 39 of the SRC Act. Six appeals from Tribunal determinations were filed with the Federal Court pursuant to section 46 of the SRC Act, and one application was made for judicial review.

#### **Section 46 Federal Court Appeals filed 2008-2009**

- *Ronald Gary Tottenham v Glenda Mae Tottenham (VID 639 of 2008)*
- *Susan Rose Woollan v Australian Meat Industry Superannuation Pty Ltd & Anor (QUD 308 of 2008)*
- *Jennifer Louise Forrest v SCT & Anor (VID 895 of 2008)*

- *Susan Carolyn Purcell v APS Chemicals Superannuation Pty Ltd & Anor (VID 932 of 2008 and VID 159 of 2009)*
- *Sydney Joseph East v Victoria Elizabeth Aitken & Ors (VID 160 of 2009)*
- *Rebecca Louise Webb v Jill Teeling & Ors (NSD 260 of 2009)*

### **Federal Court Judgments Handed Down 2008–2009**

- *Australian Reward Investment Alliance v Superannuation Complaints Tribunal & Anor [2008] FCA 1548* – Appeal allowed, Tribunal decision set aside and trustee decision affirmed.
- *Smith v Superannuation Complaints Tribunal [2008] FCA 1528* – Appeal allowed, matter remitted to the Tribunal.
- *Dezelske v Westscheme Pty Ltd & Anor (WAD 110 of 2008)* – Appeal dismissed by consent.
- *Busk v Board of Trustees of the State Public Sector Superannuation Scheme & Superannuation Complaints Tribunal [2008] FCA 2014* – Appeal dismissed. Notice of appeal to the Full Federal Court filed 6 May 2009.
- *Nowicka v Superannuation Complaints Tribunal & Anor [2008] FCAFC 191* – Full Federal Court, Appeal allowed, matter remitted to the Tribunal. Application for special leave to appeal to the High Court discontinued.
- *Susan Carolyn Purcell v APS Chemicals Superannuation Pty Ltd & Anor (VID 932 of 2008)* – extension of time to lodge appeal granted.

### **Federal Court Appeals Settled or Discontinued 2008–2009**

- *Ronald Gary Tottenham v Glenda Mae Tottenham (VID 639 of 2008)* – discontinued.
- *Susan Rose Woollan v Australian Meat Industry Superannuation Pty Ltd & Anor (QUD 308 of 2008)*- discontinued.

### **Federal Court Matters Pending at 30 June 2009**

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

- *Australian Super Pty Ltd & Anor v Nigel Woodward & Anor (QUD 147 of 2008)*- Full Federal Court
- *Robert Wicks v Superannuation Complaints Tribunal & Anor (QUD 305 of 2007)*

## **Judicial Review Applications filed 2008-2009**

- *Andre van Tonder v Superannuation Complaints Tribunal & Anor (NSD 557 of 2009)*

## **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).

### **Department of the Treasury**

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

### **Statutory Bodies**

Three formal inquiries were made by the Commonwealth Ombudsman under the *Ombudsman Act 1976* (Cwlth) this reporting year, as follows:

- Mr K complained to the Ombudsman about the Tribunal's decision to withdraw his complaint on the basis that it was lacking in substance. The Tribunal was asked to provide the Ombudsman with details of what information had been obtained by the Tribunal during the course of its investigation. This information was provided to the Ombudsman. The Ombudsman advised the Tribunal that it would take no further action regarding the complaint and closed its file.
- Mr H complained to the Ombudsman about the Tribunal's decision not to release documents requested by him. The Tribunal was asked by the Ombudsman whether it had considered the request as a request under the *Freedom of Information Act 1982* and suggested that the Tribunal in future should inform complainants of the process of making a valid FOI request. The Tribunal informed Mr H of the process of making a valid FOI request. The Ombudsman advised the Tribunal that it would take no further action and closed the file.
- Ms H complained to the Ombudsman about undue delay by the Tribunal in dealing with her complaint. The Tribunal provided the Ombudsman with a chronology outlining the Tribunal's handling of the complaint. The Tribunal did not hear anything further from the Ombudsman.

### **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.

### 3 Performance

#### Statistical Overview

This reporting year, the Tribunal received 2,546 written complaints (last year – 2,498), and 13,975 telephone enquiries (last year – 15,344).

These statistics show a 1.9% increase in the number of written complaints received, and a 8.9% decrease in the number of telephone enquiries received, compared with the previous reporting year.

#### Enquiries

As mentioned above, the Tribunal received 13,975 telephone calls this reporting year and dealt with a wide range of enquiries.

The most popular questions were complaint related enquiries, followed by requests for information about the Tribunal itself and general superannuation enquiries.

#### Written Complaints

The Tribunal received 2,546 written complaints this reporting year.

Of these, 1,519 (59.7%) complaints were within jurisdiction (last year – 57.7%) and 1,027 (40.3%) were outside jurisdiction (last year – 42.3%).

Fig. 1: Written Complaints

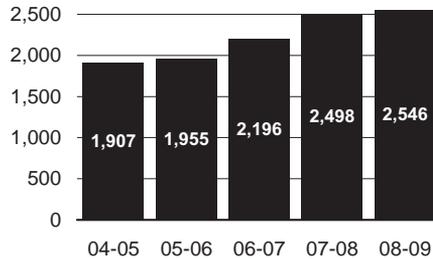


Fig. 2: Telephone Enquiries

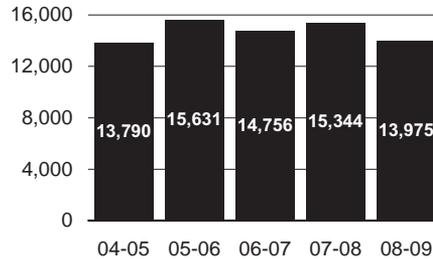
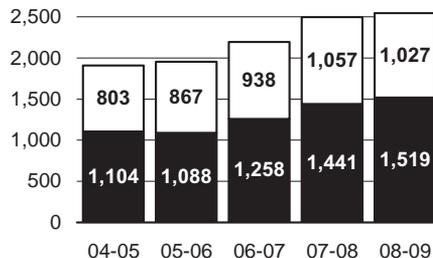


Fig. 3a: Jurisdiction



The Tribunal finalised 2,349 written complaints this reporting year, which included some complaints carried over from the previous year (last year – 2,324).

Of these, 1,272 (54.2%) were within jurisdiction (last year – 54.1%) and 1,077 (45.8%) were found to be outside jurisdiction (last year – 45.9%).

Of the 1,077 complaints closed as outside jurisdiction, 673 (62.5%) were closed pursuant to s.19 of the SRC Act (last year – 66.2%).

### Distribution by State and Territory

Table 1 shows no significant change in the origin of the 2,546 written complaints made to the Tribunal during the reporting year.

**Table 1: Written Complaints by State/Territory**

State/Territory	Number of Complaints			
	2007-08		2008-09	
Australian Capital Territory	42	1.7%	48	1.9%
New South Wales	685	27.4%	644	25.3%
Northern Territory	15	0.6%	8	0.3%
Queensland	438	17.5%	449	17.6%
South Australia	171	6.9%	176	6.9%
Tasmania	60	2.4%	42	1.7%
Victoria	598	23.9%	601	23.6%
Western Australia	213	8.5%	236	9.3%
Other/undisclosed	276	11.1%	342	13.4%
<b>Total</b>	<b>2,498</b>	<b>100.0%</b>	<b>2,546</b>	<b>100.0%</b>

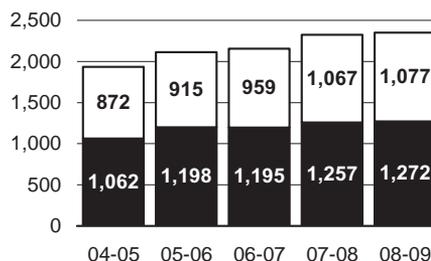
### Distribution by Age and Gender

This reporting year, men made up 57.7% (last year – 57.3%) of all written complaints made to the Tribunal.

Based on 1,462 complainants who provided their date of birth, the average age of complainants is 52 years (last year – 51) and 50.5% of complainants are aged 55 years or over (last year – 44.0%). The oldest complainant was 90 (last year – 86) years.

These figures are similar to previous reporting years.

**Fig. 3b: Jurisdiction**

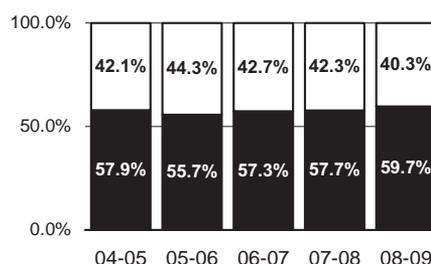


## Written Complaints Within Jurisdiction

Of the 2,546 new written complaints received by the Tribunal this reporting year, 1,519 (59.7%) were within jurisdiction.

Last reporting year, of the 2,498 written complaints received, 1,441 were within jurisdiction (57.7%).

Fig. 4: Jurisdiction



## Nature of Written Complaints Within Jurisdiction

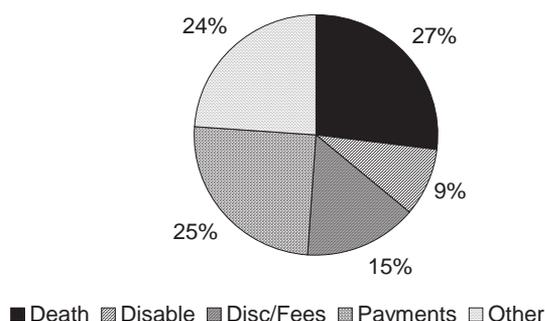
Complaints received fell into five major categories, i.e. 'death', 'disability', 'disclosure/fees', 'payments' and the catch-all category of 'other'.

'Death' complaints comprise the largest category of all written complaints received within jurisdiction – 26.5% (last year – 28.6%). 'Payments' complaints make up the second-largest category at 25.0% (last year – 22.2%), followed by 'other' complaints at 24.5% (last year – 26.0%). Note that 'administration' complaints, at 18.2% (last year – 18.1%), comprise more than two-thirds of all the 'other' category.

Table 2: Nature of Written Complaints Within Jurisdiction

Nature of Complaint	Number of Complaints Within Jurisdiction			
	No.	%	No.	%
<b>Death</b>			<b>402</b>	<b>26.5</b>
Distribution	351	23.1		
Other	51	3.4		
<b>Disability</b>			<b>139</b>	<b>9.1</b>
Medical	49	3.2		
Other	90	5.9		
<b>Disclosure/Fees</b>			<b>227</b>	<b>14.9</b>
Disclosure/Misrepresentation	101	6.6		
Fees & Charges	36	2.4		
Insurance Premiums	90	5.9		
<b>Payments</b>			<b>380</b>	<b>25.0</b>
Delay	119	7.8		
Account Balance	226	14.9		
Early Release	35	2.3		
<b>Other</b>			<b>371</b>	<b>24.5</b>
Administration	276	18.2		
Co-Contribution	13	0.9		
Investment Changes	65	4.3		
Surcharge	1	0.1		
Other	16	1.0		
<b>Total</b>	<b>1,519</b>	<b>100.0</b>	<b>1,519</b>	<b>100.0</b>

**Fig. 5: Nature of Complaints Within Jurisdiction**



**Table 3: Annual Trends: Nature of Written Complaints Within Jurisdiction**

Year Ended 30 June	2005	2006	2007	2008	2009
Death	31.4	35.1	31.3	28.6	26.5
Disability	27.8	22.1	16.6	12.0	9.1
Disclosure & Fees	3.3	9.5	12.0	11.2	14.9
Payments	14.8	12.2	14.8	22.2	25.0
Other	22.7	21.1	25.3	26.0	24.5
<b>Total (actual number)</b>	<b>1,104</b>	<b>1,088</b>	<b>1,258</b>	<b>1,441</b>	<b>1,519</b>

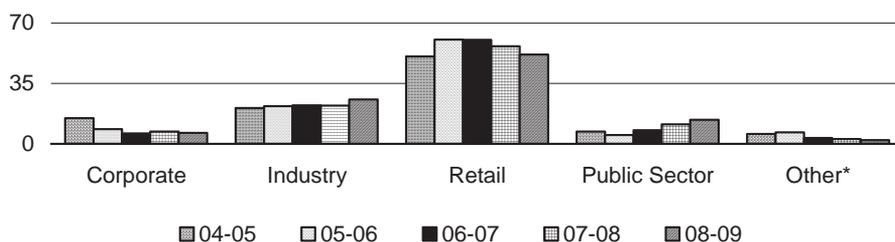
### Written Complaints Within Jurisdiction by Fund Type

The Tribunal has identified four fund types for reporting purposes – corporate (employer-sponsored) funds, industry funds, retail funds (large financial institutions which offer superannuation products to the public), 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 – 786 (51.8%) – down from 815 complaints last reporting year (56.6%) – see Fig. 6.

**Table 4: Total Written Complaints Within Jurisdiction by Fund Type**

Fund Type	Number of Complaints	Percentage of Total (%)
Corporate	95	6.3
Industry	391	25.7
Retail	786	51.8
Public Sector	213	14.0
Other *	34	2.2
<b>Total</b>	<b>1,519</b>	<b>100.0</b>

**Fig. 6: Annual Complaint Trends by Fund Type 2005–2009 (%)**



\* Note: The 'Other' category in Table 4 and Fig. 6 above includes complaints received towards the end of the reporting period where Fund Type had yet to be determined.

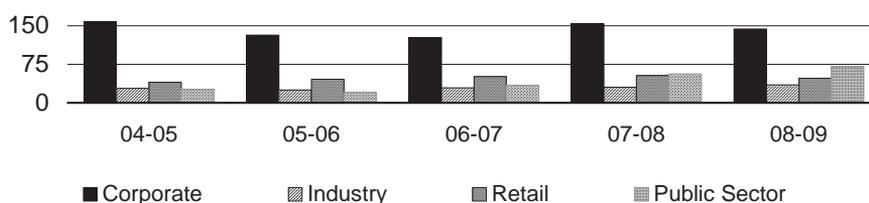
### Member Complaint Ratio by Type of Fund

The graph at Fig. 7 below shows the number of written complaints (within jurisdiction) 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 corporate funds are far more likely to lodge complaints with the Tribunal than members from other fund types. The statistics also show that members from industry funds are less likely to lodge complaints than any other members.

The statistics show that, compared to last year, the number of complaints received per million members has increased by 26.8% for public sector funds and by 16.7% for industry funds. Complaints decreased by 9.4% for retail funds and by 6.5% for corporate funds.

**Fig. 7: Member Complaint Ratio by Fund Type (per million members)**



Note: Figure 7: (1) Many public sector funds are exempt public sector superannuation schemes whose members are not able to lodge complaints with the Tribunal. This factor should be taken into account to avoid distorting the outcomes. (2) Statistics based upon APRA June 2008 Annual Superannuation Bulletin.

## Complaints Resolved/Withdrawn in the Reporting Period

This reporting year, a total of 1,272 written complaints were resolved or withdrawn (last year – 1,257). One complaint was suspended in the reporting year, pending further action or information gathering by the parties.

**Table 5: Complaints Resolved/Withdrawn**

<b>Withdrawn by the Tribunal</b>	<b>Number of Complaints</b>	<b>%</b>
s.22(1)	237	
s.22(3)(a),(b)	354	
s.22(3)(c),(d),(e)	2	
s.22A	2	
s.28(4)	1	
	<b>596</b>	<b>46.8</b>
<b>Withdrawn by the Complainant</b>		
pre conciliation conference	226	
post conciliation conference	282	
after review meeting but before determination	4	
	<b>512</b>	<b>40.3</b>
without resolution	64	
	<b>64</b>	<b>5.0</b>
<b>Resolved by the Tribunal at Review</b>		
decision affirmed	71	
decision remitted	0	
decision varied	0	
decision set aside/substituted	29	
	<b>100</b>	<b>7.9</b>
<b>Total</b>	<b>1,272</b>	<b>100.0</b>

This year 1,208 (last year – 1,211) complaints were resolved at inquiry, conciliation or review (95.0%) and 64 (last year – 46) complaints were withdrawn without resolution (5.0%).

The number of complaints withdrawn by complainants with resolution (pre conciliation) decreased by 18.4% (last year – 277). The number of complaints withdrawn by complainants without resolution has increased from 3.6% in 2007-2008 to 5.0% in 2008-2009. This reporting year, 92.1% of all complaints were resolved/withdrawn at the inquiry and conciliation stages compared with 88.6% last reporting year. The number of complaints resolved at review decreased from 11.4% last year to 7.9% this year.

### Conciliation Conferences

The Tribunal conciliated 466 cases in 2008-2009 (last year – 467).

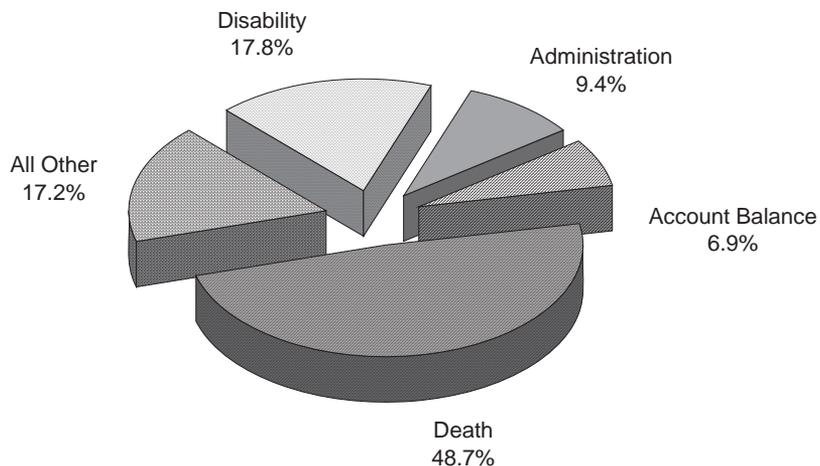
Of the 443 cases concluded, settlement was achieved in 309, resulting in a settlement rate of 69.8% (up from 69.5% in 2007-2008). The outcome is pending in 23 cases (4.9%) compared to 37 cases (7.9%) for last year.

## Nature of Conciliation Cases

The categories of note in the year are as follows:

- Death Benefits – 227 (48.7%) conciliations. Of the 223 concluded cases, 176 (78.9%) were settled.
- Disability – 83 (17.8%) conciliations. Of the 69 concluded cases, 39 (56.5%) were settled.
- Administration – 44 (9.4%) conciliations. Of the 42 concluded cases, 29 (69.0%) were settled.
- Account balance/benefit calculation – 32 (6.9%) conciliations. Of the 31 concluded cases, 22 (71.0%) were settled.

**Fig. 8: Nature of Conciliation Cases**



## Mode of Conciliation Conferences

Telephone conferences accounted for 390 cases (83.7%). Of the 369 cases concluded by telephone conferences, settlement was achieved in 237 (64.2%). There were 75 (16.1%) complaints dealt with by other interventions. Of the 73 cases concluded, settlement was achieved in 72 (98.6%). A meeting was held for one case, which was not settled.

**Table 6: Mode of Conference and Outcomes**

<b>Mode of Conference</b>	<b>No. of Cases</b>	<b>Pending</b>	<b>Settled</b>	<b>Not Settled</b>
Teleconference	390	21	237	132
Meeting	1	0	0	1
Corres/Other	75	2	72	1
<b>Total</b>	<b>466</b>	<b>23</b>	<b>309</b>	<b>134</b>



The Tribunal's Conciliators

### **Review Meetings**

This reporting year, 100 (last year – 143) matters were determined at Review. Of these, the Tribunal affirmed 71 trustee decisions (71.0%) and set aside 29 trustee decisions (29.0%) – see Table 7.

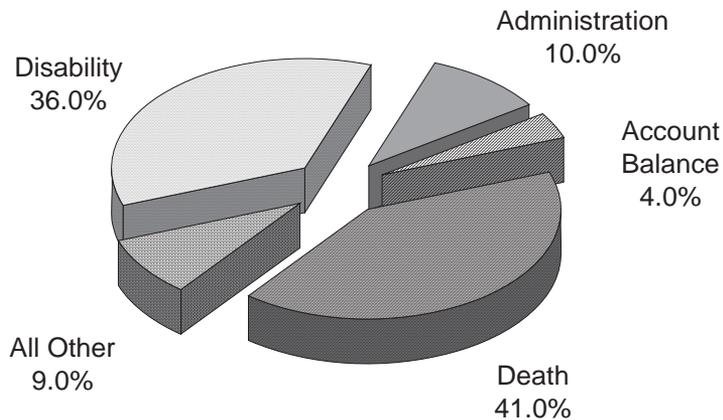
**Table 7: Review Determination Outcomes for 2008-2009**

<b>Decision Affirmed s.37(3)(a)</b>	<b>Decision Remitted s.37(3)(b)</b>	<b>Decision Varied s.37(3)(c)</b>	<b>Decision Set Aside s.37(3)(d)</b>	<b>Decision No Jurisdiction</b>	<b>Total No.</b>
71	0	0	29	0	100

## Nature of Review Determinations

This reporting year the largest category of complaints determined at review was death complaints – 41 (41.0%). Disability complaints made up the second largest category – 36 (36.0%). Comparatively, in the 2007-2008 reporting year 46.8% of complaints determined at review were disability cases, and 33.6% were death benefit matters.

**Fig. 9: Nature Of Review Determinations**



## 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.



The Chairperson, Acting Deputy Chairperson and the staff of the Superannuation Complaints Tribunal

## 4 Corporate Governance

### Corporate Plan

The Tribunal's Corporate Plan outlines the strategies for meeting the Tribunal's business objectives, which are reviewed annually or as required to reflect changes in the superannuation arena and in the Tribunal's powers and procedures.



### 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 for their regard to the particular needs of our stakeholders.

### Corporate Objectives

#### Short Term Objectives — Under 12 Months

In the short term the Tribunal aims to:

- implement changes to systems and procedures arising from legislative changes that impact on its functions;
- continue to improve its procedures for resolving complaints to ensure that they are as fair, economical, informal and quick as possible; and
- 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:

### **Resolution of Written Complaints**

The resolution of written complaints resulted in the following outputs:

- 2,349 written complaints being finalised in the year by Inquiry, Conciliation and Review;
- 466 conciliation conferences being held; and
- 100 complaints dealt with at Review Meetings.

### **Other Initiatives**

- The completion of enhancements to the Tribunal's Case Management System (CMS) and the back capture of documents for Electronic Document Management (EDM) of the Tribunal's document library.
- The redevelopment of the Tribunal's Website.

### **Professional Development of Staff**

- The participation of staff in training as identified by means of individual development plans as an integral part of the Performance Management Program.
- The attendance of Tribunal Members and staff at conferences and seminars in relation to superannuation administration practices and administrative and trust law.

### **Stakeholders**

- The attendance by the Chairperson, Acting 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 are as follows:

- Continuation of timely resolution of complaints by inquiry, conciliation and review determination.
- Promotion of the Tribunal's complaints resolution service in the superannuation community and the community at large.
- Engagement of qualified staff and their development.

## **Systems and Procedures**

The ongoing monitoring of systems and procedures is essential to ensure operational efficiency and outputs are maintained and improved. The Tribunal will continue to implement changes as necessary to achieve its aims.

## **Systemic Issues affecting the superannuation community**

The importance of relationships with APRA, ASIC, the ATO, industry and consumer bodies is essential in maintaining vigilance on systemic issues affecting members' interests. The Tribunal will continue to participate in agency and industry liaison meetings.

## **Public Awareness**

The Tribunal's executive conveys general and specific information to the public and the superannuation community through:

- quarterly bulletins;
- the creation and updating of brochures as necessary;
- the website;
- presentations and speaking engagements; and
- media interviews.

## **Human Resources**

The maintenance of consistency and efficiency is underpinned by:

- The retention of ongoing skilled staff to deal efficiently with complaints.
- The continuing provision of professional training for new and existing staff and staff attendance at seminars dealing with current issues in superannuation.
- 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 Section Managers.

## Senior Management

<p><b>Liaison</b></p>	<p><b>Industry:</b> Ongoing liaison by the Chairperson and Deputy Chairperson and senior managers with industry to promote conciliation and more effective complaints resolution.</p> <p><b>Government:</b> Ongoing liaison by the Chairperson with the Minister's office to keep the Minister apprised of the progress of the Tribunal's functions. Liaison with Treasury on legislative changes and matters impacting on the interests of superannuation members and beneficiaries.</p> <p><b>ASIC:</b> Continued liaison, principally by the Chairperson and the Director, with ASIC in relation to matters that fall under the SLA in relation to service delivery and the MOU between the two agencies.</p> <p><b>APRA:</b> Continued liaison on matters of interest to it and its stakeholders.</p> <p><b>ATO:</b> Liaison meetings with ATO officers at senior level and participation in the ATO's superannuation consultative committee.</p>
<p><b>Information to Staff</b></p>	<p>Regular meetings with staff to keep them apprised of developments affecting the Tribunal's functions.</p>
<p><b>Learning and Development</b></p>	<p>Management recognises the benefits for staff and the Tribunal of the Performance Management Program and is committed to it as the basis for the programmed development of all staff.</p> <p>Senior managers in conjunction with staff seek to ensure that appropriate learning and development opportunities are available under the Performance Management Program.</p>
<p><b>Structure and Procedure</b></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><b>Information Technology</b></p>	<p>The continual review of information systems to provide for efficiencies in processes and to meet reporting requirements.</p>
<p><b>Public Education</b></p>	<p>Management is committed to public education initiatives 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 by extending its public education program.</p>

<p><b>Budget and Administration</b></p>	<p>Budget and administration are dealt with through the Director and senior management group with briefing by the Assistant Director and Finance Officer.</p> <p>Since 1 July 2003 the Tribunal has been funded on a formula funding model set quadrennially.</p> <p>The Tribunal is required to adhere to ASIC budget policy which reflects the Government's expectations on service delivery and costs.</p>
<p><b>Public Relations</b></p>	<p>Management maintains 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 assists with this task.</p>

**Policy/Legal**

<p><b>General</b></p>	<p>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 the Tribunal's statutory role.</p>
<p><b>Legislation</b></p>	<p>Support for effective liaison with the Minister's Office, Treasury, ASIC and APRA in respect of any relevant proposed legislation.</p> <p>Monitoring of all new legislation with implications for the Tribunal and drafting of appropriate policy responses.</p> <p>Advice to the Tribunal on the interpretation of existing legislation relevant to matters before the Tribunal and issues of Tribunal policy, procedures and administration.</p>
<p><b>Casework</b></p>	<p>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, related legislation and the Tribunal's policies and procedures.</p>
<p><b>Litigation</b></p>	<p>Support for any litigation in which the Tribunal is a party, in accordance with the principle in <i>The Queen v ABT; Ex parte Hardiman</i> (1980) 144 CLR 13.</p> <p>Compliance with court requests for documentation in accordance with the SRC Act; keeping a watching brief on all court cases relevant to the Tribunal and interpreting the significance of outcomes for Tribunal policy.</p>

<b>Annual Report</b>	The Director ensures 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.
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### Section Managers

<b>Information Flow</b>	<p>Section Managers facilitate the flow of information between different areas of the Tribunal by conducting regular team meetings and providing feedback to senior managers.</p> <p>Section Managers participate in regular management meetings, providing input to the development of corporate goals and Tribunal procedures and structures.</p>
<b>Participative Management</b>	Section Managers are committed to build on the good morale of the teams by maintaining cohesive teams focused on corporate goals, act as mentors to junior staff and provide regular performance feedback to staff. Section Managers are major contributors in upholding the Tribunal's commitment to valuing staff by supporting flexible working hours and two-way communication in the office.
<b>Performance Management</b>	Section Managers recognise the potential benefits for staff and the Tribunal of the Performance Management Program. They participate in relevant training and in the development of Performance Management Agreements with their staff as well as monitoring workflows and providing assistance.

### 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.

#### Review

<b>Members</b>	As at 30 June 2009 there were 19 Members.
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## Inquiry and Conciliation

<b>Delegations and Complaint-Handling Procedures</b>	<p>The Tribunal continues to review complaints handling procedures and delegations to identify areas of greater efficiency.</p>
<b>Case Allocation, Inquiry and Conciliation</b>	<p>The case management process comprises of the stages outlined hereunder.</p> <p>Following an initial check on the Tribunal's jurisdiction at the lodgement stage the complaint is allocated to a complaints analyst to issue the s.17 notices required to collect information from the parties about the complaint.</p> <p>When this information is received, the Tribunal again checks its ability to deal with the complaint, and the complaints analyst begins the analysis of the information and the issues. At this point a recommendation to withdraw the complaint can arise (for example if the complaint is considered to be misconceived) or it may be advanced to the conciliation area.</p> <p>If the complaint is not suitable for conciliation or is not resolved by a conciliation conference it is returned to the complaints analyst who completes any outstanding inquiry and writes up the Complaint Report, making a recommendation as to the next action, most commonly to proceed to a review meeting.</p>
<b>Staffing</b>	<p>The Tribunal is staffed by ongoing employees. Temporary staff engagements may be made to meet the Tribunal's operational needs as they arise.</p>

## Budget and Administration

<b>Administration</b>	<p>The Tribunal's systems and administration support are provided by ASIC under an SLA.</p> <p><b>Financial system processing:</b> The Tribunal works within ASIC's financial processing system, including accrual accounting practices.</p> <p><b>Records Management:</b> Records are stored in the course of the year in accordance with the Tribunal's archiving policy and statutory requirements.</p> <p><b>Business Continuity Plan:</b> The Assistant Director is responsible for the ongoing monitoring and updating of the Business Continuity Plan in liaison with ASIC.</p>
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<b>Budget</b>	<p><b>Purchasing:</b> The Tribunal undertakes its purchasing responsibilities in accordance with government procurement guidelines and ASIC purchasing procedures.</p> <p><b>Assets Management:</b> While the Tribunal maintains its own assets records, formal responsibility for managing assets remains with ASIC.</p> <p><b>Consultants and Competitive Tendering and Contracting:</b> The Tribunal adheres to government requirements and ASIC procedures.</p>
<b>Staff</b>	Staff in the Administration Unit provide support to the Tribunal's core function 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 and 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 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 a 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 8 below sets out the number of Tribunal staff in the various target groups as at 30 June 2009.

**Table 8: Superannuation Complaints Tribunal – Workplace Diversity Target Groups (as at 30 June 2009)**

Total Staff	Target Groups				
	NESB1	NESB2	ATSI	PWD	Women
EO	8	0	2	0	5
ASICO	32	2	5	0	14
<b>Total</b>	<b>40</b>	<b>2</b>	<b>7</b>	<b>0</b>	<b>19</b>

### Key

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

## Occupational Health & Safety

The Tribunal has an Occupational Health and Safety Officer and a trained First Aid Officer. There was one incident of work-related injury. No compensation claims were made in the year.

## Freedom of Information

The Tribunal is subject to the operation of the FOI Act and has an authorised FOI Officer. The Tribunal received no 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 Equity**

The Tribunal remains committed to best practice 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; and
- communicating with complainants, where necessary, by way of the Translating and Interpreting Service (TIS).

## Glossary

<b>ADR</b>	Alternative Dispute Resolution
<b>AIST</b>	Australian Institute of Superannuation Trustees
<b>APRA</b>	Australian Prudential Regulation Authority
<b>ASFA</b>	Association of Superannuation Funds of Australia Ltd
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ATO</b>	Australian Taxation Office
<b>CMS</b>	Case Management System
<b>EPSSS</b>	Exempt Public Sector Superannuation Scheme
<b>FOI</b>	Freedom of Information
<b>FSI</b>	Financial Systems Inquiry
<b>MOU</b>	Memorandum of Understanding
<b>OH &amp; S</b>	Occupational Health & Safety
<b>RSA</b>	Retirement Savings Account
<b>SACCH</b>	Standards Australia Committee on Complaints Handling
<b>SAF</b>	Small APRA Fund
<b>SCT</b>	Superannuation Complaints Tribunal
<b>SIS</b>	<i>Superannuation Industry (Supervision) Act 1993</i> (Cwlth)
<b>SLA</b>	Service Level Agreement
<b>SMSF</b>	Self-managed superannuation fund
<b>SRC Act</b>	<i>Superannuation (Resolution of Complaints) Act 1993</i> (Cwlth)
<b>SSCS</b>	Senate Select Committee on Superannuation
<b>SSCSFS</b>	Senate Select Committee on Superannuation & Financial Services
<b>TIS</b>	Translating and Interpreting Service
<b>TPD</b>	Total and Permanent Disability
<b>Tribunal</b>	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 Annual Reports*, issued by the Department of the Prime Minister and Cabinet – 17 June 2009, but has had regard to them in so far as it is 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).

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## Appendix 1

### Tribunal Organisation Chart

(as at 30 June 2009)

Classification	Ongoing				Non-Ongoing				Total
	Full-Time		Part-Time		Full-Time		Part-Time		
	F	M	F	M	F	M	F	M	
<b>Chairperson</b>	1								1
<b>Deputy Chair</b>	1								1
<b>Exec 2</b>	1		1						2
<b>Exec 1</b>	1	3							4
<b>ASIC 4</b>	2	4							6
<b>ASIC 3</b>	6	7	1		2	3		1	20
<b>ASIC 2</b>	1	2	1						4
<b>ASIC 1</b>		1	1						2
<b>Total</b>	<b>13</b>	<b>17</b>	<b>4</b>		<b>2</b>	<b>3</b>		<b>1</b>	<b>40</b>

## Appendix 2

### Delegations

**Sub-Section 59(1) Superannuation (Resolution of Complaints) Act 1993  
(as at 30 June 2009)**

Section	E2	EL2	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	•	•	•	•	•	•
s19 not to deal with complaint unless made to trustee and not settled	•	•	•	•	•	•

<b>Section</b>	<b>E2</b>	<b>EL2</b>	<b>E1</b>	<b>ASIC4</b>	<b>ASIC3</b>	<b>ASIC2</b>
s22(1)(2) discretion to treat complaint as withdrawn (complainant does not 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	•	•	•	•	•	•
s24A discretion to extend 28 day notice period re death benefit notification by trustee/insurer	•	•	•			

Section	E2	EL2	E1	ASIC4	ASIC3	ASIC2
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	Director (Executive 2)
EL2	Legal Counsel
E1	Assistant Director; Complaints Manager (Executive 1)
ASIC4	Senior Complaints Analyst & Conciliation Officer
ASIC3	Complaints Analyst
ASIC2	Inquiries Officer

*Jocelyn Furlan*

Jocelyn Furlan  
Acting Chairperson

Dated this 8th day of September 2007.

## Appendix 3

### Complaint Resolution Outcomes

	Retail	Corporate	Industry	Public Sector	Other	Total
<b>Tribunal Unable to Deal With</b>						
Non-Compliance with s.19	322	32	155	68	96	673
Outside Jurisdiction	139	19	75	39	132	404
<b>Withdrawn by Tribunal</b>						
s.22(1)	139	9	42	30	17	237
s.22(3)(a)(b) <sup>1</sup>	185	27	72	62	8	354
s.22(3)(c)(d)(e) <sup>2</sup>	0	2	0	0	0	2
s.22A	2	0	0	0	0	2
s.28(4)	1	0	0	0	0	1
<b>Withdrawn by Complainant</b>						
Resolution Without Conference	129	19	40	32	6	226
Resolution With Conference	174	15	78	13	2	282
Resolution after Review Meeting but before Determination	3	0	1	0	0	4
Without Resolution	35	5	15	9	0	64
<b>Review</b>						
Decision Affirmed	36	6	13	12	4	71
Remit to Trustee	0	0	0	0	0	0
Decision Varied	0	0	0	0	0	0
Decision Set Aside	13	2	12	2	0	29
<b>Total</b>	<b>1,178</b>	<b>136</b>	<b>503</b>	<b>267</b>	<b>265</b>	<b>2,349</b>

<sup>1</sup> Withdrawn because 12 months old; or after inquiry because it is trivial, vexatious, misconceived or lacking in substance.

<sup>2</sup> 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) While recognising the desirability for the Tribunal to be constituted by 3 Members at hearings, the following guidelines will apply —
  - (i) Total and Permanent Disablement and other Disability cases  

The Tribunal wherever possible will be constituted by 3 Members, one of whom shall be a member of the medical profession, e.g. a medical practitioner, physiotherapist etc.
  - (ii) Death Benefit Distribution involving sums –
    - Below \$20,000 - Single Member Tribunal
    - Above \$20,000 - 3 Members
  - (iii) In other cases where the complaint involves a claim of less than \$10,000, the Tribunal will be constituted by one Member.
  - (iv) In cases where a party notifies the Tribunal in advance that there is an issue of principle to be determined, or where the Tribunal identifies such an issue or there is some unusual difficulty associated with the complaint, then the Chairperson may, where the matter under the above guidelines may otherwise be determined by a 1 Member Tribunal, list the matter before a 3 Member Tribunal.

##### 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. 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(2B). The 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 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/her own discretion or at the request of the Presiding Member, request any other Member to draft and finalise the wording of a Determination and reasons. The Tribunal will endeavour to prepare a draft Determination within 6 weeks of the final Review Meeting for signing off within a further 4 weeks.
- (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) To conform with the secrecy provisions under s.63 of the Act, 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.

The use of generic terms like Complainant, Trustee, Member, Deceased Member, Insurer, Employer, Infant Son, Daughter, Spouse, De Facto 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 time 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 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.
- (4) 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.



Jocelyn Furlan  
Chairperson  
30 June 2009

### **Subsection 28(7) of the *Superannuation (Resolution of Complaints) Act 1993***

<p><b><i>Guidelines about when the Tribunal would ordinarily require persons to attend a conciliation conference</i></b></p>
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#### **Purpose of the guidelines**

These guidelines are published to assist in understanding the Tribunal's role in trying to resolve complaints through the conciliation process. The Tribunal is required by its governing legislation to formulate guidelines indicating the kind of circumstances in which it would ordinarily require persons to attend a conciliation conference. Attendance at a conference may, at the Tribunal's discretion, be by telephone, in person or by any other means of communication.

Conciliation by its very nature has the aim of reaching an agreement for resolution of the complaint. The Tribunal provides the forum for the parties to the complaint to engage in open discussion of the complaint with the aim of reaching an agreement. The Tribunal cannot compel the parties to reach agreement. The Tribunal's role is one of hosting the conference, providing information to the parties and assisting them in arriving at a fair settlement of the complaint.

## **Matters for the Tribunal to consider on the holding of a conciliation conference**

Where a complaint has been made to the Tribunal, provided the Tribunal has the power to deal with that complaint and it is not withdrawn, the Tribunal is required to try and settle the complaint through conciliation.

The Tribunal may, if it thinks it desirable to do so, by notice in writing given to each party to the complaint and any other person who is likely to be able to provide information, or whose presence is likely to be of assistance in settlement of the complaint, require the party or other person to attend a conciliation conference.

The Tribunal is also required to have regard to the objectives in section 11 of the SRC Act, which requires that the mechanism for conciliation must be one that is 'fair, economical, informal and quick'.

## **Typical circumstances requiring attendance at a conciliation conference**

Having regard to the documents provided to the Tribunal and the complaint issues, the Tribunal will typically schedule a conference in circumstances such as:

### **Death benefit distribution**

- If a person makes a complaint to the Tribunal about a decision of a trustee of a regulated superannuation fund to distribute a death benefit in a particular way, the Tribunal would make inquiries and obtain relevant information from the trustee and any other party involved in the matter. Where the complainant and joined parties all indisputably come within the definition of 'dependant' as defined in the trust deed of the fund, the Tribunal would normally proceed with a conciliation conference.

### **Disability benefits**

- In a complaint relating to a claim for a disability benefit that is declined by the trustee, the Tribunal would normally schedule a conciliation conference. With a technical or complex matter, such as alleged entitlement to insurance cover or alleged non-disclosure of a pre-existing medical condition by the complainant, the Tribunal may make appropriate inquiry of the trustee and/or insurer with a view to proceeding to a conference for the purpose of narrowing the disputed issue(s) and/or clarification of the evidentiary issue(s).

### **Administrative actions, disclosure issues etc.**

- Decisions by trustees and other decision-makers comprising administrative action, account balance advice, benefit calculation, rollover request, account interest crediting and disclosure issues

relating to the provision of information and advice (just to mention some), are matters ordinarily regarded as appropriate to the conciliation process.

### **What procedures does the Tribunal follow relating to conciliation conferences?**

The following steps will be taken:

1. The parties will be notified of the proposed conciliation conference by telephone or in writing. In cases where a party disagrees to the holding of a conciliation conference, then reasons are to be provided by telephone or submitted in writing.
2. In the case where a party expresses disagreement with proceeding to a conference, then the Tribunal will consider the reasons offered before deciding whether or not to proceed with the conference.
3. The views expressed by the parties will not be exchanged between them, as to do so in a case where one of the parties disagree that the holding of the conference would be beneficial but where the Tribunal determines to proceed in any event, may prejudice the conference outcome.
4. Generally, documents as to factual events and medical reports filed with the Tribunal will be exchanged between the parties prior to the holding of a conference. In specific cases, particularly where a document expresses a subjective opinion which may, in the view of the Tribunal, be unduly prejudicial to the resolution of the complaint at a conference, e.g. matters pertaining to a person's character or moral values, the documents may not be exchanged.

[Note: If documents are not exchanged prior to the holding of a conference and the conference does not successfully result in the resolution of the complaint, then all documents will be exchanged prior to the Tribunal conducting a Review Meeting, so that all parties have the opportunity of commenting on submissions made.]

5. Because of the varied locations of the parties, the conferences will, unless otherwise decided by the Tribunal, be conducted by telephone.
6. Where a conference results in resolution of the complaint or an undertaking being given by one of the parties to conduct further enquiries or obtain further reports, the Tribunal will confirm the outcome in writing to all parties.
7. There is a presumption against representation contained in s.23 of the SRC Act, except where the complainant has a disability (as defined in the *Disability Discrimination Act 1992*) or where the Tribunal "considers it necessary in all the circumstances". Where the Tribunal has, prior to

the holding of a conference, exercised its discretion to allow an individual to be represented by an agent (which term extends to include legal representation), then the individual may be represented by that agent. Where the Tribunal has refused representation by an agent then the person must participate himself/herself.

A handwritten signature in black ink, appearing to read 'Graham McDonald', with a stylized flourish at the end.

Graham McDonald  
(then Chairperson)  
30 June 2007

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

## 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 2009.

#### Establishment

The Tribunal is an independent statutory authority 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, certain exempt public sector superannuation schemes, 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 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 require the parties to attend a conciliation conference to try to settle the complaint. If this is unsuccessful, and the complaint is not withdrawn, the complaint must proceed to review where the Tribunal has the power to implement a range of remedies. The Tribunal may under the particular circumstances:

- 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, or vary the terms of the policy/RSA as it applies to the complainant (s.37A, s.37B, s.37D, s.37F);
- require any party to the policy/RSA/fund to repay monies with interest as prescribed by regulations (s.37A, s.37B, s.37D, s.37F);

- cancel the complainant's membership of the fund (s.37A(4)(a)); or
- vary the governing rules of the fund as they apply to the complainant (s.37A(4)(b)).

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.

[Reference in this part of the statement are to sections of the SRC Act.]

## Categories of Documents Held by the Tribunal

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### Documents available to the Public Free of Charge

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

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- **Brochures:**
  - *Superannuation Complaints Tribunal...how it can help you.* \*
  - *How to resolve a complaint about your superannuation.*
  - *Death Benefits.*\*
  - *Total and Permanent Disability.*\*
- **Guides:**
  - *Key considerations that apply to death benefit complaints.*\*
  - *Key considerations that apply to TPD claims.*\*
- **Bulletin:**
  - *SCT Quarterly Bulletin.*\*
- **Information Sheets:**
  - *Superannuation Complaints Tribunal – Please read carefully before making your complaint to the fund.*
  - *Conciliation Conference Guide for Complainants and Joined Parties.* \*
  - *Conciliation Conference Guide for Trustees & Insurers.* \*
  - *Information about Review Meetings.*
  - *What is a Submission?*

- **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.*
- *Conciliation Attendance Guidelines - when the Tribunal would ordinarily require persons to attend a conciliation conference. \**

- **Registration of Complaint Form. \***

- **Information Kit** (containing a number of the above).

(\* Also available on-line at <http://www.sct.gov.au>)

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**Documents made available to the Public for a Fee**

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

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- **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.\*

The documents listed in the above categories are available from the office of the Tribunal which is located on the **15th Floor, 31 Queen Street, Melbourne**, or by telephoning **1300 780 808** (for the cost of a local call).

(\* Also available on-line at <http://www.sct.gov.au>)

### **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:

**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 this .....6th.....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

September – October 2008	International Network of Financial Ombudsman Conference – New York, USA	Jocelyn Furlan
June 2009	International Network of Financial Ombudsman Conference - Dublin, Ireland	Jocelyn Furlan

#### Presentations

July 2008	External Dispute Resolution Forum - Sydney	Jocelyn Furlan
September 2008	ASFA Melbourne Trustee Breakfast - Melbourne	Jocelyn Furlan
November 2008	Life Insurance Law - An Annual Review - Sydney	Jocelyn Furlan
November 2008	Life Insurance Law – An Annual Review - Melbourne	Jocelyn Furlan
December 2008	Masters course in superannuation - Melbourne University - Melbourne	Jocelyn Furlan
February 2009	FEAL (Funds Executives Association Ltd) Discussion Forum with the Regulators - Sydney	Jocelyn Furlan
February 2009	AIST Roadshow - Hobart	Jocelyn Furlan
February 2009	AIST Roadshow - Melbourne	Jocelyn Furlan
February 2009	AIST Roadshow - Sydney	Jocelyn Furlan
February 2009	AIST Roadshow - Brisbane	Jocelyn Furlan
March 2009	AIST Roadshow - Adelaide	Jocelyn Furlan
March 2009	AIST Conference of Major Superannuation Funds (CMSF 09) - Gold Coast	Jocelyn Furlan
March 2009	Presentation to UniSuper - Melbourne	Jocelyn Furlan
April 2009	ASIC Superannuation Team Conference – Sydney	Jocelyn Furlan
April 2009	IFAA Directors Education Conference - Gold Coast	Jocelyn Furlan

April 2009	Presentation to ComSuper - Canberra	Jocelyn Furlan
April 2009	Jurisdiction Presentation to SuperPartners (x 2)	Fiona Power & Joe Faife
May 2009	Law Institute of Victoria - Superannuation Committee - Melbourne	Jocelyn Furlan
June 2009	Victorian Bar - SCT update	Katy Adams
June 2009	ASFA Legislation Discussion Group - Melbourne	Jocelyn Furlan

## **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.

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### ***SCT Quarterly Bulletin***

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- Issue No 53 1 July 2008 – 30 September 2008
- Issue No 54 1 October 2008 – 31 December 2008
- Issue No 55 1 January 2009 – 31 March 2009
- Issue No 56 1 April 2009 – 30 June 2009

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### ***Superannuation Complaints Tribunal – How it can help you***

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(Memorandum: revised and reprinted January 2009)

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### ***How to resolve a complaint about your superannuation***

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(Brochure: updated November 2005)

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### ***Death Benefits***

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(Brochure: updated and reprinted August 2007)

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### ***Total and Permanent Disability***

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(Brochure: updated and reprinted July 2007)

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### ***Information sheets***

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- *Superannuation Complaints Tribunal – Please read carefully before making your complaint to the fund.*
- *Conciliation Conference Guide for Complainants and Joined Parties* (updated April 2006).
- *Conciliation Conference Guide for Trustees & Insurers* (updated April 2006).
- *Information about Review Meetings* (updated March 2000).

- *Key considerations that apply to death benefit complaints.*
- *Key considerations that apply to TPD claims.*

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**Registration of Complaint Form**

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May be used to lodge a complaint with the Tribunal.

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**Rules & Guidelines**

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*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.*

*Guidelines about when the Tribunal would ordinarily require persons to attend a conciliation conference under section 28(7) of the SRC Act.*

**Contact**

Ms Fiona Power  
Public Education & Media Liaison

Telephone: 03 8635 5500

Facsimile: 03 8635 5588

## Appendix 8

### Staff Training

<b>Training - External</b>	<b>Staff</b>
ASFA Roadshow	All Staff
AIST – Assessing TPD & Death Benefit Claims	All Staff
ASFA Superannuation PS 146 refresher training	Complaints Analysts (2) and Administration Officer (1)
ASFA 100 Superannuation training	Administration Officer (1)
National Mediation Conference	Executive Staff (2), Conciliator (1)
Micro Skills Workshop	Executive Staff (1)
St. John's Ambulance training	First Aid Officer (1)

<b>Training - Internal</b>	<b>Staff</b>
Grammar Program	Complaints Analysts (3)
Art Data Warehouse	Finance Officer & Information Communications and Technology Officer
Understanding Superannuation	Complaints Officer (1)
Introduction to Superannuation	Complaints Analyst (1)
Corporate Legislation fundamentals	Complaints Analyst (1)

## Appendix 9

### Financial Statement

#### Financial and Staffing Resources Summary 2008–2009

The following is a summary of the direct cost of the Superannuation Complaints Tribunal for 2008–2009. These figures are derived from the audited statements of the Australian Securities and Investments Commission.

	(2008–2009) \$(000)
<b>ACCRUAL BASIS</b>	
Employee expenses	3,326.6
Suppliers expenses	920.2
Depreciation Expenses including write downs	101.3
Operating expenses	<u>4,348.1</u>
Super Choice SCT – operating expenses	<u>264.0</u>
<b>Total operating expenses</b>	<b><u>4,612.1</u></b>
Super Choice – capital expenditure	153.0
<b>TOTAL ASSETS</b>	<b>2,830.2</b>
<b>TOTAL LIABILITIES</b>	<b>1,585.6</b>
<hr/>	
<b>STAFFING</b>	
Average Staffing	36.1
<hr/>	
<b>MEMBERS FEES</b>	<b>314.0</b>

Total Life of Project Super Choice capital expenditure \$861K.

## **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 may 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.

### **Feedback or complaints about our service**

Because we are committed to improving our service to the community, we welcome your views. If you have been particularly pleased with your dealings with us, please let us know. If you want to make a suggestion or if you want to complain about our service, you can contact us by writing to the following address:

The Chairperson  
Superannuation Complaints Tribunal  
Locked Bag 3060  
GPO Melbourne VIC 3001  
Facsimile: (03) 8635 5588

or email us at [info@sct.gov.au](mailto:info@sct.gov.au)

Your matter will be carefully considered by a senior officer.

**If you are still not satisfied**

If you are not satisfied after we have investigated your complaint, you can contact the Commonwealth Ombudsman.

The Ombudsman has an office in every State and Territory.

Complaints can be made in writing, by telephone or by using the Ombudsman's online complaint form.

The Ombudsman's office can be contacted by telephone on 1300 362 072 for the cost of a local call. The addresses and further information about the Ombudsman can be found on the Internet at [www.comb.gov.au](http://www.comb.gov.au)

## Appendix 11

### Tribunal Location & General Information

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#### Location:

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The Superannuation Complaints Tribunal is located at **Level 15, 31 Queen Street, Melbourne, Victoria.**

**Telephone:** Enquiries and Complaints **1300 780 808** (toll free)  
Administration (03) 8635 5500

**Facsimile:** (03) 8635 5588

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

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

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#### Readers with Enquiries about the Tribunal or this Report should contact:

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Ms Fiona Power  
Public Education & Media Liaison  
Locked Bag 3060  
GPO Melbourne  
Victoria 3001

**Telephone:** (03) 8635 5500  
**Facsimile:** (03) 8635 5588  
**Email:** [fiona.power@sct.gov.au](mailto:fiona.power@sct.gov.au)

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#### Access to Review Determinations:

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The full text of determinations are available electronically free of charge at <http://www.sct.gov.au> (the Tribunal's website) – under the heading 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.]

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