



**Superannuation  
Complaints**  

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**Tribunal**

**Annual Report**  
2003–2004

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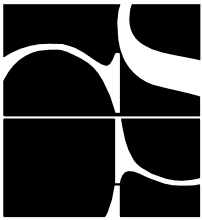
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Tribunal

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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 tenth Annual Report of the Superannuation Complaints Tribunal for the year ended 30 June 2004, 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

23 September 2004

## Highlights of 2003–2004

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### **Volume down, complexity up**

While the volume of written complaints lodged in the 2003-04 year has decreased, the drop is more than offset by a steady increase in complexity of the matters requiring investigation and determination.

### **Tribunal can now require attendance at conciliation conferences.**

Schedule 7 of *The Financial Sector Legislation Amendment Act (No.1) 2003 (Cwlth)*, assented to on 27 November 2003, amended the SRC Act, *inter alia* so as to increase the time limit applying to disability benefit complaints from one to two years. It also strengthened, modernised and improved the conciliation powers of the Tribunal by enabling it to require attendance at conciliation conferences.

### **Determination Summary Service**

The Tribunal is providing funding for one year to enable it to provide a limited Determination summary service. The service provides summaries of all Tribunal Determinations that are considered to raise new issues or issues of particular interest or relevance, or which indicate trends in Tribunal decision-making. It has a menu based search facility which allows broad searches according to the general 'subject' or more specific searches according to particular 'catchwords'.

### **New Members**

The Tribunal welcomes the appointments of Ms Janet Martin, Mr John Bingeman QC, Mr Bill Hassell AM and Mr David Clyne as new members.

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# Introduction

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The focus of this reporting year, in terms of corporate initiatives and outputs, continued to be on the management of written complaints.

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

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

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

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

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

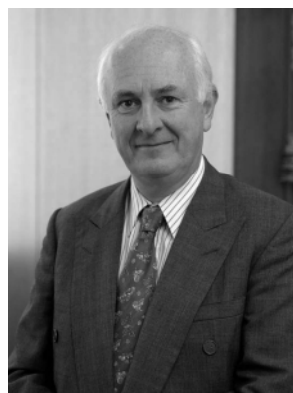
The Tribunal's **Financial Statement** was prepared by ASIC—see Appendix 9.

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

## Chairperson's Review

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The work of the Tribunal has progressed steadily over the past year with the Tribunal further consolidating its operations. As the contents of the Report show, the volume of written complaints lodged in 2003-04 year has dropped. However, the drop in volume is more than offset by a steady increase in complexity of the matters requiring investigation and determination. One example of this was the need to determine a complaint which challenged the duties of a trustee in the calculation of the superannuation surcharge as the result of the introduction of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999*. The increasing



volume and detail of legislation applied in the superannuation arena will see complexity as an ongoing feature of complaint resolution.

The Tribunal welcomes the appointments of Ms Janet Martin, Mr John Bingeman QC, Mr Bill Hassell AM and Mr David Clyne as new members. There will be a need to consider the appointment of a further medical member, given the high number of total and permanent disability cases requiring determinations.

Last year I reported the Tribunal's long-term Director, Ms Margaret McDonald, was to retire. Fortunately, for the Tribunal, after taking a pre-retirement period on long service leave, Margaret decided to return for at least a further two years. We are obliged to Margaret for her co-operation in remaining with the Tribunal. I would like to acknowledge the dedicated work of Mr Phillip McGrath, who occupied the position of Director during Margaret's long service leave.

The upgrade of the Complaint Management System referred to in last year's report has been partially completed with further refinement under way. The Tribunal has introduced a complaint summary service on its website which, along with an easily operated search facility, should enable better industry and consumer access to SCT decisions.

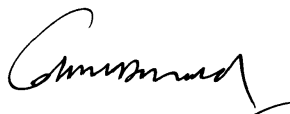
Several proposals for the amendment to improve the operation of the *Superannuation (Resolution of Complaints) Act 1993* are before government. Another area in which amendment needs serious consideration is for the introduction of a requirement that trustees give written reasons to members when declining the payment of a benefit. The current law contains no such requirement and was developed at a time when payment of benefits arose as the result of a non-compulsory, non-contributory benefice bestowed by an employer or other third party. The nature of compulsory contributory

superannuation gives rise to entirely different considerations. Most members would be surprised to learn that trustees are not required to provide a brief summary of the matters considered relevant when their claim is rejected, if for no other reason that it precludes them from properly addressing relevant points at the review process – whether internal (i.e. under the provisions of s.101 of the *Superannuation Industry (Supervision) Act 1993*) or externally (to the SCT or other complaints resolution body). While many trustees sensibly voluntarily provide reasons, there are a number who continue not to do so. It is these trustees that may need some legislative encouragement.

In the longer term, as I have reported in the Quarterly Bulletin through the year, the position of the Tribunal, vis-à-vis other alternative dispute resolution schemes covering the financial services area, needs some consideration. The fact, for instance, that the Banking and Financial Services Ombudsman (BFSO) is able to look at disputes arising in all bank subsidiaries and given the growth of integration of financial services through bank takeovers, this may ultimately result in superannuation complaints being determined either by the Tribunal or by the BFSO. Differing procedures and differing criteria for the resolution of complaints would then apply. That inevitably will lead to confusion for both industry and complainants as to which of the schemes are to be used. Additionally, the Financial Industry Complaints Scheme has jurisdiction to determine life insurance claims, including where related to superannuation. The fact that three schemes may be open to a complainant for resolution of his/her complaint is clearly unsatisfactory. Aside from considerations relating to confusion for complainants, it must be borne in mind that one way or the other the industry and, through it, the members of superannuation funds, pay for each of the three services offered. There would clearly be some advantages and savings from instigation of a single operating scheme. Such a scheme was established in the UK following amendment to the Financial Services Act in 2000 when several industry schemes were integrated into one scheme.

The first steps in that direction are being taken. The Tribunal will join BFSO and FICS in having the one toll-free entry point for consumers and proposes in 2004/5 to relocate to the same building occupied by those and other financial alternative dispute resolution schemes.

May I again express my appreciation to all of the Tribunal's hardworking staff and members whose efforts and dedication to ensuring the fair determination of disputes has been unflinching.



Graham McDonald  
Chairperson

September 2004



# 1 Overview

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## 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 provide mechanisms that are 'fair, economical, informal and quick' for the purposes of inquiring into, conciliating, and reviewing complaints.

The Tribunal's statutory functions are enumerated in section 12 of the SRC Act. Sub-sections 12(1)(a) & (b) of the SRC Act provide that the Tribunal is to inquire into a complaint and try to resolve it by conciliation. If conciliation is unsuccessful, the Tribunal must review the complaint. The Tribunal is also empowered under sub-section 12(1)(c) of the SRC Act to carry out any other functions conferred on it 'by or under any other Act.'

## Organisational Structure

The definition and the establishment sections of the SRC Act implicitly refer to the 'Tribunal' as constituted for review. However, pursuant to sub-section 59(1), the Tribunal's inquiry and conciliation functions are exercisable 'on behalf of the Tribunal' by the Chairperson, the Deputy Chairperson and/or by members of the 'staff' of the Tribunal who have been so authorised by the Chairperson.

Importantly, the Tribunal's review powers are reposed directly in the Tribunal as constituted for review and may not be delegated. Nor may the Tribunal Members, other than the Chairperson and the Deputy Chairperson, exercise any powers under the SRC Act other than the powers of review. Sub-section 59(2)(a) of the SRC Act lists certain specific powers which are exercisable only by the Chairperson; and, sub-sections 59(2)(b) and (c) list specific powers which are exercisable only by the Chairperson and/or the Deputy Chairperson.

### Tribunal Chairperson

**Mr Graham McDonald** is the Chairperson of the Tribunal and commenced a three year term of appointment on 14 March 2000. He acted in the position from 14 March 2003 until re-appointed, on 14 June 2003, for a further two years.

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. She then acted in the position until reappointed on 14 June 2003 for a further two years.

Ms Cullen brings to the Tribunal 15 years experience in commercial dispute resolution as a lawyer and mediator. She specialised in Commercial Litigation at Arthur Robinson & Hedderwicks (now Allens Arthur Robinson) and subsequently as a corporate lawyer for the Commonwealth Bank of Australia. She then managed the Financial Services Complaints Resolution Scheme (which merged with FICS in 2000). In addition to chairing review meetings, Ms Cullen is authorised to exercise the powers stipulated in section 59(1) of the SRC Act.



Ms Cullen provides assistance to the Chairperson in relation to a range of Tribunal matters, including achieving best practice standards at the review stage of the Tribunal's process. Ms Cullen is also involved in the Tribunal's public education program which aims to promote understanding of the Tribunal's role and debate about systemic issues identified by 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. 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.



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



## Review

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

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

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

## Profiles of the Tribunal Members

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

### **Mrs Jane Abbott**

(20 April 2001–12 November 2005)

Mrs Abbott has worked in corporate superannuation for over 20 years as an administrator, consultant and trustee. She provided advice to Trustee Boards on legislative, administrative and member issues. She has been involved with the Association of Superannuation Funds of Australia's education program for 13 years.

### **Ms Katy Adams**

(5 August 1997–3 April 2006)

Ms Adams is a lawyer who has, since 1989, worked in corporate, tax and superannuation related areas in both the United Kingdom and Australia. In the UK, she worked for Clifford Chance as a tax and pensions lawyer. She was a lecturer at the College of Law, where she taught tax, wills and probate, and business law. In Australia, she has worked in private practice, as in-house counsel for superannuation fund administrators and as a senior lawyer at the Australian Securities and Investments Commission.

### **Mr John Bingeman QC**

(4 November 2003–12 November 2005)

John Bingeman QC has been a Barrister at the Victorian Bar for over 35 years and has appeared as counsel in the County Court, Supreme Court, Court of Appeal and on a number of occasions on the High Court of Australia. He was a Judge of the Victorian Accident Compensation Tribunal from 1988-1992 and

has practiced in Insurance Law, Defamation Law, Law of Contempt and Personal Injuries. He was made Queens Counsel in 1995.

**Mr Graham Bird**

(6 March 2003–3 April 2006)

Mr Bird is an independent consultant with 35 years experience providing advice to employers in the areas of employee benefits and superannuation. He also advises the trustees of superannuation funds on a range of issues including member administration services and insurance. Mr Bird is active in the Association of Superannuation Funds of Australia and a member of the Australian Institute of Superannuation Trustees and Australian Institute of Risk Managers.

**Mr Ross Christie**

(1 December 1998–9 July 2004)

Mr Christie worked as a financial planner until December 2002 holding his Proper Authority from Industry Fund Services Pty Ltd. His previous experience has been as a trustee of Public Sector, Local Government and University superannuation schemes. Mr Christie is a former General Manager of the State Superannuation Office (SA), Chief Executive of the Local Government Superannuation Board (Vic), and Federal Councilor of the Association of Superannuation Funds of Australia.

**Mr David Clyne**

(4 November 2003–12 November 2005)

Mr Clyne is a Barrister with 32 years experience practising primarily in personal injury and insurance law. He has been a Commissioner of the District Court of Western Australia. He was for 13 years a member of the Legal Practice Board of Western Australia, including 6 years as Deputy Chairman.

**Mr Graeme Cumbrae-Stewart, OAM.**

(6 March 2003–3 April 2006)

Mr Cumbrae-Stewart retired in 2002 after a 44 year career within the superannuation environment of a major financial institution based in Melbourne. He spent the last 12 years of his career as General Manager and Director of its wholly owned Approved Public Offer Superannuation Fund Trustee Company. In that capacity, he was ultimately responsible for the management of its 11 staff and all aspects of its daily operations.

Prior to those appointments Mr Cumbrae-Stewart was employed by its Principal Company as head of its Superannuation Legal Support department (10 years), having earlier gained extensive experience as a superannuation fund administrator; claims assessor and as a senior Consultant to its major superannuation fund clients. He also brings to the Tribunal broad experience in superannuation fund legislative compliance.

**Dr Catherine Dean**

(20 April 2001–12 November 2005)

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

**Ms Ella de Rooy**

(6 March 2003–3 April 2006)

Ms de Rooy currently works through her own consultancy, providing technical, compliance and best practice advice and services to superannuation funds and industry organisations such as ASFA. Her superannuation experience of 15 years spans public sector, industry and corporate funds, and includes senior management roles in technical advice and business development as well as fund secretarial and trustee functions. She was previously a full-time member of the State Compensation Board (NSW - now WorkCover) and started her working life as an economist.

**Mr Colin Grenfell**

(4 April 2000–3 April 2006)

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

**Mr Bill Hassell, AM, JP, LL.B (Western Australia), MA (Reading, England).**

(4 November 2003–12 November 2005)

Bill Hassell runs with his wife an advisory consultancy, is a company director, an honorary consul, undertakes voluntary work with two charities, is a member of the Engineering and Manufacturing Committee of the Industry Research and Development Board, a fortnightly newspaper columnist and a part-time member of the Superannuation Complaints Tribunal. He is trustee of a self-managed superannuation fund.

He is a qualified lawyer with experience in company, commercial and property law, a former Member of Parliament and Minister of the Crown, a former Agent General representing Western Australia in Britain and Europe, and a former Director of the Government Employees Superannuation Board of Western Australia.

Mr Hassell's consultancy work over 12 years has involved him in activities for a wide range of major corporations, SMEs and industry bodies.

**Mr Damyon Lill**

(4 April 2000–3 April 2006)

Mr Lill is a partner at PriceWaterhouseCoopers Legal in Commercial & Finance specialising in Superannuation & Life Insurance. He works closely with the PWC's compliance practice. He also has extensive experience in litigation and general insurance. He regularly presents at industry functions and last year was invited to Oxford University to attend the Oxford Round Table where he presented a paper on Superannuation.

**Ms Janet Martin**

(4 November 2003–12 November 2005)

Mrs Janet Martin is a farmer and lawyer in country practice.

Until October 2003, she was Registrar of the Supreme Court of Western Australia for 12 years, where, among other things, she mediated over 400 civil actions and conducted civil case management hearings.

Previously, she spent 5 years lecturing at the Law School of the University of Western Australia in property, civil procedure, corporate governance and agency and was, at various times, the Sub-Dean and the Mooting co-coordinator. She has also taught trusts, constitutional law and legal research and writing.

In over 30 years in the legal profession, Mrs Martin has practised on her own account and held senior positions with the Legal Aid Commission and the Department of Corporate Affairs (WA).

She has a broad legal background with experience in criminal and civil law and has been a member of the Parole Board of Western Australia and the Social Security Appeals Tribunal.

**Ms Pamela McAlister**

(8 July 1997–9 July 2004)

Ms McAlister is a lawyer with specialist experience in superannuation and trust law. She is currently Director – Legal & Technical Operations at the Australian Securities & Investments Commission. For many years she 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 2001–12 November 2005)

Dr 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. Dr Olsberg was named Trustee of the Year for 2002 at the Conference of Major Superannuation Funds. She has been an employee elected Trustee of one of Australia's largest superannuation funds, Unisuper, for 10 years. She is Deputy Chair of Unisuper and chairs the Membership Committee of Unisuper. In 1996/97 she served as Executive Director of the Australian Institute of Superannuation Trustees.

**Mr Robert Putnam**

(1 December 1998–9 July 2004)

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 2006)

Dr Re is a medical practitioner who has worked in private general practice for over 17 years. She is a visiting medical officer at Albury Base Hospital. She is currently a part-time member of the Commonwealth Social Security Appeals Tribunal and works as a freelance medical writer. She was a part time member of the Federal Administrative Appeals Tribunal (1995-2001) and a member of the Victorian Casino and Gaming Authority (2001-2004).

**Miss E Anne Shanahan**

(20 April 2001–12 November 2005)

Miss 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 1997–9 July 2004)

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 1994–9 July 2004)

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



## Review Support

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



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 Dhammika Amukotuwa, in providing documents to the Federal Court of Australia in matters under litigation.

## Inquiry And Conciliation

The Inquiries and Conciliation Section is the largest section of the Tribunal. Sub-section 59(1) of the SRC Act provides that the Chairperson, Deputy Chairperson and any authorised member of the ‘staff’ of the Tribunal may exercise the various listed powers relating to the inquiry and conciliation functions—see Appendix 2. The Director heads the Inquiries and Conciliation Section supported by two Assistant Directors and by 20 Case Officers—see Appendix 1. The day to day work of the Case Officers is managed by Mr Frank Stasiak. 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 consensually resolve their differences under the aegis of an experienced conciliator. The conciliation process is the trigger, which, if unsuccessful, activates the review function of the Tribunal.

## Legal Adviser

Dharmika Amukotuwa joined the Tribunal from the Australian Securities and Investments Commission (ASIC) in February 2004. During her 12 years of service with ASIC, she was the principal lawyer involved in the development of the Good Advice policies, which formed the basis of some of the key regulatory requirements now applying to all financial service providers under the Financial Services Reform package.



She was also an ASIC delegate on the IOSCO Working Party 5, which is the specific group within the international organisation for securities regulators that specialises in harmonising the regulatory requirements applying to managed investments. Her areas of expertise include licensing of financial product and service providers, managed investments, financial product advice and disclosure. She developed her expertise and interest in the superannuation area during a 12 month secondment from ASIC to the legal team at Mercer in Melbourne in early 2000.

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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 the Tribunal, processes the initial receipt of complaints, and assists in the practical facilitation of the inquiry, conciliation and review functions.

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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 audio teleconferencing. Reviews are generally conducted solely 'on the papers'.

## Relationship With ASIC

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

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

## **Memorandum of Understanding**

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

## **Service Level Agreement**

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

## **Budget**

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

ASIC provides the Tribunal with budget allocations on an annual basis with a review mechanism in December of each year. See Appendix 9—Financial Statement, and Chapter 4.

## **Staff**

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 and/or the Australian Prudential Regulation Authority (APRA) with certain particulars in respect of complaints pursuant to sections 64, 64A, 65 and 31(2) of the SRC Act.

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

The Chairperson is required to report the contravention, or suspected contravention, of 'any law' or of 'the governing rules of a fund' to ASIC and / or APRA—sub-s.64(b) of the SRC Act. The Chairperson is likewise required to report the breach of any terms and conditions relating to an annuity policy, a life policy or an RSA—sub-s.64A(b) of the SRC Act. This reporting year, one matter was referred to APRA under sub-s.64(b)(i) and one matter was

referred to ASIC under sub-s.64(b)(ii); no matters were referred under sub-s.64A.

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

On becoming aware that a party to a complaint has refused or failed to give effect to a determination made by the Tribunal, the Chairperson must give particulars to ASIC and/or APRA under sub-s.65(1)(b) of the SRC Act. There were no breaches this reporting year.

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

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

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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 superannuation funds excluding self-managed funds. APRA is also responsible for collecting an annual levy on superannuation entities under the *Superannuation (Excluded Funds) Taxation Act 1987* (Cwlth). This levy is paid into Consolidated Revenue and the operating cost of the Tribunal is appropriated by Parliament as part of the ASIC appropriations as described above.

### **Referral of Complaints**

As mentioned above, one matter was referred to APRA under sub-s.64(b)(i) this reporting year.

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### **The Responsible Minister**

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

The Tribunal's Portfolio Minister is the Treasurer, the Hon. Peter Costello MP. The Treasurer can allocate Ministerial responsibility for the Tribunal to the

Parliamentary Secretary to the Treasurer, the Hon. Ross Cameron MP, or to the Minister for Revenue and Assistant Treasurer. The Tribunal's enabling Act, the SRC Act, is administered by the Department of the Treasury.

## 2 Jurisdiction and Powers

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### New Legislation

The *Superannuation (Resolution of Complaints) Act 1993* (the SRC Act) has been amended in the year ending 30 June 2004 by the following statutes.

The *Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003 (Cwlth)*, which was assented to on 12 November 2003. This enables a person to make a complaint to the Tribunal if the person is dissatisfied with a statement given to the Commissioner of Taxation regarding Government Co-contributions in respect of that person.

The *Financial Sector Legislation Amendment Act (No.1) 2003 (Cwlth)*, ('FSLAA') which was assented to on 27 November 2003. Schedule 7 of FSLAA amended the SRC Act so as to:

- increase the time limit applying to disability benefit complaints from one to two years;
- strengthen, modernise and improve the conciliation powers of the Tribunal by enabling it to require attendance at conciliation conferences instead of the current voluntary system. The Tribunal will also be required to issue guidelines indicating the kinds of circumstances in which it would ordinarily require persons to attend conciliation conferences;
- enable part-time appointments to be made in relation to the offices of Chairperson and Deputy Chairperson;
- remove all references to the Tribunal's now defunct arbitration function; and
- implement minor technical amendments which will have the effect of streamlining the SRC Act.

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

### New Executive Action

#### Regulations

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

## Jurisdictional Limits

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

- complaints where the complainant has not first lodged a complaint with the fund / RSA provider via its internal complaints resolution arrangements under s.101 of SIS or s.47 of the Retirement Savings Accounts Act 1997 (Cwlth) (the RSA Act) (as relevant) before coming to the Tribunal—section 19 SRC Act;
- exempt public sector superannuation scheme (EPSSS) complaints which are not deemed to be 'regulated' by section 4A of the SRC Act, or prior to being so deemed;
- total and permanent disability complaints which do not comply with the requirements of sub-sections 14(6A)–(6D), 15F(5)–(8) or 15J(5)–(8) of the SRC Act;
- 'management of the fund as a whole' complaints—sub-sections 14(6), 15F(4) or 15J(4) of the SRC Act;
- complaints about decisions of trustees of 'regulated' superannuation funds and 'approved' deposit funds made before the fund was regulated. See the judgment of Merkel J in *Briffa & Ors v. Hay* (1997) 147 ALR 226;
- 'excluded complaints' and complaints concerning 'excluded subject-matter' as declared in the SRC Regulations. Nil so declared as at 30 June 2004;
- '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; and
- complaints where the statutory standing requirements have not been met by the complainant(s).

### Largest Categories of Written Complaints Outside Jurisdiction

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

This year, 52% of all such written complaints fell into this category, down from 54% last reporting year. Once again, this indicates that there is still much educative work to be done in this area to apprise members of the statutory requirements.

Again this reporting year, the second largest category of written complaints outside jurisdiction was 'management of the fund as a whole' at 12% (down from 16% in 2002-2003),

## **Powers**

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

### **Exit Fee**

In *Rhodes v Tower Superannuation Fund* [2004] FCA 510, the Federal Court held that the Tribunal did not have jurisdiction to review the trustee's decision in respect of the deduction of an exit fee. This was because the trustee did not exercise any discretion in deducting the early exit fee, as that fee was a charge imposed under the term of the insurance policy entered into between the trustee and the insurer. The Tribunal, under s37(5) of the SRC Act, could not correct any unfairness or unreasonableness, where it involved acting contrary to law, governing rules of the fund or, if there is a contract of insurance between the trustee and an insurer, to the terms of that contract.

### **Actuaries**

The Federal Court decisions of *Boeing Superannuation Pty Ltd v Glanville* [2004] FCA 623, *Boeing Superannuation Pty Ltd v Frame* [2004] FCA 623 and *Boeing Superannuation Pty Ltd v Weiss* [2004] FCA 623 raised identical issues involving the same trustee.

In these matters, the Tribunal determined that the trustee's decision, taken on the advice of the Actuary, to exclude the "surplus" in calculating the complainants' resignation benefits (due to a reorganisation of the employer) in the defined benefit plan was not fair and reasonable as it did not accord with the relevant provisions of the trust deed. In line with the above finding, the Tribunal directed the actuary to re-calculate the complainants' resignation benefit taking into account the actuarial surplus and directed the trustee to remit to the complainants the benefit so calculated, along with interest at the crediting rate of the fund.

Boeing appealed against this determination. Apart from elements of the decision that were particular to the terms of the relevant trust deed, it is of note that the Federal Court held that the Tribunal exceeded its jurisdiction by joining the Actuary as a party to the complaints, as s.18(1)(a) - (e) of the SRC Act, which specifies the persons who may be joined as a party to a s14 complaint, does not include an actuary.



However, the Federal Court did not agree that the Tribunal did not have the jurisdiction to review the Actuary's calculation of the benefit, as the Trustee itself was bound by the Actuary's calculation. The Federal Court noted that, although the Trustee acted on advice given by the Actuary in calculating the benefit, it was still a decision of the Trustee, and hence reviewable by the Tribunal.

## **Internal Scrutiny**

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

## **External Scrutiny**

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

### **Parliament**

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

### **Parliamentary Committees**

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

### **Courts**

The jurisdiction, powers and operations of the Tribunal are open to judicial scrutiny via statutory appeal and judicial review. Specifically, the Tribunal is subject to judicial scrutiny by the Federal Court of Australia pursuant to sections 39 and 46 of the SRC Act. This reporting year 10 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 4 applications have been made to the Federal Court for judicial review pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) (AD(JR) Act) and s.39B *Judiciary Act 1903* (Cwlth).

## **Section 46 Federal Court Appeals Lodged 2003–2004**

- *QIESS Pty Ltd v Maw* (No V512 of 2003);
- *Merlino v Commonwealth Superannuation Scheme* (No N508 of 2003)
- *Military Superannuation Benefits Board No 1 v Batt* (No V574 of 2003)
- *Employees First v Tolhurst Capital Ltd and Barratt* (No N957 of 2003)
- *The National Mutual Life Association of Australia Ltd v Esposito* (No V872 of 2003)
- *Noel v Cook* (No N1501 of 2003)
- *Kumar v SCT* (V326 of 2004)
- *Hannover Life Re of Australia Pty Ltd v Gell & Ors* (No V897 of 2004)
- *Citicorp Life Insurance Ltd v McCausland* (No N909 of 2004)
- *CSS Board v Kitching* (No W120 of 2004)

## **Federal Court Appeals Lodged Under the AD(JR) Act & s.39B Judiciary Act 2003–2004**

- *Bramwell v SCT* (No BZ 466 of 2003)
- *Stewart v SCT and United Super Pty Ltd* (No MZ 1020 of 2003)
- *Huynh v POST Super Pty Ltd* (No V1043 of 2003)
- *Hannover Life Re Australia Pty Ltd v McDonald & Ors* (No V896 of 2004)

## **Federal Court Judgments Handed Down 2003–2004**

- *Hourn v Farm Plan P/L* [2003] FCA 1122 16 October 2003(unreported)
- *Barghouthi v ING Life Ltd & PlesTel P/L* [2003] FCA 1272, 7 November 2003
- *Merlino v CSS* [2003] FCA 1490; 16 December 2003
- *Rhodes v Tower Superannuation Fund* [2004] FCA 510, 27 April 2004
- *Boeing Superannuation Pty Ltd v Glanville* [2004] FCA 623, 19 May 2004
- *Boeing Superannuation Pty Ltd v Frame* [2004] FCA 623, 19 May 2004
- *Boeing Superannuation Pty Ltd v Weiss* [2004] FCA 623, 19 May 2004
- *CSS Board v Kitching* [2004] FCA 605, 18 May 2004
- *Rhodes v Tower Australia Superannuation Limited as Trustee for Tower Superannuation Fund* [2004] FCA 812, 25 June 2004
- *Noel v Cook* (No 2) [2004] FCA 721

## **Federal Court Appeals Settled or Discontinued 2003–2004**

- *The National Mutual Life Association of Australia Ltd v Esposito* (No V872 of 2003)
- *Fraser v Pivot Group Superannuation Co Pty Ltd & Anor* (No V34 of 2003)
- *QIESS Pty Ltd v Maw* (No V512 of 2003)
- *The National Mutual Life Association of Australasia Ltd v Dartnell* (No V277 of 2003)
- *Topsfield v The Estate of Wendy Robson & Anor* (No W357 of 2002)
- *Huynh v POST Super Pty Ltd* (No V1043 of 2003)

## **Federal Court Matters Pending At 30 June 2004**

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

- *Ray v Superannuation Complaints Tribunal & Ors* (No V73 of 2003)
- *Hannover Life Re of Australasia Ltd v Membrey & Anor* [2004] FCA 1095
- *Employees First v Tolhurst Capital Ltd and Barratt* (No N957 of 2003)
- *Military Superannuation Benefits Board No 1 v Batt* (No V574 of 2003)
- *Bramwell v SCT* (No BZ 466 of 2003)
- *CSS Board v Dexter* (No V503 of 2002)
- *Lap Huynh v POST Super Pty Ltd* (No V1043 of 2003)
- *Kumar v SCT* (V326 of 2004)
- *Stewart v SCT and United Super Pty Ltd* (No MLG 1020 of 2003)
- *Hannover Life Re Australia Pty Ltd v Gell & Ors* (No V896 of 2004)
- *Hannover Life Re of Australia Pty Ltd v McDonald & Ors* (No V897 of 2004)
- *Citicorp Life Insurance Ltd v McCausland* (No N909 of 2004)
- *CSS Board v Kitching* (No W120 of 2004)

## **Commonwealth Departments**

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

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

## **Department of the Treasury**

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

## **Statutory Bodies**

### **The Ombudsman**

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

- The first inquiry related to the sums insured, bonuses and contribution taxes for the Complainant's matured endowment superannuation policies.

The Tribunal found that all three complaints were outside jurisdiction because they were about matters that related to the management of a fund as a whole. Section 14(6) of the SRC Act prevents the Tribunal from dealing with a complaint "that relates to the management of a fund as a whole".

The Ombudsman examined the material before the Tribunal and concluded that the Tribunal's decision was reasonably open to it. The Ombudsman did not consider that there was a basis on which to conclude that the Tribunal acted unreasonably or improperly.

- The second inquiry related to incorrect information provided to the Complainant. The Tribunal withdrew the complaint as lacking in substance because the Complainant was unable to provide the Tribunal with sufficient evidence to show that he would have acted differently had he been provided with the correct information.

The Tribunal re-opened the complaint when the Ombudsman drew its attention to an apparent factual misunderstanding, and the complaint was later successfully conciliated.

### **The Privacy Commissioner**

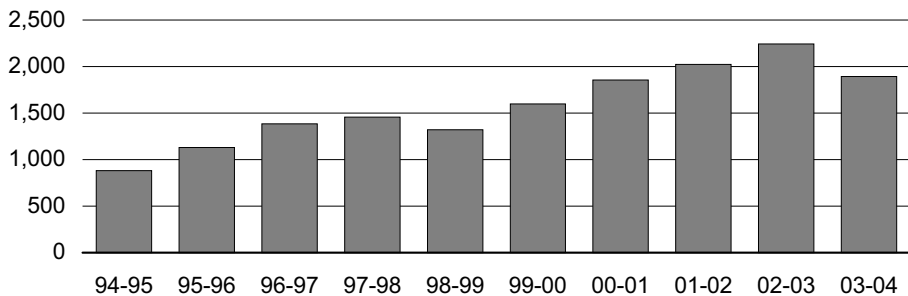
No reports have been made by the Privacy Commissioner under the *Privacy Act* 1988 (Cwlth) in respect of the Tribunal during this reporting period.

### 3 Performance

#### Statistical Overview

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, 1,892 written complaints (down from 2,243 in 2002-2003), and 13,984 (down from 16,800 in 2002-2003) telephone enquiries, were received by the Tribunal. These statistics show a 15.6% decrease in the number of written complaints received and a 16.8% decrease in the number of telephone enquiries received compared with the 2002-2003 reporting year.

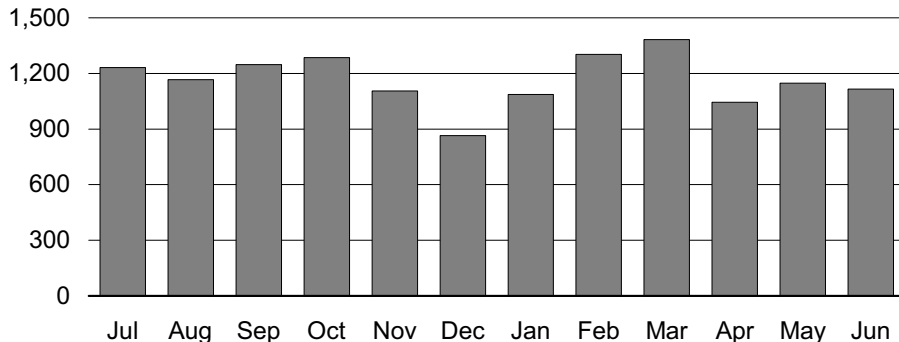
**Fig. 1: Written Complaint Trends 1994–2004**



#### Enquiries

As mentioned above, the Tribunal received 13,984 telephone calls this reporting year and dealt with a wide range of enquiries. The most popular questions were employer related enquiries, enquiries about death and disablement benefits, and general enquiries concerning the Tribunal.

**Fig. 2: Monthly Telephone Enquiries 2003–2004**



## Written Complaints

The Tribunal received 1,892 written complaints this reporting year. Of these, 1,112 (58.8%) complaints were within jurisdiction (up from 57.0% in 2002-2003) and 780 (41.2%) were outside jurisdiction (down from 43.0% in 2002-2003).

The Tribunal actually dealt with 1,906 (down from 2,282 in 2002-2003) written complaints during the reporting year (which includes some complaints carried over from the previous reporting year). Of these, 1,104 (57.9%) were within jurisdiction (up from 56.8% in 2002-2003) and 802 (42.1%) were found to be outside jurisdiction (down from 43.2% in 2002-2003). Of the 802 complaints closed as outside jurisdiction, 414 (51.6%) were s.101 referrals closed pursuant to s.19 of the SRC Act. (down from 53.8% in 2002-2003).

At the end of the reporting year 878 complaints remained open (down from 892 in 2002-2003). This represents a decrease of 1.6% over the previous reporting year.

## Distribution By State and Territory

Table 1 shows the origin of the 1,892 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. Table 1 shows that no significant disparities have occurred this reporting year.

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

<b>State / Territory</b>	<b>Number of Complaints</b>
Australian Capital Territory	45
New South Wales	536
Northern Territory	11
Queensland	326
South Australia	156
Tasmania	55
Victoria	455
Western Australia	192
Other	116
<b>Total</b>	<b>1,892</b>

## Distribution By Age And Gender

Men made 56.6% (down from 61.0% in 2002-2003) of all written complaints made to the Tribunal, which, as in all previous reporting years, indicates that men are over-represented.

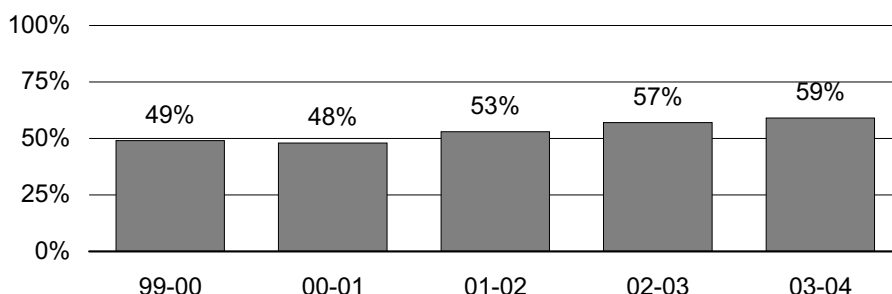
Of the 1,892 written complaints received by the Tribunal, 1,276 complainants provided their date of birth. Based on these statistics, the average age of complainants is 49 years (as in 2002-2003) and 24% of complainants are aged 55 years or over (down from 39% in 2002-2003). The oldest complainant was 99 (2002-2003 – 89) years.

These figures are essentially the same as previous reporting years and once again indicate that the older age groups are highly represented because many complaints arise out of the payment of retirement benefits. The older age factor also helps to explain the gender disparity, because men comprise a greater proportion of the over 55 age group of fund members.

### Written Complaints Within Jurisdiction

Of the 1,892 new written complaints received by the Tribunal this reporting year, 1,112 (58.8%) were within jurisdiction. Last reporting year, of the 2,243 written complaints received, 1,278 were within jurisdiction (57.0%). Fig. 3 below shows the annual complaint trends in respect of written complaints within jurisdiction received from 1999–2000 to 2003–2004.

**Fig. 3: Annual Trends—Written Complaints Within Jurisdiction (%)**



### Nature of Written Complaints Within Jurisdiction

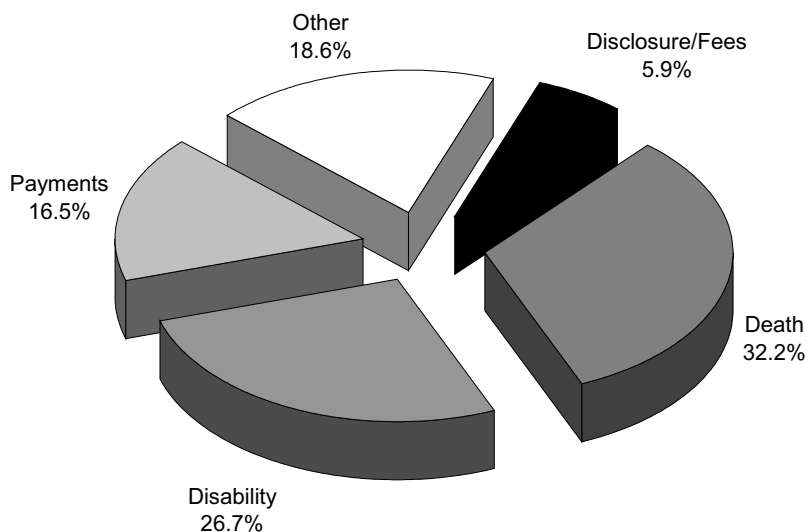
Once again, the majority of these complaints have fallen into four of the six major categories of complaints received, i.e. ‘Death’, ‘Disability’, ‘Payments’ and the ‘catch-all’ category of ‘Other’.

‘Death’ complaints comprise the largest category of all written complaints received within jurisdiction—32.2% (up from 22.5% in 2002-2003). ‘Disability’ complaints make up the second-largest category at 26.7% (up from 23.5% in 2002-2003), followed by ‘Other’ at 18.6% (down from 23.6% in 2002-2003). Note that ‘Administration’ complaints, at 12.4% (down from 15.0% in 2002-2003), 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>66</b>	<b>5.9</b>
Agent Misrepresentation	15	1.3		
Fees & Charges	51	4.6		
<b>Death</b>			<b>358</b>	<b>32.2</b>
Death – distribution	312	28.1		
Death – other	46	4.1		
<b>Disability</b>			<b>297</b>	<b>26.7</b>
Disability – medical	186	16.7		
Disability – other	111	10.0		
<b>Payments</b>			<b>184</b>	<b>16.6</b>
Payment Delay	41	3.7		
Account Balance	110	9.9		
Release of Benefits/Preservation	33	3.0		
<b>Other</b>			<b>207</b>	<b>18.6</b>
Administration	138	12.4		
Statement error	3	0.3		
Surplus Distribution	2	0.2		
Trustee misrepresentation	15	1.3		
Other	18	1.6		
Surcharge	9	0.8		
Investment Changes	18	1.6		
Investment Returns	4	0.4		
<b>Total</b>	<b>1,112</b>	<b>100.0</b>	<b>1,112</b>	<b>100.0</b>

**Fig. 4: Nature of Written Complaints Within Jurisdiction**



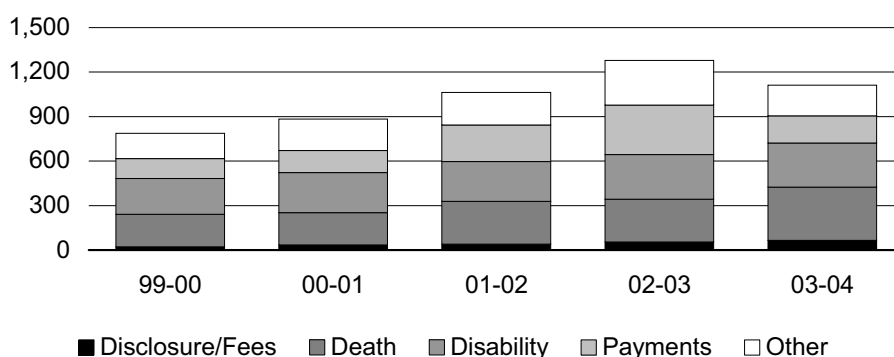


The proportional distribution of complaint types across all categories remains more or less consistent with the distribution statistics in previous reporting years—see Table 3 and Fig. 5.

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

<b>Year Ended 30 June</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Disclosure & Fees	2.3	4.0	3.8	4.3	5.9
Death	27.5	24.7	26.9	22.5	32.2
Disability	30.8	30.6	25.1	23.5	26.7
Payments	17.4	16.9	23.2	26.1	16.6
Other	22.0	23.8	21.0	23.6	18.6
<b>Total (actual number)</b>	<b>782</b>	<b>883</b>	<b>1,069</b>	<b>1,278</b>	<b>1,112</b>

**Fig. 5: Annual Complaint Trends by Nature of Complaints Within Jurisdiction**



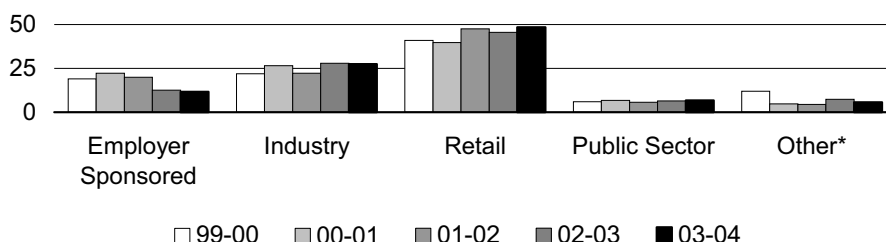
### Written Complaints Within Jurisdiction By Fund Type

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 – 539 (48.5%)—down from 582 complaints last reporting year (45.5%) – see Fig. 6.

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

<b>Fund Type</b>	<b>Number of Complaints</b>	<b>Percentage of Total (%)</b>
Employer Sponsored	129	11.6
Industry	305	27.4
Retail	539	48.5
Public Sector	76	6.8
Other *	63	5.7
<b>Total</b>	<b>1,112</b>	<b>100.0</b>

**Fig. 6: Annual Complaint Trends by Fund Type 2000–2004 (%)**



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

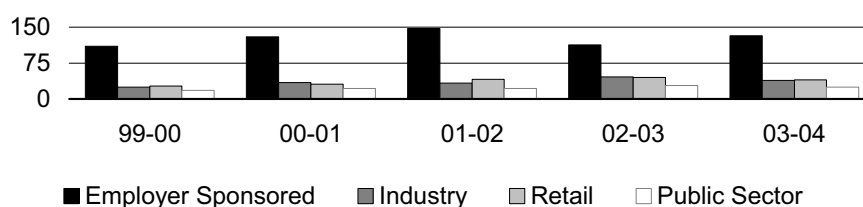
### Member Complaint Ratio By Type Of Fund

The graph at Fig. 7 below shows the number of written complaints 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. The Tribunal is continuing to work with the Corporate Superannuation Association to identify the reasons. It likewise remains the case that members from public sector funds are less likely to lodge complaints than any other members. However, as a substantial number of public sector funds are 'exempt' from the Tribunal's jurisdiction, this factor should be taken into account to avoid distorting the outcomes.

The statistics also show that the number of complaints received per million members has increased by 16.8% this reporting year in relation to employer-sponsored funds but decreased by 15.2% in relation to industry funds, by 10.7% in relation to public sector funds, and by 11.1% in relation to retail funds.

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



Note: Figure 7: (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 2004.

## Complaints Resolved / Withdrawn In The Reporting Period

This reporting year, a total of 1,100 written complaints were resolved or withdrawn (down from 1,286 in 2002-2003). Four complaints remained suspended at the end of the reporting year.

**Table 5: Complaints Resolved / Withdrawn**

<b>Withdrawn by the Tribunal</b>	<b>Number of Complaints</b>	<b>%</b>
s.22(1)	156	
s.22(3)(a),(b)	348	
s.22(3)(c),(d),(e)	22	
	<b>526</b>	<b>47.8</b>
<b>Withdrawn by Complainant</b>		
pre conciliation conference	182	
post conciliation conference	144	
	<b>326</b>	<b>29.6</b>
without resolution	32	
	<b>32</b>	<b>3.0</b>
<b>Resolved by Tribunal at Review</b>		
decision affirmed	133	
decision remitted	8	
decision varied	5	
decision set aside/substituted	68	
decision no jurisdiction	2	
	<b>216</b>	<b>19.6</b>
<b>Total</b>	<b>1,100</b>	<b>100.0</b>

This year, 1,068 (down from 1,255 in 2002-2003) complaints were resolved at inquiry, conciliation and review (97.1%) and 32 (up from 31 in 2002-2003) complaints were withdrawn by their respective complainants without resolution (2.9%).

The number of complaints withdrawn by complainants without resolution has increased from 2.4% in 2002-2003 to 3.0% in 2003-2004. This reporting year, 80.4% of all complaints resolved/withdrawn were resolved/withdrawn at the inquiry and conciliation stages compared with 72.6% last reporting year. The number of complaints resolved at review decreased from 27.4% last year to 19.6% this year.

### Conciliation Conferences

The Tribunal conciliated 268 cases in 2003-2004, an increase of 15 (5.93%) on last year's 253. Once again this is the largest number of cases dealt with in the conciliation process to date.

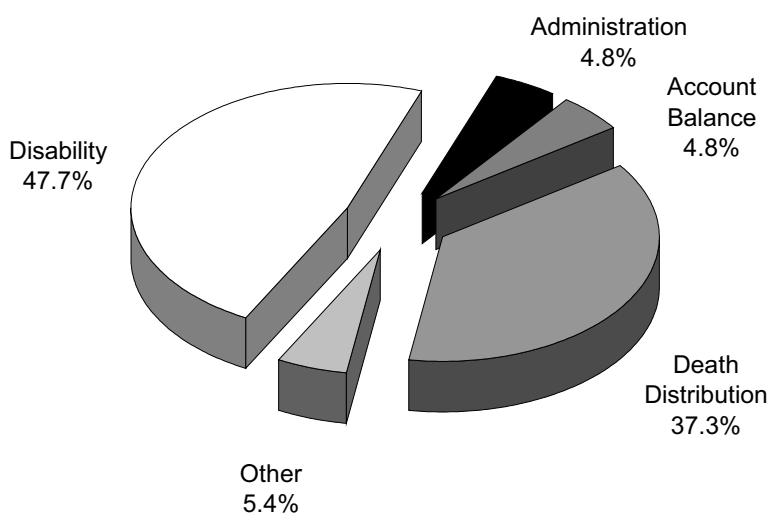
Of the 239 cases concluded, settlement was achieved in 144, resulting in a settlement rate of 60.25% compared to 67% in the previous year. The outcome is pending in 29 cases (10.82%) compared to 42 (17%) for last year.

## Nature of Conciliation Cases

The categories of note in the year are as follows:

- Disability – 128 (47.76%) conciliations. Of the 113 concluded cases 69 (61.06%) were settled.
- Death Benefits – 100 (37.31%) conciliations. Of the 91 concluded cases 54 (59.34%) were settled.
- Administration – 13 (4.85%) conciliations. Of the 12 concluded cases 7 were settled.
- Account balance/benefit calculation – 13 (4.85%) conciliations. Of the 9 concluded cases 5 were settled.

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



## Mode Of Conciliation Conferences

Telephone conferences accounted for 217 cases (80.97%). Of the 193 concluded cases, settlement was achieved in 120 (62.18%). Complaints dealt with by other interventions accounted for 33 (12.31%) cases of which 30 were concluded with 16 (53.33%) settled. Meetings were held in 18 (6.72%) cases of which 16 were concluded and settlement achieved in 8.

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

Mode of Conference	No of Cases	Pending	Settled	Not Settled
Teleconference	217	24	120	73
Meeting	18	2	8	8
Corresp/Other	33	3	16	14
<b>Total</b>	<b>268</b>	<b>29</b>	<b>144</b>	<b>95</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 person-to-person meetings have historically resulted in a higher rate of resolutions however, this year, there is no variance between the two conferencing modes.

**Table 7: Teleconference & Person-To-Person Meeting Resolutions 1995–2004**

Reporting Years	Telecon Held	Telecon Resolved	%	P2P Meetings Held	P2P Meetings Resolved	%
1995 – 1996	18	3	17%	8	6	75%
1996 – 1997	35	12	34%	18	6	33%
1997 – 1998	41	18	44%	8	6	75%
1998 – 1999	58	31	53%	7	5	71%
1999 – 2000	92	53	58%	9	3	33%
2000 – 2001	155	98	63%	27	18	67%
2001 – 2002	187	114	61%	14	9	64%
2002 – 2003	182	116	64%	10	8	80%
2003 – 2004	193	120	62%	16	8	50%
<b>Total</b>	<b>961</b>	<b>565</b>	<b>59%</b>	<b>117</b>	<b>69</b>	<b>59%</b>

**Table 8: Teleconferencing / Meeting Cumulative Resolutions 1995–2004 (%)**

Reporting Years	Teleconferences Resolved	Person-to-Person Meetings Resolved
1995 – 1996	17%	75%
1996 – 1997	28%	46%
1997 – 1998	35%	53%
1998 – 1999	42%	56%
1999 – 2000	48%	52%
2000 – 2001	54%	57%
2001 – 2002	56%	58%
2002 – 2003	58%	60%
2003 – 2004	59%	59%

### Initiatives

- The Parliament passed the government's amendments to the SRC Act with effect from 27 November 2003. Of particular note is the Tribunal's right to compel parties to attend a conciliation conference. Draft guidelines indicating the circumstances in which parties would be required to attend a conciliation conference were issued for comment. The final version is now being compiled.
- The Tribunal's promotion of the conciliation process continued through the year and is now well established in the complaint resolution process among the superannuation community.

## Review Meetings

In the 2003–2004 reporting year, 216 (2002-2003 – 352) matters were determined at Review. Of these, the Tribunal affirmed 133 trustee decisions (61.6%); set aside 68 trustee decisions (31.5%); remitted 8 decisions back to the trustee (3.7%) and varied 5 decisions (2.3%)—see Table 9 below.

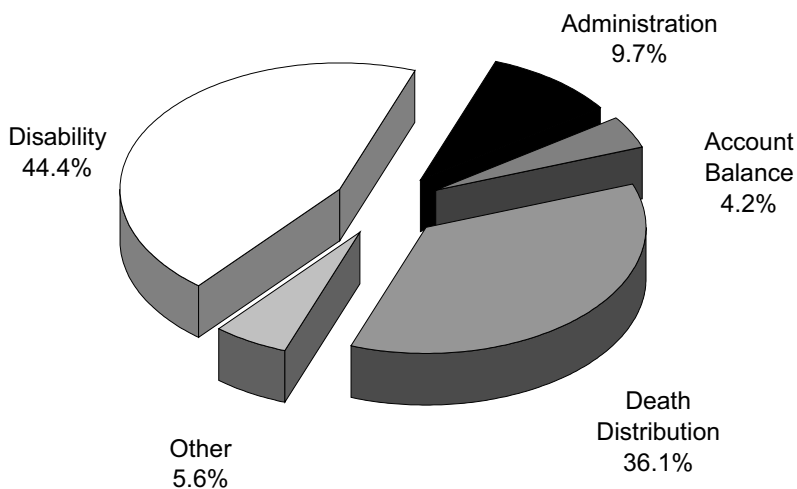
**Table 9: Review Determination Outcomes for 2002 – 2003 Reporting Period**

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	Total No.
133	8	5	68	2	216

## Nature of Review Determinations

This reporting year the largest category of complaints determined at review was medical disability—75, (34.7%). Death benefit distribution complaints made up the second largest category—72, (33.3%). Comparatively, in the 2002–2003 reporting year 42.3% of complaints determined at review were medical disability cases, and 32.4% were death benefit distribution matters.

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



## Service Charter

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

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



## 4 Corporate Governance

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### Corporate Plan

The Tribunal's Corporate Plan—the *Superannuation Complaints Tribunal 1999 Business Plan*—has been in place since April 1999 and outlines the strategies for meeting the Tribunal's objectives. The strategies are reviewed as necessary to take account of the current environment.



### Mission Statement

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

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

### Corporate Objectives

#### Short Term Objectives — under 12 Months

In the short term the Tribunal aims to:

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



## **Overview of Outputs**

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

### **Management of Written Complaints**

The management of written complaints resulted in the following outputs:

- 1,100 written complaints being finalised in the year by Inquiry, Conciliation and Review;
- 268 conciliation conferences being held;
- 216 complaints dealt with at Review Meetings; and
- 197 determinations issued.

### **Other initiatives included:**

- Implementation of case management procedures to deal with enhancements arising from legislative changes on conciliation and expansion of the time limits applying to lodgement of total and permanent disability complaints.
- Alignment of the team structure in case management. All officers with cases under inquiry now reporting to the Case Manager and Technical Officers appointed to deal with the more complex cases now report to the Director.

### **Professional Development of Staff**

- The participation of all staff in training as identified by means of individual development plans in conjunction with corporate and statutory objectives.

### **Stakeholders**

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

## **The Future and Objectives - 1 To 3 Years**

The longer term objectives are as follows:

- Timely resolution of complaints by inquiry, conciliation and review determination.
- Legislative enhancements to improve the effectiveness and reach of the objectives of the SRC Act.
- Promotion of the Tribunal's complaints resolution service in the superannuation community and the community at large.

- Engagement of qualified staff and their development.

### **Case Management**

- The review of the Case Management System (CMS) to establish its suitability and responsiveness to management needs and information dissemination.

### **Systems and Procedures**

- Changes to procedures to be implemented to deal with:
  - amendments arising from the Family Law Act as it impacts on the division of superannuation between separating/divorcing couples;
  - superannuation issues arising from disclosure requirements under the Financial Services Reform Act.

### **Systemic Issues Affecting the Superannuation Community**

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

### **Public Awareness**

Arising from legislative changes impacting on the operations of the Tribunal, it is intended to redraft and publish the Memorandum as required by section 13 of the SRC Act, as well as other information brochures.

### **Human Resources**

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

### **Corporate Strategies**

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

## Senior Management

<p><b>Liaison</b></p>	<p><b>Industry:</b> Ongoing liaison by the Chairperson and Deputy Chairperson and senior managers with industry to promote conciliation, and 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's office to keep the Minister apprised of the progress of the Tribunal's functions. Ongoing liaison with 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> <p><b>APRA:</b> continued liaison on matters of interest to it and its stakeholders.</p>
<p><b>MOU &amp; Related Documents</b></p>	<p>Observance of the MOU and the continuing development and implementation of the underlying Operational Procedures and SLA by the Director.</p>
<p><b>Information to Staff</b></p>	<p>Exchange of information with staff to keep them apprised of developments in respect of the Tribunal's functions and future. Review of communication mechanisms in consultation with staff.</p>
<p><b>Learning and Development</b></p>	<p>Management recognises the benefits for staff and the Tribunal of the Performance Management Program and is committed to it as the basis for the programmed development of all staff.</p> <p>Senior managers in conjunction with staff seek to ensure that appropriate learning and development opportunities are available under the Performance Management Program.</p>
<p><b>Structure and Procedure</b></p>	<p>Management continues to monitor the Tribunal's structure and procedures in consultation with staff to ensure that the Tribunal continues to operate in the most efficient and effective manner possible.</p>
<p><b>Information Technology</b></p>	<p>The Case Management System (CMS) designed and implemented in January 2001 is under continual review to meet reporting requirements.</p> <p>The Tribunal's website provides information and facilitates the electronic lodgement of complaints. It also provides access to the Tribunal's determinations and publications.</p>

<p><b>Public Education</b></p>	<p>Management is committed to a public education initiative to achieve its long-term objective of ensuring that the Tribunal's role is better understood, accepted and appreciated by all stakeholders.</p> <p>Management is also committed to improving access to the Tribunal in accordance with the Government's access and equity strategy by extending its public education program.</p>
<p><b>Budget and Administration</b></p>	<p>In the May 2003 Budget the government approved formula funding of the Tribunal to address its business needs over the next four years. In the May 2004 Budget the government provided additional funding over four years for expenses associated with leasing new premises on the expiry of its current lease on 30 June 2004.</p> <p>The Tribunal is required to adhere to ASIC budget policy which reflects the Government's expectations on service delivery and costs.</p> <p>Budget and administration are dealt with through the Chairperson and management group with briefing through the Assistant Director and Administration Supervisor.</p>
<p><b>Public Relations</b></p>	<p>Management maintain appropriate links with the media and with ASIC and APRA to facilitate the Tribunal's participation in public debate. This is to ensure that accurate information is made available to the industry and the public. The Public Education and Media Liaison Officer assists with this task.</p>

## Policy / Legal

<p><b>General</b></p>	<p>The primary task is to ensure that senior management is aware of and addresses the messages from Government, the judiciary, the industry and the consumer movement in a way that is consistent with the Tribunal's statutory role.</p>
<p><b>Legislation</b></p>	<p>To support effective liaison with the Minister's Office, Treasury and ASIC and APRA 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 and issues of Tribunal administration.</p>

<b>Casework</b>	There is an ongoing requirement for the provision of legal advice to the Tribunal in relation to individual cases and other aspects of the SRC Act, related legislation and the Tribunal's procedures.
<b>Litigation</b>	To support any litigation in which the Tribunal is a party in accordance with the principle in <i>The Queen v ABT; Ex parte Hardiman</i> (1980) 144 CLR 13.  To comply with court requests for documentation in accordance with the SRC Act and to keep a watching brief on all court cases relevant to the Tribunal and interpret the significance of outcomes for Tribunal policy.
<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.

## Team Leaders

<b>Information Flow</b>	Team leaders facilitate the flow of information between different areas of the Tribunal by conducting regular team meetings and providing feedback to senior managers.  Team leaders participate in regular management meetings, providing input to the development of corporate goals and Tribunal procedures and structures.
<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 are major contributors in upholding the Tribunal's commitment to valuing staff by supporting flexible working hours and two-way communication in the office.
<b>Performance Management</b>	Team leaders recognise the potential benefits for staff and the Tribunal of the Performance Management Program. They participate in relevant training and in the development of Performance Management Agreements with their staff as well as monitoring workflows and providing assistance in case management.

## Program Strategies

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

### Review

<p><b>Members</b></p>	<p>The <i>Financial Sector Legislation Amendment Act (No.1) 2000</i> (Cwlth) commenced operation on 18 January 2001. Schedule 4 amended s.7 of the SRC Act to remove the upper limit of 10 members. As a consequence, the cap of 10 Members was removed and to 30 June 2004 there are 20 Members.</p> <p>As a result of the larger pool of Members available to share the workload, delays and difficulties in listing cases for Review due to conflict of interest issues among Members are now markedly reduced.</p>
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### Inquiry And Conciliation

<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 continues to develop strategies to identify inconsistencies between the senior staff in the reviewing of Complaint Reports.</p>
<p><b>Case Allocation, Inquiry and Conciliation</b></p>	<p>The Tribunal currently has a three stage case development system. After an initial check on jurisdiction at the lodgement stage to establish that the Tribunal can deal with the complaint, cases are allocated to a case officer to issue the s.17 notices required to collect information from the parties.</p> <p>When this information is received, the Tribunal again confirms its ability to deal with the complaint and the case is allocated to the conciliation unit. If the case is not suitable for conciliation or is not resolved by conciliation it is returned to the case officer who completes the inquiry into the complaint and prepares a Complaint Report.</p> <p>This procedure is under constant review.</p>

<b>Staffing</b>	<p>The funding formula for the Tribunal as approved in the May 2003 Budget enabled the Tribunal to appoint ongoing staff in place of the many temporary staff.</p> <p>The 'team model' continues to perform well and delivers improved outputs annually.</p>
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## Budget And Administration

<b>Administration</b>	<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> Records are stored in the course of the year in accordance with the Tribunal's archiving policy.</p> <p><b>Business Continuity Plan:</b> The Administration Unit is responsible for the ongoing monitoring and updating of the Business Continuity Plan in liaison with ASIC.</p>
<b>Budget</b>	<p><b>Purchasing:</b> The Tribunal undertakes its purchasing responsibilities in accordance with government procurement guidelines and ASIC purchasing procedures.</p> <p><b>Assets Management:</b> The Tribunal possesses a number of assets valued in excess of \$2,000. While the Tribunal maintains its own assets records, formal responsibility for managing assets rest with ASIC.</p> <p><b>Consultants and Competitive Tendering and Contracting:</b> The Tribunal adheres to government guidelines and ASIC procedures.</p>
<b>Staff</b>	<p>Staff in Administration provide support to the Tribunal's core function of complaint resolution.</p>

## 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 development plan with their supervisors and opportunities are made available where possible for staff to attend external training or to take advantage of in-house opportunities, such as special projects, to develop new skills.
- In line with operational requirements, the Tribunal allows its staff to take advantage of the flexible working arrangements available through the ASIC certified agreement. Staff are generally able to arrange their working hours around family and study arrangements, within the limits imposed on an office that deals with the general public.
- Managers at the Tribunal are making use of the ASIC Performance Management Program to provide feedback to staff on their performance and opportunities for development.

## Workplace Diversity

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

In furtherance of this program, the Tribunal has adopted 'family friendly' work practices and flexible work arrangements for staff; promoted and maintained a harassment-free workplace; developed recruitment and promotion practices that support workplace diversity; and provided training opportunities to staff in related areas—see Appendix 8. Table 10 below sets out the number of Tribunal staff in the various target groups as at 30 June 2004.

**Table 10: Superannuation Complaints Tribunal—Workplace Diversity Target Groups (as at 30 June 2004)**

Total Staff	Target Groups				
	NESB1	NESB2	ATSI	PWD	Women
EO	5	0	0	0	3
ASICO	29	5	3	0	19
<b>Total</b>	<b>34</b>	<b>5</b>	<b>3</b>	<b>0</b>	<b>22</b>

(See over for Key)



## Key

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

## Occupational Health & Safety

The Tribunal has an Occupational Health and Safety Officer and a trained First Aid Officer. There were two incidents of work-related injuries and two compensation claims were made in the year.

## Freedom Of Information

The Tribunal is subject to the operation of the FOI Act and has two authorised FOI Officers. The Tribunal received three freedom of information applications this reporting year.

Upon receiving an FOI request, the Tribunal, as a general rule, first seeks permission from the provider of the information to release the information to the applicant pursuant to sub-s.63(3)(b) of the SRC Act. If the information provider agrees, this mechanism usually provides a faster, cheaper and more satisfactory result for all concerned. It also accords with s.14 of the FOI Act which encourages the provision of information access outside the FOI regime where proper or required by law.

If the information provider does not agree to the release of the information, the Tribunal then proceeds with the FOI application in the normal way within the requisite statutory time frame.

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

## Privacy

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

## Environmental Awareness

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

## **Social Justice And Access & Equity**

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

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

## Glossary

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<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>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 (Cwlth)</i>
<b>SLA</b>	Service Level Agreement
<b>SMSF</b>	Self-managed superannuation fund
<b>SRC Act</b>	<i>Superannuation (Resolution of Complaints) Act 1993 (Cwlth)</i>
<b>SSCS</b>	Senate Select Committee on Superannuation
<b>SSCSFS</b>	Senate Select Committee on Superannuation & Financial Services
<b>TIS</b>	Translating and Interpreting Service
<b>TPD</b>	Total and Permanent Disability
<b>Tribunal</b>	Superannuation Complaints Tribunal

# Compliance Index

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

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# Appendix 1

## Tribunal Organisation Chart

(as at 30 June 2004)

Classification	Ongoing				Non-Ongoing				Total
	Full-Time		Part-Time		Full-Time		Part-Time		
	F	M	F	M	F	M	F	M	
Chairperson		1							1
Deputy Chair	1								1
Exec 2	1								1
Exec 1 (Legal)	1								1
Exec 1	1	1				1			3
ASIC 4		3	1		1				5
ASIC 3	6	2			1	2	2		13
ASIC 2	2	1			2		2		7
ASIC 1					1			1	2
<b>Total</b>	<b>12</b>	<b>8</b>	<b>1</b>		<b>5</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>34</b>

# Appendix 2

## Delegations

**Sub-Section 59(1) *Superannuation (Resolution Of Complaints) Act 1993*  
(as at 30 June 2004)**

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

## Complaint Resolution Outcomes

	Retail	Employer	Industry	Public Sector	Other	Total
<b>Tribunal Unable to Deal With</b>						
Non-Compliance with s.19	157	35	89	27	106	414
Outside Jurisdiction	142	36	87	41	82	388
<b>Withdrawn by Tribunal</b>						
s.22(1)	63	8	55	14	16	156
s.22(3)(a)(b) <sup>1</sup>	200	39	80	21	8	348
s.22(3)(c)(d)(e) <sup>2</sup>	14	3	2	1	2	22
<b>Withdrawn by Complainant</b>						
Resolution Without Conference	89	23	48	7	15	182
Resolution With Conference	63	12	57	8	4	144
Without Resolution	18	2	11	1	0	32
<b>Review</b>						
Decision Affirmed	40	37	31	25	0	133
Remit to Trustee	3	1	3	1	0	8
Decision Varied	4	0	1	0	0	5
Decision Set Aside	32	11	21	4	0	68
No Jurisdiction to Determine	1	0	1	0	0	2
<b>Total</b>	<b>826</b>	<b>207</b>	<b>486</b>	<b>150</b>	<b>233</b>	<b>1,902<sup>3</sup></b>

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

<sup>2</sup> Other remedy has been sought; already dealt with by Tribunal or other Statutory authority; could be dealt with by other Statutory authority or complaint-handling body.

<sup>3</sup> Excludes four suspended complaints.

# Appendix 4

## Chairperson's Procedural Rules & Guidelines

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

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

(1) The Tribunal is required under s. 9(1) to be constituted for Review by 'one or more, but not more than 3 Tribunal Members' as selected by the Chairperson, after taking into account their 'qualifications, experience and suitability having regard to the nature of that complaint' as required under s. 9(2).

(2) While recognising the desirability for the Tribunal to be constituted by 3 Members at hearings, the following guidelines will apply –

(i) Total and Permanent Disablement cases

The Tribunal wherever possible will be constituted by 3 Members, one of whom shall be a member of the medical profession, e.g. a medical practitioner, physiotherapist etc. (in the event of a 2 Member Tribunal every effort will be made to ensure one Member is from the medical profession).

(ii) Death Benefit Distribution involving sums –

- Below \$20,000 – Single Member Tribunal
- Between \$20,000 - \$40,000 – 2 Members
- Above \$40,000 – 3 Members

(iii) In other cases where the complaint involves a claim of less than \$10,000, the Tribunal to be constituted by one Member.

(iv) In cases where a party notifies the Tribunal in advance that there is an issue of principle to be determined, or where the Tribunal identifies such an issue or there is some unusual difficulty associated with the complaint, then the Tribunal may, where the matter under the above guidelines may otherwise be determined by a 1 or 2 Member Tribunal, list the matter before a 3 Member Tribunal.

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

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

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

- (1) All material submitted by the parties in relation to the complaint shall, otherwise than in exceptional circumstances, be exchanged with all the other parties, insofar as is required to ensure that procedural fairness is observed.
- (2) All such exchanges are considered to be 'for the purposes of [the] Act' under s.63(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 6 weeks of the final Review Meeting for signing off within a further 4 weeks.
- (4) All Determinations and Reasons should basically follow the outline in the pro-formas approved from time to time by the Chairperson. Such pro-formas will include a layout for the cover pages and final signature at the rear. The pro-formas may include standard sub-headings which may assist both Members and staff undertaking word processing. The pro-formas will *not* include standard form paragraphs because each Tribunal must turn its mind to the particular requirements and circumstances of each individual complaint in the context of the relevant law(s).

- (5) 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 2004

[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 2004.

### 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 require 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 2003–2004 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

September 2003	NADRAC Conference – Successfully Managing and Resolving Disputes	Nicole Cullen
October 2003	ASIC Sydney – Speaker to Financial Planners Seminar	Graham McDonald
October 2003	Financial Industry Complaints Service – SCT Jurisdiction	Nicole Cullen
November 2003	SCT – Financial Industry Complaints Service Jurisdiction	Nicole Cullen
November 2003	Banking & Financial Services Ombudsman – SCT Jurisdiction	Nicole Cullen
November 2003	SCT – Banking & Financial Services Ombudsman Jurisdiction	Nicole Cullen
January 2004	Difficult and Querulent Complainants	Nicole Cullen
February 2004	Australian Law Council Conference – Paper –  "How does the SCT deal with jurisdictional issues"	Graham McDonald
February 2004	CMSF Conference – Paper – "SCT – New Initiatives to Process Complaints"	Graham McDonald
March 2004	Consumer Affairs – Consumerism in the 21 <sup>st</sup> Century	Nicole Cullen
March 2004	Splitting the Proceeds of Death	Nicole Cullen
April 2004	Super Law Masterclass Conference	Graham McDonald
May 2004	Financial Counsellors Seminar (ASIC)	Graham McDonald
May 2004	Financial Counsellors Seminar	Graham McDonald
June 2004	5 <sup>th</sup> Safety in Super Conference – Sydney – "Examining the SCT's new focus on consolidating Dispute Resolution Schemes"	Graham McDonald
June 2004	LexisNexis Superannuation Conference – Sydney – "Assessing the impact of Key Determinations by the SCT"	Graham McDonald

## 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 33 1 July 2003–30 September 2003
- Issue No 34 1 October 2003–31 December 2003
- Issue No 35 1 January 2004–31 March 2004
- Issue No 36 1 April 2004–30 June 2004

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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 8663 5530  
Facsimile: 03 8663 5588



# Appendix 8

## Staff Training

<b>Training</b>	<b>Provider</b>	<b>Staff</b>
New Legislation	Internal	Case Officers
Agency Issues	Internal	Case Officers
Death Benefit Distribution	Internal	Case Officers
Superannuation Splitting	Internal	All Staff
Handling Difficult Complainants	Internal	Case Officers
Payment Delay & Negative Interest	Internal	Case Officers
Jurisdiction	FICS	All Staff
Complaint Report (New Format)	Internal	Case Officers
Jurisdiction	BFSO	All Staff

<b>Formal Studies</b>	<b>Provider</b>	<b>Staff</b>
Staff undertaking part-time studies at tertiary institutions	Various	9

# Appendix 9

## Financial Statement

### Financial And Staffing Resources Summary 2003–2004

The following is a summary of the direct cost of the Superannuation Complaints Tribunal for 2003–2004. These figures are derived from the audited statements of the Australian Securities and Investments Commission.

	<b>(2003–2004)</b> <b>\$(000)</b>
<hr/>	
<b>ACCRUAL BASIS</b>	
Employee expenses	2,531
Suppliers expenses	766
Depreciation Expenses including write downs	56
Net Cost	<hr/> <b>3,353</b>
<b>TOTAL ASSETS</b>	44
<b>TOTAL LIABILITIES</b>	785
<hr/>	
<b>STAFFING</b>	32
Average Staffing	
<hr/>	
<b>MEMBERS FEES</b>	363
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# Appendix 10

## Service Charter

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

### **Our objective**

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

To achieve this objective we will:

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

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

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

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

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

### **Our undertaking to you**

If you have a complaint about a decision made by a trustee or life company in the circumstances described above, we will give it careful attention. We will do whatever we can to help you within our powers and resources.

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

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

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

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

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

Before you lodge your complaint with us, you must have made the complaint to your superannuation provider and given them an opportunity to resolve the complaint.

Certain time limits apply, particularly if your complaint concerns a disability benefit or the distribution of a death benefit.

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

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

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

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

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

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

# Appendix 11

## Tribunal Location & General Information

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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 884 114** (toll free)  
Administration (03) 8663 5500

**Facsimile:** (03) 8663 5588

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

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

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

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

**Telephone:** (03) 8663 5500

**Facsimile:** (03) 8663 5588

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### Access To Review Determinations:

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

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