



**Superannuation  
Complaints  
Tribunal**

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**Annual Report**  
2000–2001

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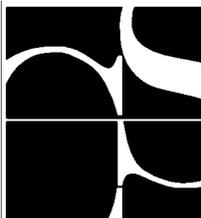
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The Tribunal would like to acknowledge and thank the author of this Report, Mr Phillip McGrath.

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Complaints  
Tribunal

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

Dear Treasurer

I have pleasure in submitting to you for presentation to the Parliament the seventh Annual Report of the Superannuation Complaints Tribunal for the year ended 30 June 2001, as required by sub-section 67(1) of the *Superannuation (Resolution of Complaints) Act 1993*.

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

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

Yours sincerely

Graham McDonald  
Chairperson

5th September 2001



## Highlights of 2000–2001

<p><b>An Exceptionally Busy Year</b></p>	<p>There has been an exponential rise in the number of determinations from 82 in 1999–2000 to 280 determinations affecting 301 Complainants in the current year, an increase of 267%. This year's statistics also demonstrate a substantial increase in the number of conciliation conferences conducted. The number of cases concluded by conciliation increased from 86 in 1999–2000 to 183 in the current year, an increase of 113%.</p>
<p><b>Consultative Committee Established</b></p>	<p>A Consultative Committee consisting of Trustee, Insurer and Consumer representatives, has been established and met twice during the current year. The Committee has provided useful feedback to the Tribunal on its operations and the Tribunal appreciates receipt of the information so willingly provided by the participants.</p>
<p><b>Appointment of Additional Part-Time Members</b></p>	<p>Following a legislative change which removed the cap of 10 Part-Time Members, the Minister, the Hon. Joe Hockey, has appointed 6 new Part-Time Members, thereby increasing the total number of Part-Time Members to 16.</p>
<p><b>Reduction of The 'Backlog' of Complaints</b></p>	<p>The Tribunal has, with some minor exceptions, completed reviews for all of the 1997 to 1999 backlog. The reason for the backlog has been set out in last year's Report. While the number of written complaints received by the Tribunal has increased by 16% in the current year to a total of 1,856, the number of cases remaining open at the end of the period has increased by only 2.7%. See Chapter 3.</p>
<p><b>Early Exchange of Information</b></p>	<p>In order to enhance the early resolution of complaints, the Tribunal has determined to exchange information with the Complainant once it is received from the Trustee / Insurer. The release of information places the Complainant in a better position to assess and understand where he/she stands at the earliest possible time in the process.</p>

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# Introduction

The focus of this reporting year, in terms of corporate initiatives and outputs, continues to be upon the strategies put in place by the Tribunal to reduce the pre-*A-G(Cwth) v. Breckler* 'backlog' of complaints while keeping abreast of incoming complaints and enquiries and to streamline its inquiry and conciliation functions.

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

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

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

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

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

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

## Chairperson's Review

The 2000-01 year has been an exceptionally busy year for the Tribunal. The Tribunal has, with some minor exceptions, completed reviews for all of the 1997 to 1999 (inclusive) cases which were in the backlog. The reason for the backlog has been set out in last year's Report. At the same time, there has been an increase of approximately 200 in the number of written complaints received by the Tribunal in the current year to a total in excess of 1,800. It is estimated that approximately 300 of those complaints will require to be determined by the Tribunal.

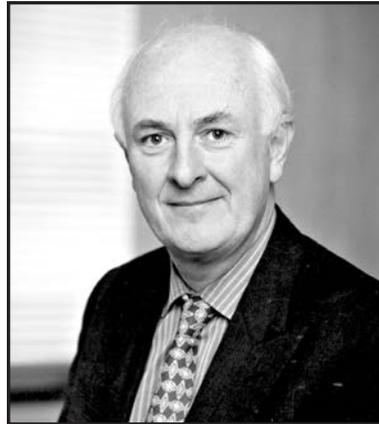
Following a legislative change which removed the cap of 10 Part-Time Members, the Minister, the Hon. Joe Hockey, has appointed 6 new Part-Time Members as follows:

Ms Jane Abbott has 19 years experience in the superannuation industry including experience as a trustee and chairperson of a board of trustees.

Mrs Jennifer Batrouney, S.C. is a Senior Counsel at the Victorian Bar.

Dr Catherine Dean is a Physiotherapist and is working as an independent assessor for the Motor Accident Authority. She currently works at an academic institution and is involved in teaching, research and clinical education.

Mr Richard Fayle was formerly an Associate Professor and Head of the Accounting & Finance of the Department of the University of Western Australia where he taught taxation aspects of superannuation at post graduate level.



**Graham McDonald**

Dr Diana Olsberg is currently Director of the University of New South Wales Research Centre on Ageing and Retirement and is a trustee of Unisuper. She was formerly National Executive Director of the Australian Institute of Superannuation Trustees.

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

The participation of members with such a range of broad but relevant backgrounds is welcome and will be a relief to the current membership.

There has been an exponential rise in the number of determinations from 82 in 1999-2000 to 280 determinations affecting 301 Complainants in the current year.

This year's statistics also demonstrate a substantial increase in the number of conciliation conferences conducted. The Tribunal is required by its governing legislation to consider conciliation in all cases. However, to be conciliated, cases need consent from all parties. While there has been a substantial increase in the number of trustees/insurers willing to participate, there still needs to be a greater appreciation of the benefits of conciliation and willingness to participate by industry members, not only to maintain, but also to increase the success of this form of case disposition.

Disability cases continue to dominate by volume and complexity in the matters proceeding to review. While there has been an increase in the number of complaints concerning administrative error, most of those resolve at an early stage of the proceedings.

As foreshadowed in last year's Report, a Consultative Committee consisting of Trustee, Insurer and Consumer representatives, has been established and met twice during the current year. The Committee has provided useful feedback to the Tribunal on its operations and the Tribunal appreciates receipt of the information so willingly provided by the participants.

The Tribunal has participated in a number of training sessions for Trustees and potential Trustees. The publication

by the Tribunal of a pamphlet on legal issues in disability claims has been well received and the Tribunal hopes, in the current year, to produce a similar booklet on death benefit claims.

I would again like to express my appreciation to the dedicated work of the Tribunal's staff, without which the volume of work disposed of by the Tribunal could not have been achieved. On the general feedback received, industry members appreciate the detail contained in the Tribunal's reasons for decision which, a number of Trustees have indicated, have guided them in the disposition of other cases arising for consideration. I would like to express my appreciation to Ms Carol Foley, the Tribunal's Senior Lawyer, who acted as the Deputy Chair during the absence of Ms Nicole Cullen on maternity leave.

I would also like to take this opportunity to thank Mr Greg Mullins, former Assistant Director, for his many years of valuable service to the Tribunal.

I am sure the 2001-2002 year will prove to be as challenging as the 2000-2001 year. I am also sure, however, that the challenge will be met through the continued dedication of the staff, the Deputy Chair and the Part-Time Members.



Graham McDonald  
Chairperson

5th September 2001

## Role

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

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

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## Objectives And Functions

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

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## Organisational Structure

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

review. Sub-section 59(2)(a) of the SRC Act lists certain specific powers which are exercisable only by the Chairperson; and, sub-sections 59(2)(b) and (c) list specific powers which are exercisable only by the Chairperson and/or the Deputy Chairperson.

## **Tribunal Chairperson**

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

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

## **Tribunal Deputy Chairperson**

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

Ms Cullen has a law/arts degree from Monash University and practised in the Commercial Litigation department of Arthur Robinson & Hedderwicks for several years. She then worked for five years as a corporate lawyer resolving disputes through litigation, mediation and negotiation for the Commonwealth Bank of Australia. For two years Ms Cullen managed a national Complaints Resolution Scheme operating in the financial services industry. Ms Cullen has also actively participated in the ADR movement, becoming a mediator herself in 1996. She is a member of the ADR Committee of the Victorian Law Institute and is a Victorian Executive Director of LEADR.



**Nicole Cullen**

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

## Acting Deputy Chairperson

**Ms Carol Foley**, Senior Lawyer and in-house legal adviser to the Tribunal, was appointed as Acting Deputy Chairperson from 15 January 2001 to 25 May 2001.

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

## Director

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

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

The Director is supported by two Assistant Directors, Ms Fiona Power and Mr Patrick O'Dwyer.



**Fiona Power, Patrick O'Dwyer  
& Margaret McDonald**

## 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 Part-time Members.

The *Financial Sector Legislation Amendment Act (No.1) 2000* (Cwlth), which commenced operation on 18 January 2001, amended s.7 of the SRC Act to remove the upper limit of 10 members. In relation to a particular complaint, the Tribunal at review will, as far as possible, be constituted by 3 Members as selected by the Chairperson, after taking into account their 'qualifications, experience and suitability having regard to the nature of that complaint' as required under sub-section 9(2).

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

## Profiles Of The Part-Time Tribunal Members

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

### **Mrs Jane Abbott**

(20 April 2001–19 October 2002)

Mrs Abbott has worked in corporate superannuation for 19 years in various administrative and consulting roles. She has been involved with the Association of Superannuation Funds of Australia's education program for over 10 years. She is currently a superannuation consultant with NSP Buck Pty Ltd providing advice to Trustee Boards on legislative and member issues.

### **Ms Katy Adams**

(5 August 1997–4 August 2001)

Ms Adams is a superannuation lawyer who has, since 1989, worked in the corporate, tax and superannuation related areas in both the United Kingdom and Australia. She is currently an Associate at William M Mercer Pty Ltd working on secondment to the Australian Securities & Investments Commission.

### **Mrs Jennifer Batrouney S.C.**

(20 April 2001–19 October 2002)

Mrs Batrouney is a Senior Counsel at the Victorian Bar.

### **Mr Ross Christie**

(1 December 1998–1 July 2002)

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

### **Mr Kenneth Dance**

(8 July 1997–7 July 2002)

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

### **Dr Catherine Dean**

(20 April 2001–19 October 2002)

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

### **Mr Richard Fayle**

(20 April 2001–19 October 2002)

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

### **Mr Colin Grenfell**

(4 April 2000–3 April 2003)

Mr Grenfell is an actuary by qualification. He is a director and trustee of the AXA Australia Staff Superannuation Plan and a director of N.M. Superannuation Pty Ltd. Through N.M Superannuation, he is chairman of trustees of the National Preservation Trust eligible rollover fund. Mr Grenfell is an Association of Superannuation Funds of Australia (ASFA) Board Director and is a member of the ASFA Disclosure, Marketing and Licensing Committee. Until 1996 he held a variety of managerial, superannuation, actuarial and investment roles with National Mutual (now AXA Australia) and from 1997 to 1998 he worked as a superannuation consultant and actuary for William M Mercer.

**Mr Damyon Lill**

(4 April 2000–3 April 2003)

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

**Ms Pamela McAlister**

(8 July 1997–7 July 2002)

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

**Dr Diana Olsberg**

(20 April 2001–19 October 2002)

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

**Mr Robert Putnam**

(3 August 1994–4 February 1998 / 1 December 1998–1 July 2002)

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

**Dr Carolyn Re**

(4 April 2000–3 April 2003)

Dr Carolyn Re is a medical practitioner who has worked in private general practice for over 17 years. She is currently a part-time member of the Federal Administrative Appeals Tribunal, is a regular writer for the fortnightly publication 'Medical Observer' and works as a freelance medical writer

**Miss E A Shanahan**

(20 April 2001–19 October 2002)

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

**Mr Brian Sharpe**

(8 July 1997–7 July 2002)

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

**Ms Marita Wall**

(3 August 1994–1 July 2002)

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



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

## Review Support

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



**Ken Jacobs**

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

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## 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 and, and by 16 Case Officers—see Appendix 1.

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

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



**Frank Stasiak and Philip Laird**

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.

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## Legal Adviser

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



Carol Foley

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## Administration

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



Administration

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## National Operation

The Tribunal is located in Melbourne, Victoria and so most conciliations and reviews are held at the Tribunal's Melbourne office. Where necessary, the Tribunal has discretionary powers under sub-sections 29 and 35 of the SRC Act and rule 4 of the *Procedural Rules* to determine that conciliations and reviews may be conducted by telephone, closed-circuit television or by 'any other means of communication'. The Tribunal does not have its own closed circuit television system, so presently conducts most conciliation conferences via its audio teleconferencing system, Conference Master TC-100 and Polycom. Reviews are generally conducted solely 'on the papers'.

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## Relationship With ASIC

The Tribunal's relationship with the Australian Securities and Investments Commission (ASIC) commenced on 1 July 1998. ASIC is an independent Commonwealth body that enforces and administers the Corporations Law and regulates the advising, selling and

disclosure of all financial products and services to consumers, except credit. Providing consumers with access to efficient and fair mechanisms to resolve their complaints and overseeing all the complaints handling bodies in the financial sector forms part of ASIC's purpose.

## **Memorandum of Understanding**

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

## **Service Level Agreement**

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

## **Budget**

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

## **Staff**

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

## **Referral Of Complaints**

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

### **Sections 64 and 64A of the SRC Act**

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

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

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

### **Section 31(2) of the SRC Act**

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

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### **Relationship With APRA**

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

### **Referral Of Complaints**

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

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### **Relationship With Treasury**

The Tribunal's enabling Act, the SRC Act, is administered by the portfolio Department of the Treasury. The Tribunal's Portfolio Minister is the Treasurer, The Hon. Peter Costello MP. The Treasurer is assisted in his portfolio by the Assistant Treasurer, Senator The Hon. Rod Kemp and the Minister for Financial Services and Regulation, The Hon. Joe Hockey. In the context of superannuation, the Assistant Treasurer has responsibility for the administration of superannuation laws, including taxation and other policy issues. The Minister for Financial Services and Regulation has responsibility for financial system regulation and enhancement, market integrity and consumer protection regulation, the administration of prudential regulation relating to APRA and administrative matters concerning ASIC—see Press Release No. 002 issued by the Treasurer in January 1999.

### **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 Part-time Members. The Minister

does not have any statutory powers of direction over the Tribunal in the exercise of its s.12 functions.

The Treasurer, as the portfolio Minister, is regarded as having the ultimate and overall responsibility for the Tribunal; however, the Minister for Financial Services and Regulation has the day-to-day responsibility for those aspects of superannuation law which most affect the operation of the Tribunal.

# Jurisdiction and Powers

## New Legislation

This reporting year two enactments have been passed which will impact upon the Tribunal's operations: the *Financial Sector Legislation Amendment Act (No.1) 2000* (Cwlth); and, the *Family Law Legislation Amendment (Superannuation) Act 2001* (Cwlth).

### **Additional Part-Time Members for the Tribunal—Financial Sector Legislation Amendment Act (No.1) 2000 (Cwlth)**

The *Financial Sector Legislation Amendment Act (No.1) 2000* (Cwlth) commenced operation on 18 January 2001. Schedule 4 amended s.7 of the SRC Act to remove the upper limit of 10 members. As a consequence, six new Part-time Members were appointed to the Tribunal as from 20 April 2001.

### **Increased Jurisdiction For The Tribunal—Family Law Legislation Amendment (Superannuation) Act 2001 (Cwlth)**

The *Family Law Legislation Amendment (Superannuation) Act 2001* (Cwlth) implements minor amendments to the SRC Act to allow prospective members of SIS regulated funds (i.e. spouses/former spouses) to complain to the Tribunal. This accords with the Government's proposed new stance on superannuation and family law which enables separating couples to split superannuation in their settlement—'Joint News Release' dated 13 April 2000 by the Attorney-General, the Honourable Daryl Williams and the Assistant Treasurer, Senator the Honourable Rod Kemp. The Act received the Royal Assent on 28 June 2001, but has not as yet commenced operation.

## Proposed New Bills

### **Amendments to the SRC Act—Financial Sector Legislation Amendment Bill (No.1) 2001 (Cwlth)**

Schedule 5 of the *Financial Sector Legislation Amendment Bill (No.1) 2001* (Cwlth) will amend the SRC Act so as to:

- remove all references to the Tribunal's now defunct arbitration function;
- enable part-time appointments in relation to the offices of Chairperson and Deputy Chairperson;
- empower the Tribunal, at its discretion, to deal with total and permanent

disability complaints outside the time limits prescribed in sub-ss.14(6A) and (6B) of the SRC Act; and, require the Tribunal to formulate written guidelines indicating the kinds of circumstances in which it would ordinarily exercise this discretion;

- empower the Tribunal to direct persons to attend conciliation conferences;
- implement various other minor amendments to address existing errors and anomalies.

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## New Executive Action

### Regulations

The SRC Regulations were amended this reporting year by the *Superannuation (Resolution of Complaints) Amendment Regulations 2001 (No.1)* 2001 No.38 which amended Schedule 2—‘Complaint Handling Bodies’ so as to reflect the merger of the Financial Industry Complaints Service (FICS) and the Financial Services Complaints Resolution Scheme (FSCRS). The Regulations were gazetted on 1 March 2001.

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## Jurisdictional Limits

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

- complaints where the complainant has not first lodged a complaint with the fund / RSA provider via its internal complaints resolution arrangements under s.101 of SIS or s.47 of the *Retirement Savings Accounts Act 1997* (Cwlth) (the RSA Act) (as relevant) before coming to the Tribunal—section 19 SRC Act;
- exempt public sector superannuation scheme (EPSSS) complaints which are not deemed to be ‘regulated’ by section 4A of the SRC Act, or prior to being so deemed;
- total and permanent disability complaints which do not comply with the requirements of sub-sections 14(6A)–(6D), 15F(5)–(8) or 15J(5)–(8) of the SRC Act;
- ‘management of the fund as a whole’ complaints—sub-sections 14(6), 15F(4) or 15J(4) of the SRC Act;
- complaints about decisions of trustees of ‘regulated’ superannuation funds and ‘approved’ deposit funds made before the fund was regulated. See the judgment of Merkel J in *Briffa & Ors v. Hay* (1997) 147 ALR 226;
- ‘excluded complaints’ and complaints concerning ‘excluded subject-matter’ as declared in the SRC Regulations. Nil so declared as at 30 June 2001.
- ‘self-managed superannuation funds’ (SMSFs) which are regulated by the Australian Taxation Office (ATO);

- complaints about decisions made by decision-makers who are not specifically caught by the SRC Act;
- complaints where the subject-matter of the complaint is currently the subject of court proceedings—section 20 SRC Act;
- complaints where the statutory standing requirements have not been met by the complainant(s).

## **Largest Categories of Written Complaints Outside Jurisdiction**

Once again, complaints which failed to comply with section 19 of the SRC Act—i.e. complaints where the complainant had failed to lodge a section 101 complaint with the trustee prior to lodging a complaint with the Tribunal—comprised the largest category of written complaints found to be outside jurisdiction. This year, 37 per cent of all such written complaints fell into this category, down from 42 per cent in the last reporting year. This indicates that there is still room for improvement in the educative work to be done in this area to appraise members of the statutory requirements.

Likewise, as in previous reporting years, the second largest category of written complaints outside jurisdiction was ‘management of the fund as a whole’ at 18 per cent, down from 25 per cent in the last reporting year.

## **Powers**

The SRC Act provides the Tribunal with a wide range of powers to facilitate its operations. This reporting year the Federal Court of Australia considered the Tribunal’s powers and procedures only very briefly.

## **The Tribunal’s Ability to Deal with Discretionary and Non-Discretionary Decisions**

In *Coonara Superannuation Services Pty Ltd v. Simons* [2000] FCA 1369 (27 September 2000), the Trustee argued, as a ‘threshold question’, that the Tribunal had no jurisdiction to deal with non-discretionary trustee decisions. The Trustee cited *Wilkinson v. CARE* (1998) 79 FCR 469 and *A-G(Cth) v. Breckler* (1999) 163 ALR 576 in support and submitted that Merkel J’s contrary judgment in *Seafarers’ Retirement Fund Pty Ltd v. Oppenhuys* [1999] FCA 1683 (3 December 1999) ought not to be followed. Lindgren J, however, stated that the case did not require him to decide whether or not the Tribunal was limited to reviewing decisions which involved the exercise of discretionary powers and left the question open.

In *Hannover Life Re of Australasia Ltd v. Farm Plan Pty Ltd & Ralph* (No N-1151 of 1999), [2001] FCA 796, Lee J commented, in passing, that s.14AA of the SRC Act ‘makes it clear that a decision reviewed by the Tribunal includes a decision involving the exercise of a discretion.’

## **Internal Scrutiny**

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

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## **External Scrutiny**

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

### **Parliament**

The Parliament scrutinises the operation of the Tribunal by way of the legislative process; the tabling of regulations; and the tabling of the Tribunal’s Annual Report. This reporting year, the Tribunal again provided a biannual indexed list of files to be tabled before the Senate in accordance with the requirements of Senate Order No 5; and provided the requisite responses to the Questions on Notice put by Senator Faulkner—Senate Notice Paper dated 20 September 1999.

### **Parliamentary Committees**

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

### **Courts**

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

### **Section 46 Federal Court Appeals Lodged 2000–2001**

- *The National Mutual Life Association of Australasia Ltd v. Scollary* (No V681 of 2000);
- *Lykogiannis v. Retail Employees Superannuation Pty Ltd & Colonial Portfolio Services Ltd* (No V764 of 2000);

- *Howitt-Steven v. Unisuper* (No N1177 of 2000);
- *Conway v. Westscheme Ltd* (No W193 of 2000);
- *Sommer v NM Superannuation Pty Ltd* (No N1230 of 2000);
- *Alderson v. Regis Nominees Pty Ltd & Citicorp Life Insurance Ltd* (No V922 of 2000);
- *Haematite Pty Ltd v. Risterski* (No. V752 of 2000);
- *PSS Board v. Wedgwood* (No W946 of 2000);
- *Flexiplan Australia Ltd v. Pankhurst* (No W9 of 2001);
- *Rio Tinto v. Prince* (No V32 of 2001);
- *Bloom v Craig (& Ors) as Trustees for Stevedoring Employees Retirement Fund Pty Ltd* (No V174 of 2001);
- *Constantinides v. Du Pont Superannuation Fund Pty Ltd & Hannover Life Re of Australasia Ltd* (No V362 of 2001);
- *Royal & Sun Alliance Financial Services Australasia Ltd v. Kim & HESTA* (No N844 of 2001);
- *PSS Board v. Anderson* (No V621 of 2001);
- *Military Superannuation and Benefits Board No 1 v. Stanger* (No V633 of 2001);
- *United Superannuation Pty Ltd v. Harrison* (No N928 of 2001);
- *Milanovic v. Colonial Mutual Superannuation Pty Ltd and Colonial Mutual Life Assurance Society Ltd* (No N954 of 2001);
- *Military Superannuation and Benefits Board of Trustees No 1 v. Drake* (No V691 of 2001).

### **Federal Court Judgments Handed Down 2000–2001**

- *Coonara Superannuation Services Pty Ltd v. Simons* [2000] FCA 1369 (27 September 2000);
- *Hannover Life Re of Australasia Ltd v. Farm Plan Pty Ltd & Filmer* (No N-1175 of 1999), [2001] FCA 796, 25 June 2001;
- *Hannover Life Re of Australasia Ltd v. Farm Plan Pty Ltd & Ralph* (No N-1151 of 1999), [2001] FCA 796, 25 June 2001;
- *Hannover Life Re of Australasia Ltd v. Farm Plan Pty Ltd & Black* (No N-1152 of 1999), [2001] FCA 796, 25 June 2001.

### **Federal Court Appeals Settled/Discontinued 2000–2001**

- *Gregory v. MIM Superannuation Pty Ltd & Dimond* (No Q11 of 2000);
- *Rio Tinto v. Prince* (No V32 of 2001).

## Federal Court Matters Pending at 30 June 2001

Based upon information obtained from the Federal Court, the following matters were still pending in the Federal Court pursuant to s.46 of the SRC Act as at the end of the reporting year:

- *Phillip Symes v. Postsuper Pty Ltd & Masulans* (No VG 449 of 1997);
- *Retail Employees Superannuation P/L v. Crocker & Colonial Portfolio Services Ltd* (No N321 of 2000);
- *The Colonial Mutual Life Assurance Society Ltd v. Crocker and Retail Employees Superannuation P/L* (No N338 of 2000);
- *The National Mutual Life Association of Australasia Ltd v. Scollary* (No V681 of 2000);
- *Lykogiannis v. Retail Employees Superannuation Pty Ltd & Colonial Portfolio Services Ltd* (No V764 of 2000);
- *Howitt-Steven v. Unisuper* (No N1177 of 2000);
- *Conway v. Westscheme Ltd* (No W193 of 2000);
- *Sommer v NM Superannuation Pty Ltd* (No N1230 of 2000);
- *Alderson v. Regis Nominees Pty Ltd & Citicorp Life Insurance Ltd* (No V922 of 2000);
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- *Military Superannuation and Benefits Board of Trustees No 1 v. Drake* (No V691 of 2001).

## **Practice And Procedure: Notification Arrangements With the Federal Court of Australia:**

As a result of the arrangements set in place with the Federal Court of Australia last reporting year to ensure that the Tribunal would be notified upon lodgement of applications pursuant to s.46 of the SRC Act, the Tribunal has received notification from the Court with respect to many, although not all, appeals lodged against its determinations. Practitioners have also complied much more rigorously with O.53B r.3 and O.53 r.6(2) of the *Federal Court Rules* (which require an applicant to serve a copy of the Notice of Appeal upon the Tribunal within 7 days after filing). This has done much to alleviate the previous problem whereby, very often, the Tribunal was unaware that a matter had been appealed to the Federal Court until some months after judgment had been handed down.

The Tribunal has not, however, received copies of relevant judgments from Federal Court judges' associates as was proposed by the Court last reporting year as part of its new procedure.

## **Commonwealth Departments**

### **Attorney-General's Department**

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

### **Australian Archives**

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

### **Department of the Treasury**

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

## **Statutory Bodies**

### **The Ombudsman**

Five formal investigations were made by the Ombudsman under the *Ombudsman Act 1976* (Cwlth) in respect of the Tribunal this reporting year as follows:

- As to the Tribunal's delay in dealing with a complaint: The Ombudsman was satisfied with the Tribunal's explanation in light of the delays caused by the 'backlog' of complaints that had built up during the suspension of its review function from 1997–1999.
- As to the outcome of a Tribunal determination: The Complainant was dissatisfied and wanted the Ombudsman to request the Tribunal to reconsider its decision. The Ombudsman accepted that the Tribunal was *functus officio* and

reminded the Complainant of his appeal rights to the Federal Court of Australia.

- As to the Tribunal's withdrawal of a complaint and delay: The Tribunal provided the Ombudsman with the relevant material and information as to key dates. The Ombudsman advised that no further action would be taken on the matter.
- As to the Tribunal's delay in issuing a determination and failure to reply to correspondence: The Tribunal admitted unreasonable delay and undertook to revise its procedures to ensure that such delays do not occur in future. The Tribunal also admitted oversight in not responding to the Complainant's letter and apologised to the Complainant in writing. The Ombudsman advised that no further remedial action was called for by the Tribunal and that no further action would be taken.
- As to the Tribunal's withdrawal of a complaint: The Ombudsman initially identified some possible systemic issues in relation to the Tribunal's withdrawal powers. However, after investigation, the Ombudsman concluded that there was no proper basis on which the Ombudsman might reasonably offer substantive criticism of the Tribunal's stance in respect of the application of its withdrawal powers.

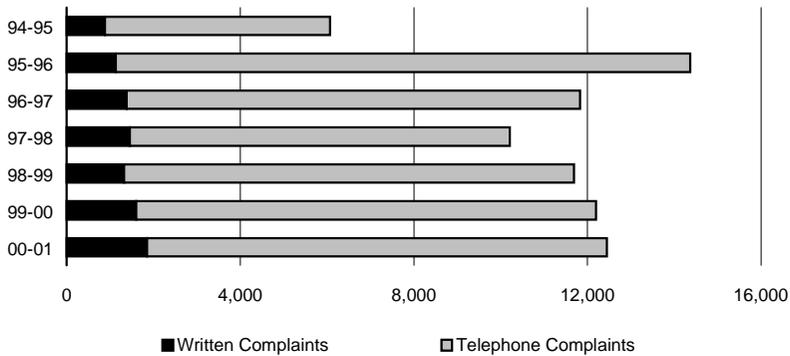
#### **The Privacy Commissioner**

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

## Statistical Overview

Section 11 of the SRC Act requires that the Tribunal must provide fair, economical, informal and quick mechanisms for carrying out its statutory functions of inquiry, conciliation and review. This reporting year, 8,733 telephone enquiries and 1,856 written complaints were received by the Tribunal. These statistics show a 17.6 per cent decrease in the number of telephone enquiries received; and a 16.1 per cent increase in the number of written complaints received compared with the 1999–2000 reporting year.

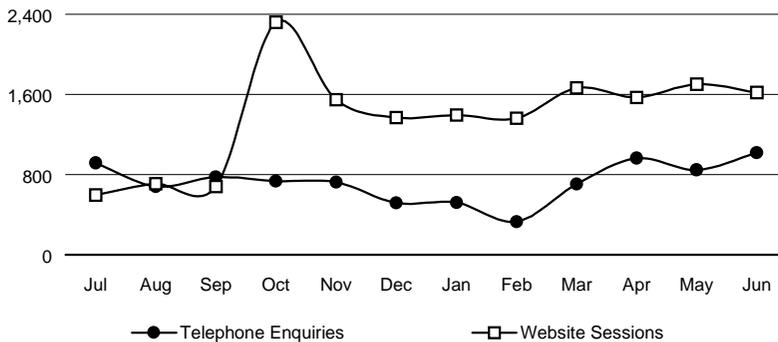
**Fig. 1: Annual Complaint Trends 1994–2001**



## Enquiries

The Tribunal received 8,733 telephone calls this reporting year and dealt with a wide range of enquiries. The most popular questions were requests for information about the Tribunal itself; general superannuation enquiries; employer related enquiries; and enquiries concerning preservation and vesting.

**Fig. 2: Monthly Enquiries 2000–2001**



## Written Complaints

The Tribunal received 1,856 written complaints this reporting year. Of these, 883 complaints were within jurisdiction (48.9 per cent) and 973 outside jurisdiction (51.1 per cent). The Tribunal actually dealt with 1,839 written complaints during the reporting year (which includes some complaints carried over from the previous reporting year). Of these, 853 were within jurisdiction (46 per cent) and 986 were found to be outside jurisdiction (54 per cent). Of the 986 complaints closed as outside jurisdiction, 366 (37 per cent) were s.101 referrals closed pursuant to s.19 of the SRC Act. At the end of the reporting year 908 complaints remained open. This represents an increase of 2.7 per cent over the previous reporting year, which is a very pleasing result given the 16.1 per cent increase in the overall number of written complaints received this reporting year.

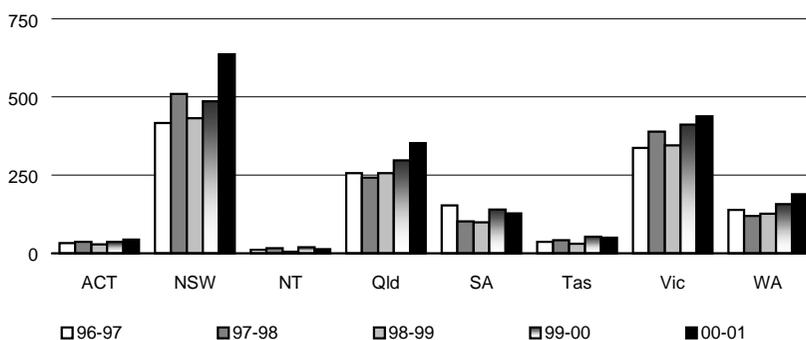
### Distribution By State and Territory

Table 1 shows the origin of the 1,856 written complaints made to the Tribunal during the reporting period by State and Territory. This gives an indication of the number of complaints received relative to the respective populations in each State/Territory, so that any significant disparities over time may be charted. Figure 3 shows that no significant disparities have occurred this reporting year.

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

State / Territory	Number of Complaints
Australian Capital Territory	44
New South Wales	637
Northern Territory	13
Queensland	353
South Australia	128
Tasmania	50
Victoria	438
Western Australia	189
Other	4
<b>Total</b>	<b>1,856</b>

**Fig. 3: Annual Written Complaint Trends by State / Territory 1996–2001**



## Distribution By Age And Gender

In total, 65 per cent of all written complaints made to the Tribunal were from men which, as in all previous reporting years, indicates that men are over-represented. In the previous reporting year, 64 per cent of all complaints were from men.

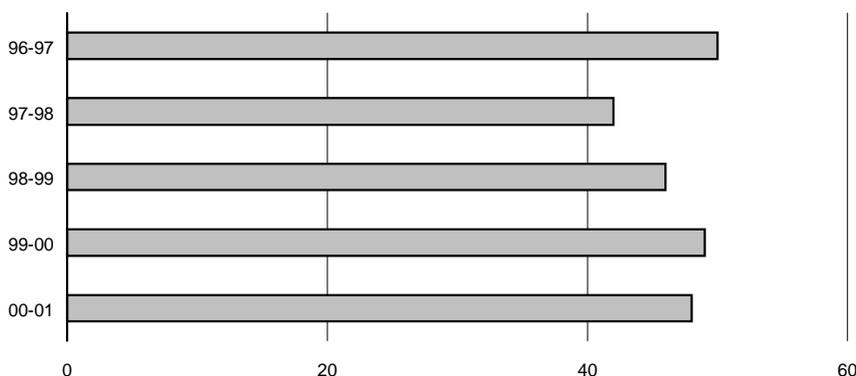
Of the 1,856 written complaints received by the Tribunal, 1,285 complainants provided their date of birth. Based on these statistics, the average age of complainants is 47 years and 29 per cent of complainants are aged 55 years or over. The oldest complainant was 86 years. These figures are essentially the same as previous reporting years and once again indicate that the older age groups are highly represented because many complaints arise out of the payment of retirement benefits. The older age factor also helps to explain the gender disparity, because men comprise a greater proportion of the over 55 age group of fund members.

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## Written Complaints Within Jurisdiction

Of the 1,856 new written complaints received by the Tribunal this reporting year, 883 (48 per cent) were within jurisdiction. Last reporting year, of the 1,599 written complaints received, 782 were within jurisdiction (49 per cent). Fig. 4 below shows the annual complaint trends in respect of written complaints within jurisdiction received from 1994–1995 to 2000–2001.

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



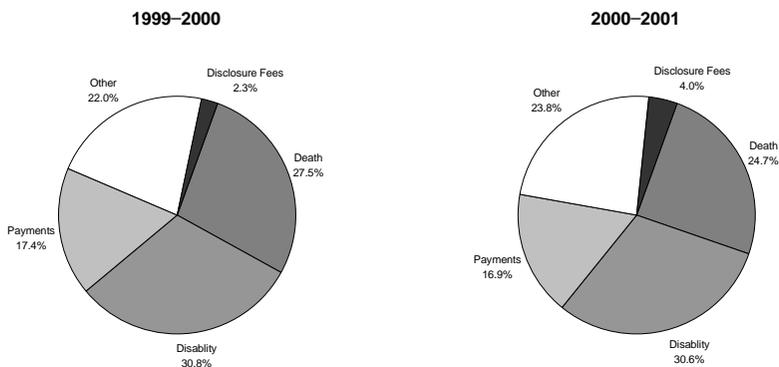
## Nature of Written Complaints Within Jurisdiction

Once again, the majority of these complaints have fallen into four of the six major categories of complaints received, i.e. 'Death', 'Disability', 'Payments' and the 'catch-all' category of 'Other'. As in previous years 'Disability' complaints comprise the largest category of all written complaints received within jurisdiction—30.6 per cent. Likewise, as in previous years, 'Death' complaints make up the second-largest category at 24.7 per cent, followed by 'Payments' at 16.9 per cent. Note that 'Administration complaints', at 20.3 per cent, comprise almost all of the 'Other' category.

**Table 2: Nature of Written Complaints Within Jurisdiction**

Nature of Complaint	Number Of Complaints Within Jurisdiction			
	No	%	No	%
<b>Disclosure / Fees</b>			<b>35</b>	<b>4.0%</b>
Agent Misrepresentation	6	0.7%		
Fees & Charges	29	3.3%		
<b>Death</b>			<b>218</b>	<b>24.7%</b>
Death – distribution	197	22.3%		
Death – other	21	2.4%		
<b>Disability</b>			<b>270</b>	<b>30.6%</b>
Disability – medical	207	23.4%		
Disability – other	63	7.1%		
<b>Payments</b>			<b>149</b>	<b>16.9%</b>
Payment Delay	26	2.9%		
Account Balance	107	12.1%		
Release of Benefits / Preservation	16	1.8%		
<b>Other</b>			<b>211</b>	<b>23.8%</b>
Administration	179	20.3%		
Statement error	5	0.6%		
Surplus Distribution	1	0.1%		
Trustee misrepresentation / malpractice	15	1.7%		
Other	5	0.6%		
Employer-related	3	0.3%		
Surcharge	1	0.1%		
Investment Returns	2	0.2%		
<b>Total</b>	<b>883</b>	<b>100.0%</b>	<b>883</b>	<b>100.0%</b>

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

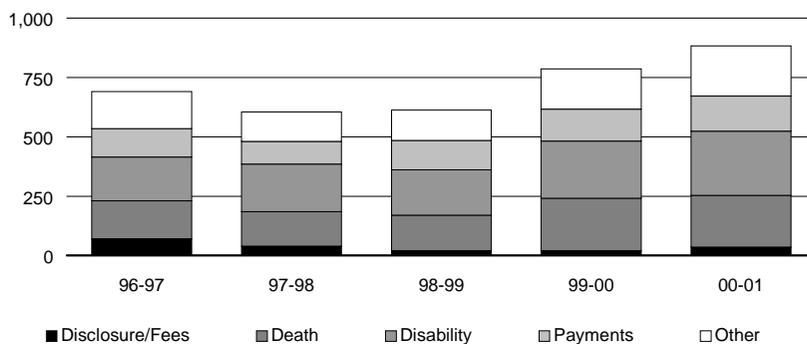


The proportional distribution of complaint types across all categories remains more or less consistent with the distribution statistics in previous reporting years, with the exception of the 1994–95 inaugural reporting year. Note, however, that there has been a 3 per centage point drop in the number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

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

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

**Fig. 6: Annual Complaint Trends by Nature of Complaints Within Jurisdiction 1996–2001 (actual numbers)**



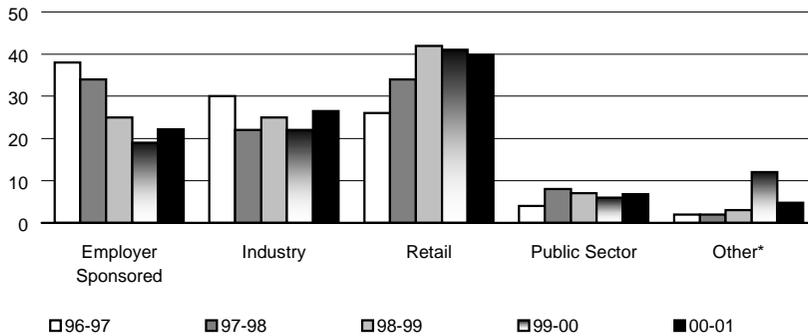
### Written Complaints Within Jurisdiction By Fund Type

The Tribunal has identified four fund types for reporting purposes—employer-sponsored (corporate) funds; industry funds; retail funds (life office and other non-industry public offer); and public sector funds. The total number of written complaints received within jurisdiction in relation to each fund-type is shown in Table 4. Once again this reporting year, the greatest number of such complaints received related to retail funds – 39.8 per cent—which is almost exactly the same as last reporting year (40.5 per cent) – see Fig. 7.

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

Fund Type	Number of Complaints Received		Percentage of Total	
	1999-2000	2000-2001	1999-2000	2000-2001
Employer Sponsored	152	196	19.5%	22.2%
Industry	172	234	22.0%	26.5%
Retail	317	351	40.5%	39.8%
Public Sector	44	60	5.6%	6.8%
Other *	97	42	12.4%	4.8%
<b>Total</b>	<b>782</b>	<b>883</b>	<b>100.0%</b>	<b>100.0%</b>

**Fig. 7: Annual Complaint Trends by Fund Type 1996–2001 (%)**



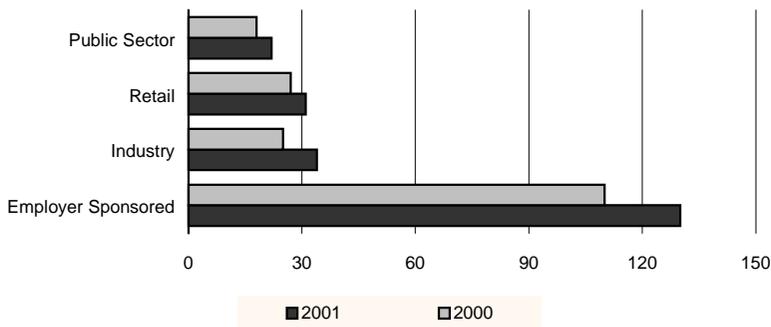
Note: The 'Other' category in Table 4 and Fig. 7 above includes complaints received towards the end of the reporting period where Fund Type had yet to be determined.

### Member Complaint Ratio By Type Of Fund

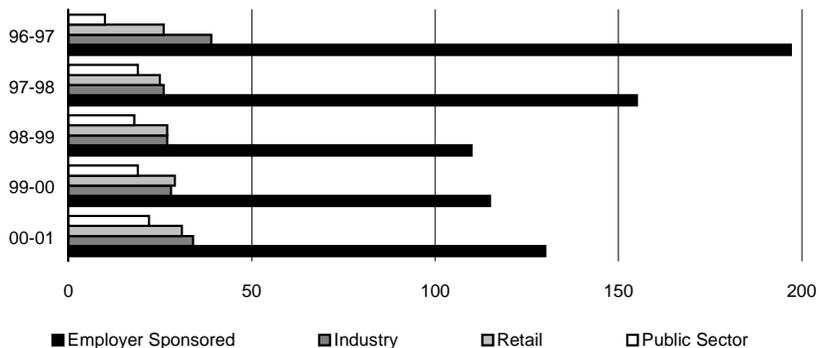
The graph at Fig. 8 below shows the number of written complaints for each fund type as a proportion of the total number of members in each fund type. It therefore provides a basis for an overall comparison of the number of complaints received for each fund type. As in previous years, the statistics show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

The statistics also show that the number of complaints received per million members from all fund types has increased this reporting year. Complaints from members of employer-sponsored funds have risen by 18 per cent from last year; complaints from members of industry funds have risen by 36 per cent; complaints from retail funds have risen by 14 per cent; and complaints from public sector funds have risen by 22 per cent.

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



**Fig. 9: Annual Trends Member Complaint Ratio by Fund Type 1996–2001**  
(per million members)



Note: Figures 8 and 9: (1) Most public sector funds are EPSSS, so their members are excluded from lodging complaints with the Tribunal. (2) Statistics based upon *APRA Superannuation Trends* March 2001, Table 2a Superannuation Fund Members

### Complaints Resolved / Withdrawn In The Reporting Period

This reporting year, a total of 853 written complaints were resolved or withdrawn. Comparatively, last reporting year, 544 written complaints were resolved or withdrawn.

**Table 5: Complaints Resolved / Withdrawn**

Withdrawn by the Tribunal	Number of Complaints	%
s.22(1)	69	
s.22(3)(a),(b)	84	
s.22(3)(c),(d),(e)	14	
	<b>167</b>	<b>19.6%</b>
<b>Withdrawn by Complainant</b>		
pre conciliation conference	215	
post conciliation conference	124	
	<b>339</b>	<b>39.7%</b>
without resolution	46	
	<b>46</b>	<b>5.4%</b>
<b>Resolved by Tribunal at Review</b>		
decision affirmed	153	
decision remitted	11	
decision varied	8	
decision set aside/substituted	128	
decision no jurisdiction	1	
	<b>301</b>	<b>35.3%</b>
<b>Total</b>	<b>853</b>	<b>100.0%</b>

This year, 807 complaints were resolved at inquiry, conciliation and review (95 per cent) and 46 complaints were withdrawn by their respective complainants without resolution (5 per cent). The Tribunal is pleased to note that the number of complaints withdrawn by complainants without resolution had fallen by 5 percentage points.

This reporting year, 65 per cent of all complaints resolved/withdrawn were resolved/withdrawn at the inquiry and conciliation stages compared with 81 per cent last reporting year. The number of complaints resolved at review increased from 19 per cent last year (15 per cent review and 4 per cent arbitration) to 35 per cent this year.

This reflects the fact that the Tribunal managed to work through the backlog of cases that had built up prior to the High Court's decision in *Breckler's* case.

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## Conciliation Conferences

This reporting year the Tribunal conciliated 200 complaints compared with 104 complaints last reporting year (an increase of 92 per cent). This figure represents the largest number of complaints dealt with by conciliation since the Tribunal's inception—see Table 6 below. The largest number of conciliations in a month occurred in May with 29. The April – June quarter had the highest number of cases for a quarter with 65.

Overall, 183 (92 per cent) cases were concluded at the end of the year, up from 86 cases (83 per cent) in the last reporting year. Of these 183 cases, 117 were settled, a settlement rate of 64 per cent. At the end of the reporting year, 17 cases remained pending (9 per cent of cases, as against 17 per cent in the previous year).

**Table 6: Conciliation Conference Outcomes 2000–2001**

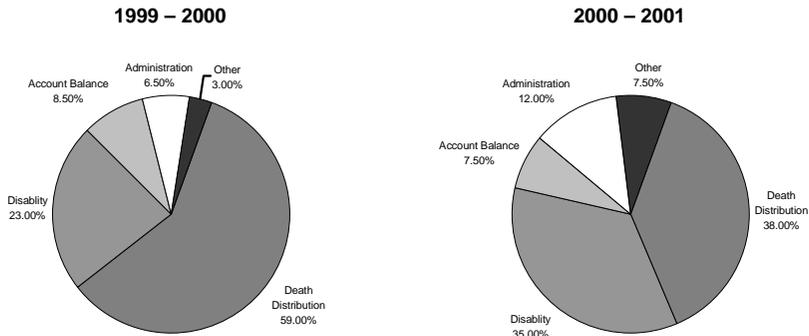
Quarter	No. of Cases	Pending	Settled	Not Settled
Jul – Sep	34	1	15	*18
Oct – Dec	59	5	34	20
Jan – Mar	42	3	24	15
Apr – Jun	65	8	44	13
<b>Total</b>	<b>200</b>	<b>17</b>	<b>117</b>	<b>66</b>

\* no jurisdiction in one case

## Nature Of Conciliation Cases

Once again this reporting year, the largest single category of conciliation cases was 'death benefit distribution' – 76 cases (38 per cent), of which 55 of the 74 finalised cases were settled. Likewise, medical disability cases again constituted the second-largest category—70 cases (35 per cent), of which 38 of the 62 finalised cases were settled. In comparison with last reporting year, the resolution rate in respect of finalised death benefit distribution cases has dropped slightly from 75 per cent to 74 per cent. Conversely, the resolution rates in respect of finalised medical disability cases has risen dramatically from 33 per cent last reporting year to 61 per cent this reporting year.

**Fig. 10: Nature of Conciliation Cases**



### Mode Of Conciliation Conferences

This reporting year, the Tribunal conducted conciliation conferences by teleconference, by person-to-person meeting, by correspondence and by videoconference. Table 7 below shows that 168 conferences (84 per cent) were held by teleconference, 27 conferences (13.5 per cent) by person-to-person meeting, 3 conferences (1.5 per cent) by correspondence and 2 conferences by videoconference (1 per cent). Overall, 155 conciliations were finalised by teleconference. Of these, 98 were resolved (63 per cent). Comparatively, 27 conciliations were finalised by person-to-person meeting. Of these, 18 were resolved (67 per cent).

**Table 7: Mode of Conference and Outcomes 2000 - 2001**

Mode of Conference	No. of Cases	Pending	Settled	Not Settled
Teleconference	168	13	98	57
Meeting	27	1	18	8
Correspondence	3	2	0	1
Videoconference	2	1	1	0
<b>Total</b>	<b>200</b>	<b>17</b>	<b>117</b>	<b>66</b>

The Tribunal has also been monitoring the resolution outcomes of teleconferencing vis à vis person-to-person meetings since the 1995–1996 reporting year. Table 8 below shows that, with the exception of the 1996–1997 and the 1999–2000 reporting years, person-to-person meetings have resulted in a markedly higher rate of resolutions. The Tribunal will continue to monitor outcomes to determine whether or not, as a general trend, person-to-person meetings promote a more effective, and therefore a fairer outcome. The statistics to date indicate that this appears to be the case. This year the overall disparity between the two conferencing modes appears to be slightly up after narrowing markedly in recent years—see Table 9.

**Table 8: Teleconference & Person-To-Person Meeting Resolutions 1995–2001**

Reporting Years	T/Conf Held	T/Conf Resolved	%	P/Mtgs Held	P/Mtgs Resolved	%
1995 – 1996	18	3	17%	8	6	75%
1996 – 1997	35	12	34%	18	6	33%
1997 – 1998	41	18	44%	8	6	75%
1998 – 1999	58	31	53%	7	5	71%
1999 – 2000	92	53	58%	9	3	33%
2000 – 2001	168	98	63%	27	18	67%
<b>Total</b>	<b>412</b>	<b>215</b>	<b>52%</b>	<b>77</b>	<b>44</b>	<b>57%</b>

**Table 9: Teleconferencing / Meeting Cumulative Resolutions 1995–2001 (%)**

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

## Projected Initiatives To Improve the Conciliation Process

### Staff Training

Tribunal staff underwent training at two levels over the year. All staff participated in a conciliation skills course of two days duration in December 2000. This had as its objective the early resolution of cases by informal conciliation where possible and otherwise, the streaming of cases for the conciliation list early in the inquiry stage. The Tribunal's experience with the older cases, is that the parties are more 'position' focussed, which tends to make resolution difficult. Selected staff participated in an external conciliation accreditation course in February 2001 and have since been available to deal with cases listed for conciliation.

### Case Management

Case management procedures were also modified to reflect and ensure early intervention in the investigation phase. Further refinements to the Case Management System (CMS) will be undertaken to enable better reporting of outcomes.

### Promotion of the Conciliation Process

The Tribunal has promoted the conciliation process in meetings with trustees, insurers and industry bodies over the course of the year and in the Tribunal's Consultative Committee meetings. The Consultative Committee is strongly supportive of conciliation as an effective alternative dispute resolution mechanism.

The participation rate for the year is testimony to the initiatives as outlined. Inquiry at the close of the year from non-participating insurers and trustees augurs well for the future. The Tribunal will continue to promote its conciliation function in the 2001–02 reporting year.

## Review Meetings

In the 2000–2001 reporting year, 301 matters were determined at Review. Of these, the Tribunal affirmed 153 trustee decisions (50.8 per cent); set aside 128 trustee decisions (42.5 per cent); remitted 11 decisions back to the trustee (3.7 per cent); varied 8 decisions (2.7 per cent) and found that one matter was outside the Tribunal's jurisdiction (0.3 per cent)—see Table 10 below. The Tribunal actually conducted 325 review meetings this reporting year; however, because a determination is not finalised until it has been made 'in writing', the remaining 24 determinations had not been 'made' as at 30 June 2001, so will be carried over into the next reporting year.

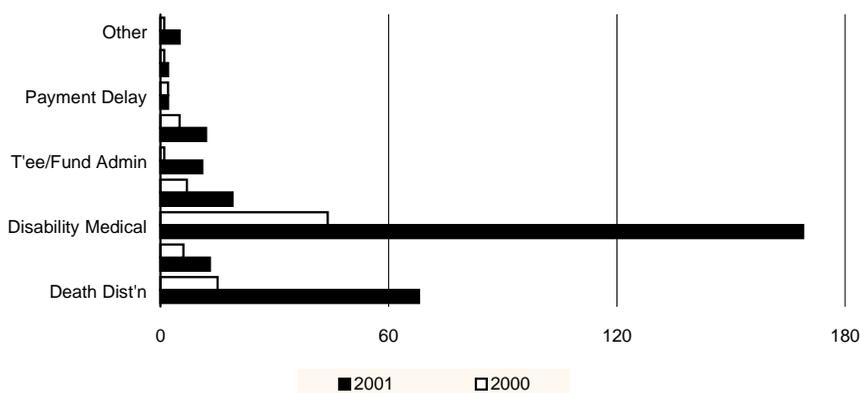
**Table 10: Review Determination Outcomes for 2000 – 2001 Reporting Period**

Decision Affirmed s.37(3)(a)	Decision Remitted s.37(3)(b)	Decision Varied s.37(3)(c)	Decision Set Aside s.37(3)(d)	No Jurisdiction to Determine	Total No.
153	11	8	128	1	301

## Nature of Review Determinations

This reporting year the largest category of complaints determined at review was medical disability—169 cases (56.1 per cent). Death benefit distribution complaints made up the second largest category—68 cases (22.6 per cent). Comparatively, in the 1999–2000 reporting year 53 per cent of complaints determined at review were medical disability cases, and 30.5 per cent were death benefit distribution matters—see Fig. 11 below.

**Fig. 11: Nature of Review Determinations 2000 – 2001**  
(actual numbers)





Review Support

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## 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 with the dramatic increase in its conciliation rate and the effective completion of the review 'backlog' since the full resumption of its review function. The quality of the Tribunal's service is also borne out in terms of its external scrutiny record—see Chapter 2.

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

# Corporate Governance

## Corporate Plan

The Tribunal's Corporate Plan—the *Superannuation Complaints Tribunal 1999 Business Plan*—was finalised in April 1999 at a time when the Tribunal's future was uncertain due to the constitutional issues surrounding its review function. Despite the difficulties attendant upon formulating a business plan in such circumstances, the strategies set in place at that time have worked very well and have successfully operated in the furtherance of the Tribunal's Mission Statement—as reproduced below:



### Mission Statement

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

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

## Corporate Objectives

### Short to Medium Term Objectives—6 to 12 Months

In the short to medium term the Tribunal aims to:

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

## Overview of Outputs

The Tribunal reports that:

- Priority was given to clearing the backlog of older cases in the listing process. With some minor exceptions, the Tribunal addressed the 1996–1999 backlog and simultaneously commenced work on the 2000–2001 cases. A record 301 matters were determined at Review. This outcome has been achieved through increased funding approved by the Minister in May 2000 with continued application for this year;
- The *Financial Sector Legislation Amendment Act (No.1) 2000* (Cwlth) commenced operation on 18 January 2001. Schedule 4 amended s.7 of the SRC Act to remove the upper limit of 10 members. As a consequence, the cap of 10 Part-Time Members was removed and the Minister, The Hon. Joe Hockey, has appointed 6 new Part-Time Members. Apart from the larger pool of Part-time Members available to share the workload, delays and difficulties in listing cases for Review due to conflict of interest issues among Part-time Members will be markedly reduced;
- A new Case Management System (CMS) was designed with technical assistance and support from ASIC. The new system was implemented in January 2001 and although it is yet to be finalised, immediate efficiencies in the case management process are noted;
- Statistical analysis of cases and emerging trends has improved through the new CMS;
- Additional staff have been engaged to deal with the current workload and the increase in written complaints. This has resulted in higher case closure rates;
- A systems review resulted in changes to case management procedures at team and case officer levels;
- A major strategy was early intervention in cases that are suitable for conciliation. This initiative resulted in 200 cases being conciliated for the year, a record since inception;
- A Consultative Committee consisting of Trustee, Insurer and Consumer representatives, has been established and met twice during the current year. The Committee has provided useful feedback to the Tribunal on its operations and the Tribunal appreciates receipt of the information so willingly provided by the participants;
- The Tribunal provided seminars for trustees and insurers regarding total and permanent disability matters;
- The Chairperson, Deputy Chairperson and Director attended numerous liaison meetings with industry and consumer groups;
- Senior managers and case officers held several liaison meetings with trustees and fund administrators.

## Longer Term Objectives—1 to 3 Years

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

## Overview of Outputs

The Tribunal reports that:

- The emphasis will continue to be on resolving cases at the earliest possible stage. Increased resources in the form of senior and experienced staff will be dedicated to assist earlier on in the complaints process;
- It is intended to establish best practice timeframes for resolution of complaints through the system; by inquiry, conciliation and review;
- New systems and procedures are to be established to deal with legislative changes affecting the Tribunal for example, as a result of amendments to the *Family Law Act 1975* and superannuation and matters arising from the *Financial Services Reform Bill 2001*;
- The Tribunal expects to have the power to compulsorily require parties to attend conciliation. An ongoing process of evaluation and review of our conciliation program will commence next year;
- Development of guidelines to assist parties to understand existing and new powers and procedures of the Tribunal;
- Using the new CMS, clearer reporting to ASIC and through proposed legislative amendment, to APRA, on systemic and recurring problem issues in the superannuation industry;
- Closer links with APRA, ASIC and industry bodies with a view to assisting in prevention of systemic and recurring problems;
- Greater emphasis on a public awareness program to promote the Tribunal to the consumers;
- Continuation of professional development activities for the superannuation industry;
- A review of the Tribunal's current telephone system has been undertaken and developments are underway for its replacement with a more responsive integrated system to ensure all contacts by telephone are dealt with;
- Continuation of communication program for Part-time Members;

- Restructure of staff to ensure appropriate levels of skill and expertise at all stages of the complaints process;
- Maintenance of professional development program for new and existing staff.

A highlight of the professional development program for staff was the conciliation training provided over a 2 day period by external trainers. As a result, some staff have now attained training to a specialist accreditation level.

## Corporate Strategies

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

### Senior Management

<b>Liaison</b>	<p><b>Industry:</b> Ongoing liaison by the Chairperson and senior managers with industry to promote conciliation, and with the Consultative Committee consisting of Trustee, Insurer and Consumer representatives which provides useful feedback to the Tribunal on its operations.</p> <p><b>Government:</b> Ongoing liaison by the Chairperson with the Minister to keep him apprised of the progress of the Tribunal's functions. Ongoing liaison with the Financial Markets Division of Treasury.</p> <p><b>ASIC:</b> Continued liaison, principally by the Chairperson and the Director, with ASIC in relation to matters that fall under the MOU and the SLA.</p>
<b>MOU &amp; Related Documents</b>	Observance of the MOU and the continuing development and implementation of the underlying Operational Procedures and SLA by the Director.
<b>Information to Staff</b>	Exchange of information with staff to keep them apprised of developments in respect of the Tribunal's functions and future. Review of communication mechanisms in consultation with staff.
<b>Learning and Development</b>	<p>Management recognises the potential benefits for staff and the Tribunal of the Performance Management Program and is committed to its successful implementation and will ensure that adequate time and resources are provided for the training of managers and staff.</p> <p>Senior managers will also seek to ensure that appropriate learning and development opportunities are available to staff and to integrate this with the Performance Management Program.</p>
<b>Structure and Procedure</b>	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.

<b>Public Education</b>	<p>Management is committed to a public education initiative to achieve its long-term objective of ensuring that the Tribunal's role is better understood, accepted and appreciated by all stakeholders.</p> <p>Management is also committed to improving access to the Tribunal in accordance with the Government's access and equity strategy by extending its public education program.</p>
<b>Information Technology</b>	<p>A new Case Management System (CMS) was designed with technical assistance and support from ASIC. The new system was implemented in January 2001 and although it is yet to be finalised, immediate efficiencies in the case management process are noted. The Tribunal's website provides information and facilitates the electronic lodgement of complaints.</p>
<b>Budget and Administration</b>	<p>The Tribunal is required to adhere to ASIC budget policy which reflects the Government's expectations on service delivery and costs. To this end, management will continue monitoring and responding to changes relative to the immediate financial effect on the current and future budgets. Budget and administration will be dealt with through the Chairperson and management group with briefing through the Assistant Director and Administration Supervisor.</p>
<b>Public Relations</b>	<p>Management will establish appropriate links with the media and with ASIC to facilitate the Tribunal's participation in public debate. This is to ensure that accurate information is made available to the industry and the public. The Public Education and Media Liaison Officer will assist with this task.</p>

### Policy / Legal

<b>General</b>	<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 its statutory role.</p>
<b>Legislation</b>	<p>To support effective liaison with the Minister's Office, the Investor Protection Unit of the Financial Markets Division of Treasury and ASIC with respect to any relevant proposed legislation.</p> <p>To monitor all new legislation with implications for the Tribunal and to make appropriate policy responses</p> <p>To advise the Tribunal on the interpretation of existing legislation relevant to matters before the Tribunal or issues of Tribunal administration.</p>
<b>Casework</b>	<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 and the Tribunal's procedures.</p>
<b>Litigation</b>	<p>To support any litigation in which the Tribunal is a party in line with the principle in <i>The Queen v ABT; Ex parte Hardiman</i> (1980) 144 CLR 13.</p> <p>To comply with court requests for documentation in accordance with the SRC Act and to keep a watching brief on all court cases with relevance to the Tribunal and interpret the significance of outcomes for Tribunal policy.</p>

<b>Annual Report</b>	The Director will ensure that the operations and functions of the Tribunal are appropriately monitored and statistically recorded in a consistent manner from year to year to facilitate the accurate compiling of the Annual Report.
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### Team Leaders

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

## Program Strategies

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

### Strategies For Review

<b>Part-Time Members</b>	<p>The <i>Financial Sector Legislation Amendment Act (No.1) 2000</i> (Cwlth) commenced operation on 18 January 2001. Schedule 4 amended s.7 of the SRC Act to remove the upper limit of 10 members. As a consequence, the cap of 10 Part-Time Members was removed and the Minister, The Hon. Joe Hockey, has appointed 6 new Part-Time Members.</p> <p>Apart from the larger pool of Part-time Members available to share the workload, delays and difficulties in listing cases for Review due to conflict of interest issues among Part-time Members will be markedly reduced.</p>
<b>Review Support Team</b>	The Tribunal reviewed the operation of the Review Support team and committed further resources to the team to enable it to meet the new target of ten review meetings per week.

## Strategies For Inquiry And Conciliation

<p><b>Case Allocation</b></p>	<p>The Tribunal's two stage case allocation system continues to operate very effectively. After an initial check that the Tribunal can deal with the complaint, cases are allocated to an officer to issue the s.17 notices required to collect information from the parties.</p> <p>When this information is received, the Tribunal again confirms its ability to deal with the complaint and the case is placed in a queue to await allocation to a more senior case officer who undertakes the inquiry into the complaint and prepares a Complaint Report.</p> <p>This procedure has continued to operate very effectively and so has been retained by the Tribunal with minor improvements and streamlining.</p>
<p><b>Delegations and Complaint-Handling Procedures</b></p>	<p>The Tribunal continues to review complaints handling procedures and delegations to identify areas of greater efficiency and avoid unnecessary 'double-handling'.</p>
<p><b>Reducing Inconsistency</b></p>	<p>The Tribunal will continue to develop strategies to identify inconsistencies between the senior staff in the reviewing of Complaint Reports.</p>
<p><b>Staffing</b></p>	<p>Prior to the High Court's decision in <i>Breckler's</i> case, the uncertainty of the Tribunal's future necessitated the replacement of exiting permanent staff with short-term contract staff as an interim measure. Now that a favourable decision has been handed down, this problem has been largely addressed by the recruitment of permanent, rather than temporary, staff.</p> <p>The 'team model' restructuring undertaken by the Tribunal in the 1996-97 reporting year continues to perform well and will be retained.</p>

## Strategies For Budget And Administration

<p><b>Staff</b></p>	<p>Staff in Administration provide support to the Tribunal's core functions of complaint resolution.</p>
<p><b>Administration</b></p>	<p><b>Financial system processing:</b> The Tribunal works within ASIC's financial processing system, fully embracing accrual accounting practices.</p> <p><b>Records Management:</b> This year the Tribunal completed its first archiving exercise and relocated many records to secondary storage.</p> <p><b>Business Continuity Plan:</b> The Administration Unit is responsible for the ongoing monitoring and updating of the Business Continuity Plan.</p> <p><b>Disaster Plan:</b> The Tribunal cooperates with ASIC in all aspects of operational and/or financial risk identification and management.</p>

<b>Budget</b>	<p><b>Purchasing:</b> The Tribunal undertakes its purchasing responsibilities in accordance with Commonwealth Government Procurement Guidelines and ASIC purchasing procedures. This reporting year, the Tribunal's purchasing expenditure was in line with annual budget projections.</p> <p><b>Assets Management:</b> The Tribunal possesses a number of assets valued in excess of \$2,000, together with portable and attractive assets. While the Tribunal maintains its own assets records, formal responsibility for managing assets rest with the Victorian Regional Office of ASIC.</p> <p><b>Consultants and Competitive Tendering and Contracting:</b> The Tribunal let one consultancy contract during the reporting year to review the Tribunal's communications operations, valued at \$2,000.</p>
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## General Strategies

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

### Staff

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

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

### Workplace Diversity

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

In furtherance of this program, the Tribunal has adopted ‘family friendly’ work practices and flexible work arrangements for staff; promoted and maintained a harassment-free workplace; developed recruitment and promotion practices that support workplace diversity; and provided training opportunities to staff in related areas—see Appendix 8. Table 9 below sets out the number of Tribunal staff in the various target groups as at 30 June 2001.

**Table 12: Superannuation Complaints Tribunal—Workplace Diversity Target Groups (as at 30 June 2001)**

	Total Staff	Target Groups				Women
		NESB1	NESB2	ATSI	PWD	
EO	4	0	0	0	0	3
ASICO	29	1	7	0	0	17
<b>Total</b>	<b>33</b>	<b>1</b>	<b>7</b>	<b>-</b>	<b>-</b>	<b>20</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 two trained First Aid Officers. No compensation claims were made this year. There were four incidents of work-related injuries.

## Freedom Of Information

The Tribunal is subject to the operation of the FOI Act and has two authorised FOI Officers. This reporting year the Tribunal processed and finalised two FOI applications. The Tribunal granted access in full in both cases.

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

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

## Privacy

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

## Environmental Awareness

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

## Social Justice And Access & Equity

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

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

### Case Officers—Inquiry & Conciliation



<b>ADR</b>	Alternative Dispute Resolution
<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>LEADR</b>	Lawyers Engaged (in) Alternative Dispute Resolution
<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>	<i>Service Level Agreement</i>
<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 Services
<b>TPD</b>	Total and Permanent Disability
<b>Tribunal, the</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 Departmental Annual Reports*—June 2001, but has had regard to them in so far as is it relevant and reasonable. The Tribunal is not required to comply with either the *Commonwealth Authorities and Companies Orders for Report of Operations*—August 1998; or with the *Financial Management & Accountability Act 1997* (Cwth).

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# Appendix 1

## Tribunal Organisation Chart

(as at 30 June 2001)

Classification	Ongoing				Non-Ongoing				Total
	Full-Time		Part-Time		Full-Time		Part-Time		
	F	M	F	M	F	M	F	M	
Chairperson		1							1
D/Chairperson	1								1
Exec 2	1								1
Exec 1 (Legal)	1								1
Exec 1	1	1							2
ASIC 4		3	1		1				5
ASIC 3	5	4			2				11
ASIC 2	2	2			4		2		10
ASIC 1								1	1
<b>TOTAL</b>	<b>11</b>	<b>11</b>	<b>1</b>		<b>7</b>		<b>2</b>	<b>1</b>	<b>33</b>

# Appendix 2

## Delegations

**Sub-Section 59(1) Superannuation (Resolution Of Complaints) Act 1993  
(as at 30 June 2001)**

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

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

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

Key: E2 Director (Executive 2)  
EL1 Senior Lawyer (Executive 1 (Legal))  
E1 Assistant Director (Executive 1)  
ASIC4 Senior Inquiries & Conciliation Officer  
ASIC3 Inquiries & Conciliation Officer  
ASIC2 Inquiries & Conciliation Officer

Graham McDonald  
Chairperson  
March 2000

## Appendix 3

### 2000–2001 Complaint Resolution Outcomes

(As at 30 June 2001)

Fund Type	Tribunal Unable to Deal With		Withdrawn by Tribunal				Withdrawn by Complainant				Review					Total
	Non-Compliance with s.19	Outside Jur'n	s.22(f)	s.22(3)(a)(b) [see note 1]	s.22(3)(c)(d)(e) [see note 2]	Resolution Without Conference	Resolution With Conference	Without Resolution	Decision Affirmed	Remit to Trustee	Decision Varied	Decision Set Aside	No Jur'n			
Retail	166	221	34	43	5	98	46	25	48	4	0	30	0	720		
Employer	59	85	12	18	5	44	33	7	44	2	6	35	0	350		
Industry	64	135	15	15	3	52	42	7	42	3	2	51	1	432		
Public Sector	16	67	3	5	0	16	1	3	19	2	0	12	0	144		
Other	61	112	5	3	1	5	2	4	0	0	0	0	0	193		
<b>Total</b>	<b>366</b>	<b>620</b>	<b>69</b>	<b>84</b>	<b>14</b>	<b>215</b>	<b>124</b>	<b>46</b>	<b>153</b>	<b>11</b>	<b>8</b>	<b>128</b>	<b>1</b>	<b>1,839</b>		

**Notes:**

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

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

# Appendix 4

## Chairperson's Procedural Rules & Guidelines

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

#### 1. The Constitution Of The Tribunal For A Review Meeting

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

Typical classes of such complaints would be:

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

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

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

Typical classes of such complaints would be:

- Total and Permanent Disability Benefit disputes where there was only limited and/or relatively consensual medical and work-capacity reports;
- death benefit allocation disputes without excessive complexity or large

- sums involved;
- a complaint where legal and actuarial skills were required in a dispute about the calculation of a significant benefit.

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

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

Typical classes of such complaints would be:

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

## **2. Commencement, Adjournment And Conclusion Of Review Meetings**

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

## **3. Exchange Of Papers Between The Parties**

- (1) All material submitted by the parties in relation to the complaint shall, otherwise than in exceptional circumstances, be exchanged with all the other parties, insofar as is required to ensure that procedural fairness is observed.
- (2) All such exchanges are considered to be 'for the purposes of [the] Act' under s.63(2). The Tribunal Chairperson or Deputy Chairperson may also, under s.38(3), exercise discretion in giving directions prohibiting or restricting the disclosure of documents or information relating to a Review Meeting.
- (3) The Tribunal shall not, other than in exceptional circumstances, consider

material that is not so exchanged.

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

#### **4. Oral Submissions**

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

#### **5. Duties Of The Tribunal For Review**

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

pro-formas may include standard sub-headings which may assist both Members and staff undertaking word processing. The pro-formas will *not* include standard form paragraphs because each Tribunal must turn its mind to the particular requirements and circumstances of each individual complaint in the context of the relevant law(s).

- (5) The Determination and Reasons must be worded in such a way that, after substituting an alternative cover page, the document may be made available to the public without enabling the identification of the parties. This is to conform with the secrecy provisions under s.63 of the Act.

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

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

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

Thus, any statement of reasons must contain three components:

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

## **6. Duties Of The Presiding Member**

- (1) The Presiding Member shall ensure that the views of all Members are heard and considered at the Review Meeting(s), and that all reasonable steps are taken to achieve agreement to the Determination and Reasons.
- (2) The Presiding Member shall ensure that requirements of the Tribunal in properly exercising its inquisitorial role under s.36(c) of the Act are executed quickly, fairly, informally and economically.
- (3) The Presiding Member shall exercise the power to adjourn Review Meetings under s. 42 and to re-convene them.
- (4) The Presiding Member shall seek to ensure that the gap between the notified or re-convened Review Meeting date, (whichever is the later), and the signing of the Determination and Reasons is no longer than 4 weeks.

## 7. Where The Determination Is Not Unanimous

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

Graham McDonald  
Chairperson  
30 June 2001

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

# Appendix 5

## Freedom Of Information Statement

This statement is published to meet the requirements of section 8 of the *Freedom of Information Act 1982* (Cwlth)(the FOI Act). It is correct as at 30 June 2001.

### Establishment

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

### Functions

The functions of the Tribunal are:

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

### Powers

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

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

- vary the governing rules of the fund as they apply to the complainant.

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

## Categories Of Documents Held By The Tribunal

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

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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.

- **Papers** given by the Tribunal Chairperson, Deputy Chairperson and other members of the Tribunal staff are available for purchase from the Tribunal. (See the 2000–2001 list of available papers in Appendix 7.)

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

## How To Make An FOI Request To The Tribunal

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

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

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

# Appendix 6

## Memorandum Of Understanding SCT & ASIC

### 1. Objective

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

### 2. Responsibilities

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

### 3. Mutual Assistance

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

### 4. Information Sharing

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

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

## **5. Referrals to ASIC**

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

## **6. Requests by ASIC**

- 6.1 ASIC may request information or production of a document under subsection 63(3) of the SRC Act. The request:
- a) will be made in a written form and in accordance with such operational procedures as may be agreed from time to time between ASIC and the SCT; and
  - b) will be signed either by:
    - i) the National Director, Regulation, or
    - ii) the Program Manager, Corporate Finance and Managed Funds, or
    - iii) such other person as may be advised in writing by the Program Manager, Corporate Finance and Managed Funds or by the National Director, Regulation.
- 6.2 Any requests by ASIC under subsection 63(3) of the SRC Act will be kept confidential by the SCT, subject to any relevant law.
- 6.3 ASIC acknowledges that information and documents provided by the SCT under section 63 of the SRC Act will be subject to the provisions of section 127 of the ASIC Act 1989.

## **7. Referrals to the SCT**

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

## **8. Confidentiality**

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

## **9. Liaison Between the Parties**

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

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

**10. Staff and Facilities**

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

**11. Disputes**

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

**12. Review of the MOU**

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

**13. Termination**

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

Dated 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 & Presentations

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

Foley, C	'Legal Issues in TPD, Forum Discussion Paper, Sydney, 10 & 11 July 2000, Melbourne, 13 July 2000.
Foley, C	'Superannuation Complaints Tribunal: Some Practical Issues', Super Brief, Ernst & Young, Melbourne, 15 May 2001
McDonald, G	'The Superannuation Complaints Tribunal – Post The High Court Decision in <i>Breckler</i> ', Address to Association of Superannuation Funds of Australia luncheon, 19 July 2000.
McDonald, G	'Total and Permanent Disablement Claims', Q Super Board of Trustees Seminar, 20 September 2000.
McDonald, G	'Assessing Total and Permanent Disablement Claims', Australian Institute of Superannuation Trustees, Melbourne, 19 October 2000.
McDonald, G	'Do We Need an Umpire?', Association of Superannuation Funds of Australia Conference, 8-10 November 2000.
McDonald, G	'Assessing Total and Permanent Disablement Claims', Australian Institute of Superannuation Trustees, Sydney, 16 November 2000.
McDonald, G	'Assessing Total and Permanent Disablement Claims', Australian Institute of Superannuation Trustees, Melbourne, 7 December 2000.
McDonald, G	'Functions of the Superannuation Complaints Tribunal ', Finlaysons, Lawyers, Adelaide, 7 March 2001.
McDonald, G	'Jurisdictional Questions for the Superannuation Complaints Tribunal', Law Council of Australian Superannuation Lawyers Conference, Queensland, 21-24 March 2001.

McDonald, G

'Functions of the Superannuation Complaints Tribunal, Total and Permanent Disablement & Death Benefits, Post Traumatic Stress Disorder – Veterans', Jacques Martin Industry Funds Australia Compliance Seminar, 10 May 2001.

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## 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 21 1 July 2000–30 September 2000
- Issue No 22 1 October 2000–31 December 2000
- Issue No 23 1 January 2001–31 March 2001
- Issue No 24 1 April 2001–30 June 2001

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### Superannuation Complaints Tribunal—How it can help you

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(Memorandum: updated insert—June 2000)

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### How to resolve a complaint about your superannuation

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(Brochure: updated—March 2000)

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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;*
- *Conciliation Conference Guide for Trustees & Insurers.*
- *Information about Review Meetings* (updated March 2000);

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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.*

## Contact

Mr Frank Stasiak  
Public Education & Media Liaison  
Telephone: (03) 9248 5164  
Facsimile: (03) 9248 5170

# Appendix 8

## Staff Training

<b>Training</b>	<b>Provider</b>	<b>Staff</b>
Family Lawyers Guide to Superannuation	Leo Cussen Institute	2
Leadership in Retirement Services	ASFA	2
Customer Service & Telephone Techniques	SCT-P McLaughlin	All Staff
Computer Training	University of Melbourne	1
Is the Trustee an Endangered Species?	ASFA	3
Pensions & Annuities	SCT-Juliet Brianton	All Inquiry Staff
Certificate in Superannuation Management	ASFA	1
The SCT Post High Court Decision	ASFA	4
ASFA 2000 Conference	ASFA	4
IFSA	IFSA	1
Implications of Privacy as an Issue for Business	ASFA	3
CMS Training	ASIC	All Staff
Conciliation Workshop	J David & Associates	Inquiry/Senior Staff
Mediation Certification	Institute of Arbitrators and Mediators	3
Jurisdiction, Standing, Powers & Grounds	SCT-Carol Foley	Inquiry/Senior Staff
JMIFA & Administration	JMIFA	Inquiry/Senior Staff
Occupational Health and Safety	CPSU	1
How to Read a Benefit Statement	SCT-Phillip McGrath	Inquiry/Senior Staff
NADRAC	SCT-Patrick O'Dwyer	All Staff
Allocated Pensions	ASFA	3
Fire Warden Training	ASIC	2
Excel	ASIC	2
Arbitration	Institute of Arbitrators and Mediators	1
Coaching & Team Building Skills	Skillpath	1
Federal Court Practice	Leo Cussen Institute	3
Inside the Financial Services Market	ASIC / DISC	5
Developments in Supervision	ASFA	2
Conveyancing – Articled Clerkship	Leo Cussen Institute	2
Costing – Articled Clerkship	Leo Cussen Institute	1
Emergency Procedures	SCT-Todd Riley	All Staff
Federal Court Practices	Leo Cussen Institute	1
Joinders	SCT-Margaret McDonald	Inquiry/Senior Staff
Role & Powers of APRA	APRA	All Staff
Guardianship & Power of Attorney	LAAMS	1
Probate & Letters of Administration	SCT-Philip Laird	Inquiry/Senior Staff
Powerpoint	ASIC	1
Components of a Trust Deed	SCT-Nicole Cullen	Inquiry/Senior Staff
<hr/>		
<b>Formal Studies</b>	<b>Provider</b>	<b>Staff</b>
Staff undertaking part-time studies at tertiary institutions	Various	2

# Appendix 9

## Financial Statement

### Financial And Staffing Resources Summary 2000–2001

The following is a summary of the direct cost of the Superannuation Complaints Tribunal for 2000–2001. These figures are derived from the audited statements of the Australian Securities and Investments Commission.

	(2000–2001) \$(000)
<hr/>	
<b>ACCRUAL BASIS</b>	
<b>Components of Expenditure</b>	
Employee expenses	1,709.8
Suppliers expenses	571.9
Net Cost	2,281.7
<b>TOTAL ASSETS</b>	135.4
<b>TOTAL LIABILITIES</b>	336.7
<hr/>	
<b>STAFFING</b>	
Average Staffing	29.8
<hr/>	
<b>MEMBERS FEES</b>	410.1
<hr/>	

# Appendix 10

## Service Charter

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

### **Our objective**

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

To achieve this objective we will:

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

### **The Tribunal's role**

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

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

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

### **Our undertaking to you**

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

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

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

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

### **What you can expect from us**

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

### **What you can do to help us**

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

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

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

### **Suggestions or complaints about our service**

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

The Chairperson  
Superannuation Complaints Tribunal  
Locked Bag 3060  
GPO Melbourne VIC 3001  
Facsimile: (03) 9248 5170

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

# Appendix 11

## Tribunal Location & General Information

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### Location:

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

**Telephone:** Enquiries and Complaints **1300 844 114** (toll free)  
Administration (03) 9248 5150

**Fax:** (03) 9248 5170

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

**Telephone:** (03) 9248 5164

**Facsimile:** (03) 9248 5170

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### Access To Review Determinations:

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An annual listing and the full text of determinations/arbitration awards (from 1995+) are electronically available free of charge at <http://scaleplus.law.gov.au> (Attorney-General's Department website)—keyword: sctdec. 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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