



**Superannuation
Complaints**

Tribunal

Annual Report
2004–2005

© Commonwealth of Australia 2005

ISSN 1324–8014

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

The Commonwealth Copyright Administration
Intellectual Property Branch
Department of Communications, Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

or posted at

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

Printed by Pirion

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



Superannuation
Complaints
Tribunal

Level 15, 30 Queen Street, Melbourne
Postal Address: Locked Mail Bag 3060, GPO Melbourne Vic 3001
Telephone (Enquiries and Complaints): 1300 884 114
Telephone (Administration): (03) 8635 5500 Fax: (03) 8635 5588

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 eleventh Annual Report of the Superannuation Complaints Tribunal for the year ended 30 June 2005, 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

9 September 2005

Highlights of 2004–2005

Statistically

Written complaints lodged this reporting year are up 0.8% from last year.

Conciliations conducted this reporting year are up 27.6% from last year. Of the cases concluded, a settlement rate of 69.6% was achieved (up from 60.3% in 2003-2004).

Legislatively

From 1 July 2004, the definition of 'dependant' in SIS was amended to include those in an interdependency relationship with the deceased.

Previously, death benefits could only be paid from a regulated superannuation fund to a spouse, a child, a financial dependant or the legal personal representative of the deceased member. If a trustee could not find anyone in these categories, benefits could be paid to another individual.

Premises

The SCT re-located to its new premises on Level 15, 31 Queen Street Melbourne. The premises were launched on 18 March 2005 by the Hon. Chris Pearce, Parliamentary Secretary to the Treasurer. The re-location brings the Tribunal into the same building as the other financial industry dispute resolution schemes.

Centralised Telephone Exchange

The SCT has also joined the financial industry schemes in utilising the centralised telephone exchange. Consumers telephoning about a complaint against a financial institution are directed to the most appropriate scheme to answer their query. This is but one of a number of moves designed to promote more ready access to consumers who may be uncertain where to direct complaints against financial industry service providers. The call centre is distinguished by the fact that all calls are personally answered. The toll free number is **1300 780 808**.

The old toll free number, 1300 884 114, will continue to operate in conjunction with the new toll free number until 30 June 2006.

Tribunal Members

No new members were appointed this reporting year.

Contents

Letter of Transmittal	3
Highlights of 2004–2005	4
Introduction	6
Chairperson’s Review	7
Chapter 1 Overview	9
Chapter 2 Jurisdiction and Powers	22
Chapter 3 Performance	29
Chapter 4 Corporate Governance	39
Glossary.....	50
Compliance Index	51

Appendices

1. Tribunal Organisation Chart	52
2. Delegations	53
3. 2004–2005 Complaint Resolution Outcomes	56
4. Chairperson’s Procedural Rules & Guidelines.....	57
5. Freedom of Information Statement.....	65
6. Memorandum of Understanding—SCT & ASIC.....	68
7. Papers, Presentations and Publications	73
8. Staff Training	75
9. Financial Statement.....	76
10. Service Charter.....	77
11. Tribunal Location & General Information	79

Index	80
--------------------	-----------

Introduction

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



The past year has been a busy one for the Tribunal involving a move to new premises. The Tribunal is now co-located with the other non-statutory external dispute resolution schemes which resolve complaints for the financial services industry. As part of the move the Tribunal has also joined the one toll free access number which covers all the schemes. The one access telephone number ought assist consumers who experience a problem within the financial services industry but are unsure of which dispute resolution body to contact.

With one exception the figures in this year's annual report reflect the pattern established in the preceding year. The exception relates to the increase in conciliation conferences undertaken by the Tribunal. The continuing success of the conferences in resolving cases has, as I have previously pointed out, a number of benefits- not the least of which is the opportunity provided to the parties to find their own solution to the complaint. Most cases not resolved at conference level are forwarded for determination by a Tribunal panel which does not involve any of the parties but which is constituted by independent members.

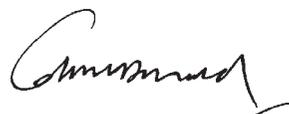
That the number of complaints received and dealt with by the Tribunal remains much the same reflects acceptance by the superannuation industry of the principles applied by the Tribunal in reaching its decisions. Those principles are drawn from the legislation and by reference to court decisions. In order to assist Trustees, Insurers and Members coming to the Tribunal those principles have been distilled and published on the Tribunal's website and are available in hard copy upon request. The Tribunal also continues to publish summaries of cases determined, which can easily be accessed and searched by subject and catchwords.

The introduction from 1 July 2004 of an expanded definition of "dependant" in the *Superannuation Industry (Supervision) Act 1993* to include interdependent relationships has led to some cases being referred for determination. It is anticipated as time progresses that the number of cases in this category will increase further.

Additional funding has been provided in the budget to meet enquiries and complaints which may arise following the introduction of choice in superannuation from 1 July 2005. Funding has also been provided to allow the Tribunal to investigate the introduction of an electronic document management system.

The Members who constitute the Tribunal panels appointed to hear and determine cases continue to report an increase in complexity of the matters to be determined. This is to be welcomed as it is an indicator that the more easily addressed matters are being resolved by the superannuation funds' internal review procedures. The retirement of Pamela McAlister after many years of outstanding service to the Tribunal is regretted. John Bingeman QC also retired after a shorter period with the Tribunal.

I finish by again recording my thanks to the dedicated staff and membership who strive to address all complaints received in an open and transparent manner. Without their positive contribution and constant enthusiasm the constant dealing with complaints could become burdensome. It is, however, also considerably lightened by the satisfaction of ensuring, with the cooperation of the superannuation industry, that decisions reached on behalf of superannuation fund members are fair and reasonable in their operation to those members.



Graham McDonald
Chairperson

September 2005

1 Overview

Role

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

The Tribunal is an independent, dispute resolution body which deals with a diverse range of superannuation-related complaints and offers a free, 'user-friendly' alternative to the court system.

The Tribunal is empowered to deal with complaints relating to the decisions and/or conduct of trustees, insurers, retirement savings accounts (RSA) providers, superannuation providers and other relevant decision-makers in relation to regulated superannuation funds, approved deposit funds, life policy funds, annuity policies, RSAs and the surcharge contributions tax.

The Tribunal does not, however, have an unlimited jurisdiction to deal with all superannuation-related grievances. Very stringent jurisdictional and standing provisions have been built into the SRC Act in the form of mandatory time limits and statutory 'interests' to ensure that the Tribunal may only deal with those matters which can 'fairly' be dealt with in an economic, informal and quick manner according to its statutory objectives.

Objectives And Functions

The Tribunal's statutory objectives are set out in section 11 of the SRC Act and require the Tribunal to provide mechanisms that are 'fair, economical, informal and quick' for the purposes of inquiring into, conciliating, and reviewing complaints.

The Tribunal's statutory functions are enumerated in section 12 of the SRC Act. Sub-sections 12(1)(a) & (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 was appointed the Chairperson of the Tribunal on 14 March 2000. His current appointment is to 14 December 2006.

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 has been the Deputy Chairperson of the Tribunal since 21 February 2000.

Ms Cullen brings to the Tribunal 16 years experience in commercial dispute resolution as a lawyer and mediator. She specialised in commercial litigation at 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 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 initiatives that aim to promote awareness of the Tribunal, its role and procedures. During the reporting year, Ms Cullen worked with industry bodies to assist trustees to improve their internal complaints handling procedures and achieve earlier resolution of complaints.

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 Ms 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 or part-time basis. The current Chairperson is full-time and the Deputy Chairperson is part-time. 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 14 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 2003–10 June 2005)

John Bingeman QC has been a Barrister at the Victorian Bar for over 35 years. 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 Risk Management Institution of Australasia.

Mr Ross Christie

(1 December 1998–3 April 2006)

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.

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 and his wife operate an advisory consultancy. He is a company director, an honorary consul, undertakes voluntary work with two charities and is a member of the Engineering and Manufacturing Committee of the Industry Research and Development Board. He is trustee of a self-managed superannuation fund and was a former Director of the Government Employees Superannuation Board of Western Australia.

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.

Mr Damyon Lill

(4 April 2000–3 April 2006)

Mr Lill was formerly a partner at PriceWaterhouseCoopers Legal in Commercial & Finance, specialising in Superannuation & Life Insurance. He also has extensive experience in litigation and general insurance.

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. 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 taught trusts, constitutional law and legal research and writing.

She has a broad legal background and held senior positions with the Legal Aid Commission and the Department of Corporate Affairs (WA) 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. Ms McAlister was, until recently, the Director – Legal & Technical Operations at the Australian Securities & Investments Commission. 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 and as a visiting medical officer at Albury Base Hospital. She currently works as a senior lecturer in the School of Rural Health, University of New South Wales Albury / Wodonga campus, as a part-time member of the

Commonwealth Social Security Appeals Tribunal and 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. 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 1997–3 April 2006)

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 1994–3 April 2006)

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 Senate Select Committee on Superannuation, 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.

Ms Wall has also acted, during the past year, in the role of Chairperson and Deputy Chairperson of the Tribunal.

Review Support

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



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 19 Complaints Analysts—see Appendix 1. The day to day work of the Complaints Analysts is managed by Mr Frank Stasiak.



The inquiry process empowers the Tribunal to obtain documents and information so that threshold decisions as to jurisdiction, standing, grounds and representation may be made. Complaint Reports are prepared by the Complaints Analysts as part of this process and are used as a basis for determining whether the particular complaints should be treated as withdrawn or alternatively, proceed to the conciliation / review stages as relevant in the particular case. The conciliation process which follows provides a valuable opportunity for parties to communicate and consensually resolve their differences under the aegis of an experienced conciliator. The conciliation process is the trigger, which, if unsuccessful, activates the review function of the Tribunal.

Legal 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.

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.

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 *Chairperson's Procedural Rules & Guidelines* (Appendix 4) to determine that conciliations and reviews may be conducted by telephone, closed-circuit television or by 'any other means of communication'. The Tribunal does not have its own closed circuit television system, so presently conducts most conciliation conferences via audio teleconferencing. Reviews are generally conducted solely 'on the papers'.

Relationship With ASIC

The Tribunal's relationship with 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, three matters were referred to APRA under sub-s.64(b)(i) and twenty-one

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

Section 65 of the SRC Act

On becoming aware that a party to a complaint has refused or failed to give effect to a determination made by the Tribunal, the Chairperson must give particulars to ASIC and/or APRA under sub-s.65(1)(b) of the SRC Act. There were no 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* (Cwth) (SIS). The 'Regulator' may be either ASIC or APRA, depending upon whether sub-s.31(2) is, or is being applied for the purposes of, a provision that is administered by ASIC or APRA—as relevant. No settlement details were given to ASIC or APRA this reporting year.

Relationship with APRA

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* (Cwth). 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, three matters were referred to APRA under sub-s.64(b)(i) this reporting year.

The Responsible Minister

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

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

New Legislation

In the year ending 30 June 2005, no major amendments to the *Superannuation (Resolution of Complaints) Act 1993* (the SRC Act) occurred. However, draft regulations prescribing non-member spouses as qualifying persons under s4B of the SRC Act, were released by Treasury for public comment on 27 June 2005. When finalised, these regulations will give non-member spouses the necessary standing to bring a complaint to the Tribunal about a trustee decision relating to a splitting order.

The Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004, which was assented to on 30 June 2004, gives effect to the Government's policy to give most employees the right to choose which superannuation fund their compulsory superannuation contributions are paid into with effect from 1 July 2005.

This Act also expanded the definition of "dependant" in the *Superannuation Industry (Supervision) Act of 1993* ("the SIS Act") by including persons who had an "interdependency relationship" with a deceased member for the purposes of death benefit distributions. New s10A of the SIS Act, which came into effect on 1 July 2004, provides two tests by which a person may demonstrate that he or she had an interdependency relationship with a deceased member. The first test requires the two persons to have had a close personal relationship with each other, lived together, and for one or both to have provided the other with financial and domestic support and personal care. The second test provides for the establishment of an interdependency relationship where, in spite of a close personal relationship, the two persons were unable to meet one or more of the other requirements of the first test due to physical, intellectual or psychiatric disability of one or both.

Section 10A of the SIS Act also provides for regulations to be made to clarify when two persons may or may not have had an interdependency relationship. The draft regulations refining the meaning of interdependency relationships were released by Treasury for public comment on 17 May 2005. When finalised, these regulations will assist trustees and other decision makers, as well as the Tribunal, to decide whether or not two persons have had an interdependency relationship.

New Executive Action

Regulations

There have been no amendments to the SRC 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. No subject matter has been declared as excluded as at 30 June 2005;
- ‘self-managed superannuation funds’ (SMSFs) which are regulated by the Australian Taxation Office (ATO);
- complaints about decisions made by decision-makers who are not specifically caught by the SRC Act (eg employers);
- complaints where the subject-matter of the complaint is currently the subject of court proceedings—section 20 SRC Act; and
- complaints where the statutory standing requirements have not been met by the complainant(s).

Largest Categories of Written Complaints Outside Jurisdiction

42% of written complaints received this reporting year were outside of 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 – 52%, which is the same percentage as the 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 9% (down from 12% in 2003-2004).

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.

Chairperson's power to re-constitute a panel

In *Hannover v Gell* – [2005] FCA 150, the Federal Court considered two appeals made by the insurer against the Tribunal's determination to set aside the insurer's and trustee's decision to reject the member's TPD claim. The Tribunal's decision to substitute its own decision that the member was in fact TPD was unsuccessfully challenged by the insurer under the ADJR Act and under s46 of the Complaints Act. Both matters were heard together as they raised similar issues. The Federal Court found that the Chairperson's discretion to reconstitute a panel is only constrained by s9(2) of the SRC Act, which required the "qualifications, experience and suitability" of the panel member/s to be taken into account. As the Chairperson had done so, the decision to re-constitute the panel with one member did not vitiate the validity of the Tribunal's determination. The Federal Court also found that as the Chairperson had followed the requirements in the SRC Act in reconstituting the panel, there was no obligation to notify the insurer before doing so.

Tribunal's role

In *Marks v CSS Board of Trustees* – [2005] FCA 797, the Federal Court considered the role of the Tribunal. This was an appeal from the Tribunal's determination to affirm a decision of the CSS Board not to allow a cancellation of an election. As the Tribunal's role involved an assessment for itself the merits of the material before it, the Tribunal was required, where appropriate, to use its fact finding powers under the SRC Act to ascertain material facts necessary for that assessment. Accordingly, a mere endorsement of the CSS Board decision on the basis that the finding was fairly and reasonably open to the Board was held to be an insufficient discharge of the Tribunal's functions under the SRC Act. Instead, the Tribunal is required to:

- (a) form a view about the necessary facts;
- (b) determine what the facts are; and
- (c) by reference to those ascertained facts, determine whether the decision under review was fair and reasonable in the circumstances. The facts ascertained by the Tribunal constitute "the circumstances" by reference to which the Tribunal makes its evaluation.

As the Tribunal did not approach the matter in this way, the Federal Court set aside the Tribunal decision and remitted the matter to the Tribunal for determination according to law.

Tribunal's power to grant interest

In *Hannover v Membrey* – [2004] FCA 1095, the Federal Court considered the Tribunal's power to grant simple and compound interest. This was an appeal from a determination of the Tribunal to grant interest at a compound rate for the unreasonable delay by the insurer to pay a death benefit on the basis that it was unfair and unreasonable for the insurer to have withheld the payment of the benefit. The Federal Court found that the Tribunal not only had the power to grant simple interest under s57 of the Insurance Contracts Act 1984 for a period where the insurer had unreasonably withheld the payment of the benefit, the Tribunal also had the power to grant compound interest in appropriate cases. The court emphasised that the SRC Act enabled the Tribunal to place the complainant as nearly as practicable in a position that the unfairness or unreasonableness it found no longer exists. Therefore, it was within the Tribunal's power to grant compound interest on appropriate facts, in an appropriate case, which was found by the Federal Court to be the case in relation to the determination that was appealed against.

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 Standing Order No 6.

Parliamentary Committees

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

Courts

The jurisdiction, powers and operations of the Tribunal are open to judicial scrutiny via statutory appeal and judicial review. Specifically, the Tribunal is subject to judicial scrutiny by the Federal Court of Australia pursuant to sections 39 and 46 of the SRC Act. This reporting year 8 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. No 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 2004–2005

- *Darlene Smith v Club Plus and Citicorp Life (No N1269 of 2004)*
- *HEST Australia P/L v Julie-Anne Sykley (No VID1065 of 2004)*
- *Joseph Anthony Marks v CSS Board of Trustees & SCT (No VID1451 of 2004)*
- *AMP Superannuation v Samuel Stuart Robert Halpin (No VID17 of 2005)*
- *Cullinane v Mellon Nominees Ltd & Ors (No WAD44 of 2005)*
- *Maree Harris v Commonwealth Superannuation Scheme (No NSD 283 of 2005)*
- *Mercer Investment Nominees Ltd v Denis Watchorn (No VID488 of 2005)*
- *Auspine Superannuation Pty Ltd v Phillip Henderson (No VID 583/2005)*

Federal Court Judgments Handed Down 2004–2005

- *CSS Board v Dexter [2004] FCA 1434, 2 December 2004 – Appeal dismissed*
- *Ray v SCT & Board of Trustees of the State Public Sector Scheme [2004] FCA 1120, 7 September 2004 – Appeal allowed*
- *Hannover Life Re v Membrey [2004] FCA 1095, 25 August 2004 – Appeal dismissed*
- *Employers First v Tolhurst Capital Limited & Barratt [2005] FCA 616, 16 May 2005 – Appeal allowed*

- *Hannover v Gell & CARE [2005] FCA 150, 28 February 2005* – Both the ADJR and S46 appeals dismissed
- *Citicorp Life Insurance Ltd v James McCausland (No N909 of 2004)* – Appeal allowed
- *CSS Board v Kitching [2004] FCAFC 299, 18 November 2004*- Appeal allowed
- *Smith v Club Plus and Citicorp Life [2004] FCA 1519, 25 November 2004* – Appeal allowed
- *Marks v CSS Board & SCT [2005] FCA 797, 17 June 2005* – Appeal allowed

Federal Court Appeals Settled or Discontinued 2004–2005

- *Kumar & SCT (No V326 of 2004, 18 October 2004)* – Settled
- *AMP Superannuation v Halpin (No VID17 of 2005)* – Settled

Federal Court Matters Pending At 30 June 2005

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:

- *Bramwell v SCT (No BZ 466 of 2003)*
- *HEST Australia P/L v Sykley (No VID1065 of 2004)*
- *Cullinane v Mellon Nominees Ltd & Ors (No WAD44 of 2005)*
- *Harris v Commonwealth Superannuation Scheme (No NSD 283 of 2005)*
- *Mercer Investment Nominees Ltd v Watchorn (No VID488 of 2005)*
- *Auspine Superannuation Pty Ltd v Henderson (No VID 583/2005)*

Commonwealth Departments

Attorney-General's Department

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

Department of the Treasury

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

Statutory Bodies

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

- Mr F complained to the Ombudsman in July 2004 about delay by the SCT in dealing with his complaint. He also said he had made telephone calls that were not returned.

SCT confirmed that it had not been in contact with Mr F since 31 March 2004. There was no evidence on file of unanswered calls and the complaints analyst said she was not aware of any.

The matter was immediately progressed and a pre-withdrawal letter issued 19 July 2004. There was no response from Mr F, so a withdrawal notice issued 9 August 2004.

As nothing further was heard from the Ombudsman, it was assumed that no further action was taken.

- Mr H complained to the Ombudsman that he had not been provided with certain documents relied on by both the trustee and the Tribunal in reaching their decisions.

Examination of the file (matter had gone to Review and Determination issued August 2002) showed that all information on file had been exchanged between the parties, including the documents Mr H claimed not to have been provided with.

The Ombudsman was satisfied that Mr H had been provided with the documents. No further action.

- Mr & Mrs C complained to Ombudsman about the SCT's decision that it lacked jurisdiction to deal with their complaints about two deferred annuity policies.

The Ombudsman concluded that the Tribunal had not acted unreasonably or improperly in making its decisions. No further action.

The Privacy Commissioner

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

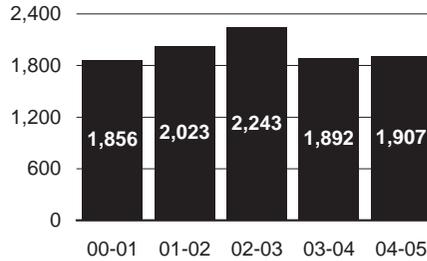
3 Performance

Statistical Overview

This reporting year, the Tribunal received 1,907 written complaints (1,892 in 2003-2004), and 13,790 telephone enquiries (13,984 in 2003-2004).

These statistics show a 0.8% increase in the number of written complaints received, and a 1.4% decrease in the number of telephone enquiries received, compared with the 2003-2004 reporting year.

Fig. 1: Written Complaints

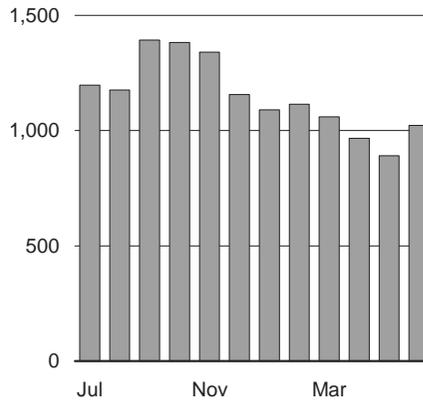


Enquiries

As mentioned above, the Tribunal received 13,790 telephone calls this reporting year and dealt with a wide range of enquiries.

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

Fig. 2: Telephone Enquiries

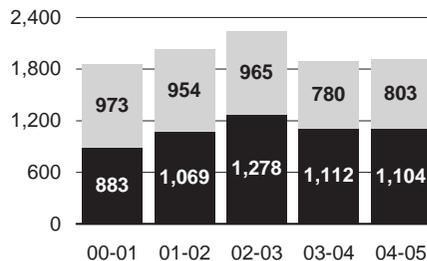


Written Complaints

The Tribunal received 1,907 written complaints this reporting year.

Of these, 1,104(57.9%) complaints were within jurisdiction (58.8% in 2003-2004) and 803 (42.1%) were outside jurisdiction (41.2% in 2003-2004).

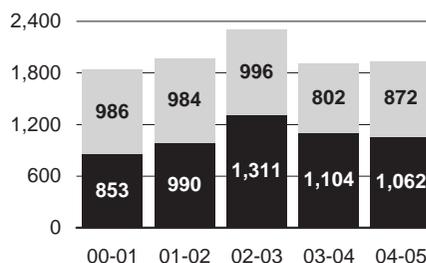
Fig. 3a: Jurisdiction



The Tribunal finalised 1,934 written complaints this reporting year, which included some complaints carried over from the previous year (1,906 in 2003-2004).

Of these, 1,062 (54.9%) were within jurisdiction (57.9% in 2003-2004) and 872 (45.1%) were found to be outside jurisdiction (42.1% in 2003-2004).

Fig. 3b: Jurisdiction



Of the 872 complaints closed as outside jurisdiction, 453 (51.9%) were s.101 referrals closed pursuant to s.19 of the SRC Act. (51.6% in 2003-2004).

At the end of the reporting year 836 complaints remained open (878 in 2003-2004). This represents a decrease of 4.8% over the previous reporting year.

Distribution By State and Territory

Table 1 shows no significant change in the origin of the 1,907 written complaints made to the Tribunal during the reporting year.

Table 1: Written Complaints by State / Territory

State / Territory	Number of Complaints			
	2003-04		2004-05	
Australian Capital Territory	45	2.4%	41	2.1%
New South Wales	536	28.3%	595	31.3%
Northern Territory	11	0.6%	14	0.7%
Queensland	326	17.2%	318	16.7%
South Australia	156	8.3%	154	8.1%
Tasmania	55	2.9%	37	1.9%
Victoria	455	24.1%	430	22.6%
Western Australia	192	10.2%	182	9.5%
Other / Undisclosed	116	6.0%	136	7.1%
Total	1,892	100.0%	1,907	100.0%

Distribution By Age And Gender

This reporting year, men made 59.6% (56.6% in 2003-2004) of all written complaints made to the Tribunal.

Based on 1,169 complainants who provided their date of birth, the average age of complainants is 48 years (49 years in 2003-2004) and 33.7% of complainants are aged 55 years or over (24% in 2003-2004). The oldest complainant was 102 (2003-2004 – 99) years.

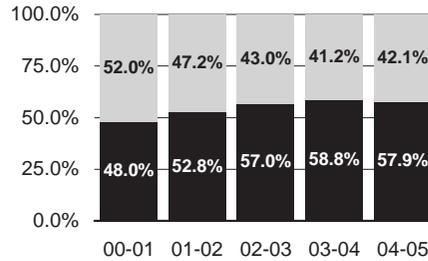
These figures are essentially the same as previous reporting years.

Written Complaints Within Jurisdiction

Of the 1,907 new written complaints received by the Tribunal this reporting year, 1,104 (57.9%) were within jurisdiction.

Last reporting year, of the 1,892 written complaints received, 1,112 were within jurisdiction (58.8%).

Fig. 4: Jurisdiction



Nature of Written Complaints Within Jurisdiction

Once again, the majority of these complaints have fallen into four of the five 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—31.42% (down from 32.2% in 2003-2004).

'Disability' complaints make up the second-largest category at 27.8% (up from 26.7% in 2003-2004), followed by 'Other' at 22.7% (up from 18.6% in 2003-2004) and 'Payments' at 14.8% (down from 16.6% in 2003-2004). Note that 'Administration' complaints, at 17.7% (up from 12.4% in 2003-2004), comprise almost all of the 'Other' category.

Table 2: Nature of Written Complaints Within Jurisdiction

Nature of Complaint	Number Of Complaints Within Jurisdiction			
	No	%	No	%
Disclosure / Fees			36	3.3
Agent Misrepresentation	2	.2		
Fees & Charges	34	3.1		
Death			347	31.4
Death – distribution	298	27.0		
Death – other	49	4.4		
Disability			307	27.8
Disability – medical	180	16.3		
Disability – other	127	11.5		
Payments			164	14.8
Payment Delay	55	4.9		
Account Balance	83	7.5		
Release of Benefits/Preservation	26	2.4		
Other			250	22.7
Administration	195	17.7		
Trustee misrepresentation	34	3.1		
Other	3	.3		
Surcharge	10	.9		
Investment Changes	8	.7		
Total	1104	100.0	1104	100.0

Fig. 5: Nature of 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. 6.

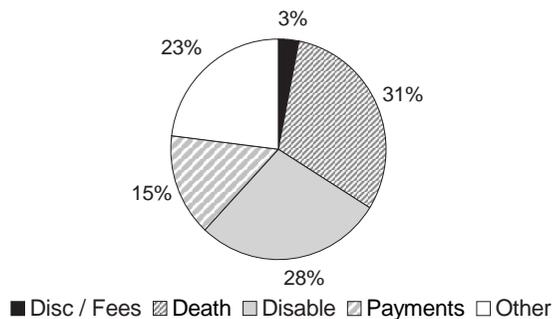


Table 3: Annual Trends: Nature of Written Complaints Within Jurisdiction

Year Ended 30 June	2001	2002	2003	2004	2005
Disclosure & Fees	4.0	3.8	4.3	5.9	3.3
Death	24.7	26.9	22.5	32.2	31.4
Disability	30.6	25.1	23.5	26.7	27.8
Payments	16.9	23.2	26.1	16.6	14.8
Other	23.8	21.0	23.6	18.6	22.7
Total (actual number)	883	1,069	1,278	1,112	1,104

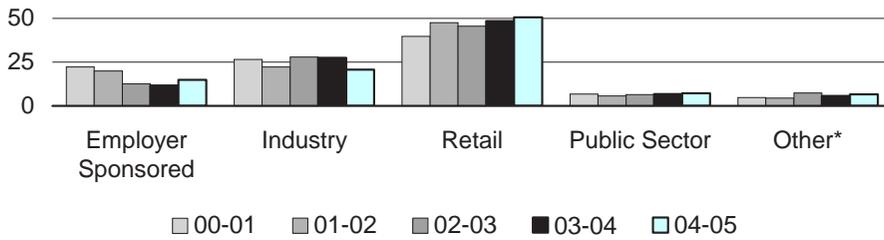
Written Complaints Within Jurisdiction By Fund Type

The Tribunal has identified four fund types for reporting purposes—employer-sponsored (corporate) funds; industry funds; retail funds (large financial institutions which offer superannuation products to the public); and public sector funds. The total number of written complaints received within jurisdiction in relation to each fund-type is shown in Table 4. Once again this reporting year, the greatest number of such complaints received related to retail funds – 559 (50.6%)—up from 539 complaints last reporting year (48.5%) – see Fig. 6.

Table 4: Total Written Complaints Within Jurisdiction by Fund Type

Fund Type	Number of Complaints	Percentage of Total (%)
Employer Sponsored	164	14.9
Industry	228	20.7
Retail	559	50.6
Public Sector	80	7.2
Other *	73	6.6
Total	1,104	100.0

Fig. 6: Annual Complaint Trends by Fund Type 2001–2005 (%)



* 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.

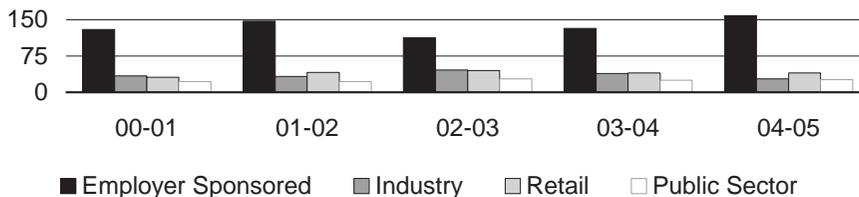
Member Complaint Ratio By Type Of Fund

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. 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 28.0% this reporting year in relation to employer-sponsored funds and by 3.8% in relation to public sector funds. Figures for industry funds show a decrease of 28.2%. There was no change 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 September 2004*. In future, membership statistics will be published by APRA annually in its Annual Report.

Complaints Resolved / Withdrawn In The Reporting Period

This reporting year, a total of 1,062 written complaints were resolved or withdrawn (down from 1,100 in 2003-2004). Four complaints remained suspended at the end of the reporting year, pending further action or information gathering by the parties.

Table 5: Complaints Resolved / Withdrawn

Withdrawn by the Tribunal	Number of Complaints	%
s.22(1)	119	
s.22(3)(a),(b)	244	
s.22(3)(c),(d),(e)	14	
	377	35.5
Withdrawn by Complainant		
pre conciliation conference	196	
post conciliation conference	228	
	424	39.9
without resolution	42	
	42	4.0
Resolved by Tribunal at Review		
decision affirmed	140	
decision remitted	5	
decision varied	3	
decision set aside/substituted	69	
decision no jurisdiction	2	
	219	20.6
Total	1,062	100.0

This year, 1,020 (down from 1,068 in 2003-2004) complaints were resolved at inquiry, conciliation and review (96.0%) and 42 (up from 32 in 2003-2004) complaints were withdrawn by their respective complainants without resolution (4.0%).

The number of complaints withdrawn by complainants without resolution has increased from 3.0% in 2003-2004 to 4.0% in 2004-2005. This reporting year, 79.4% of all complaints resolved/withdrawn were resolved/withdrawn at the inquiry and conciliation stages compared with 80.4% last reporting year. The number of complaints resolved at review increased from 19.6% last year to 20.6% this year.

Conciliation Conferences

The Tribunal conciliated 342 cases in 2004-2005, an increase of 74 (27.6%) on last year's 268. Once again this is the largest number of cases dealt with in the conciliation process to date.

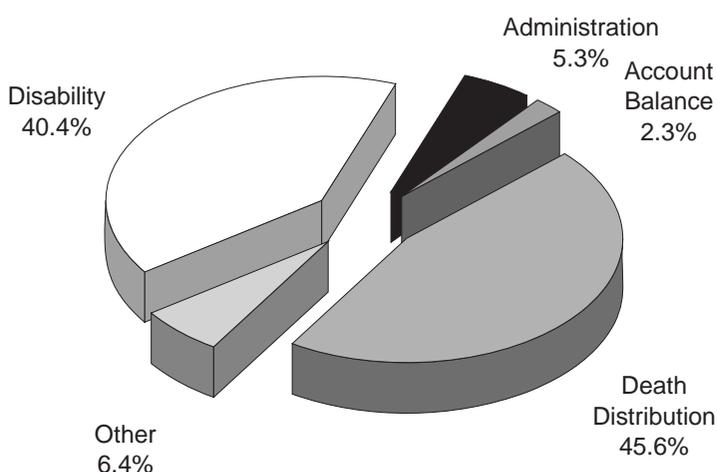
Of the 309 cases concluded, settlement was achieved in 215, resulting in a settlement rate of 69.6% (up from 60.3% in 2003-2004). The outcome is pending in 33 cases (9.6%) compared to 29 cases (10.8%) for last year.

Nature of Conciliation Cases

The categories of note in the year are as follows:

- Death Benefits – 156 (45.6%) conciliations. Of the 146 concluded cases, 106 (72.6%) were settled.
- Disability – 138 (40.4%) conciliations. Of the 121 concluded cases, 80 (66.1%) were settled.
- Administration – 18 (5.3%) conciliations. Of the 17 concluded cases, 12 (70.6%) were settled.
- Account balance/benefit calculation – 8 (2.3%) conciliations. Of the 7 concluded cases, 4 (57.1%) were settled.

Fig. 8: Nature of Conciliation Cases



Mode Of Conciliation Conferences

Telephone conferences accounted for 309 cases (90.3%). Of the 278 concluded cases by telephone conferences, settlement was achieved in 189 (68.0%). Meetings were held in 18 (5.3%) cases, of which 16 were concluded and settlement achieved in 11 (68.8%). Complaints dealt with by other interventions accounted for 15 (4.4%) cases, all of which were settled.

Table 6: Mode of Conference and Outcomes

Mode of Conference	No of Cases	Pending	Settled	Not Settled
Teleconference	309	31	189	89
Meeting	18	2	11	5
Corresp/Other	15	0	15	0
Total	342	33	215	94

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 up to 2002-2003, however, last year there was no variance between the two conferencing modes and this year teleconferences were marginally higher.

Table 7: Teleconference & Person-To-Person Meeting Resolutions 1995–2005

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%
2004 – 2005	278	189	68%	16	11	69%
Total	1,239	754	61%	133	80	60%

Table 8: Teleconferencing / Meeting Cumulative Resolutions 1995–2005 (%)

Reporting Years	Teleconferences Resolved	Person-to-Person Meetings Resolved
1995 – 1996	17%	75%
– 1997	28%	46%
– 1998	35%	53%
– 1999	42%	56%
– 2000	48%	52%
– 2001	54%	57%
– 2002	56%	58%
– 2003	58%	60%
– 2004	59%	59%
– 2005	61%	60%

General developments

- The Tribunal's continued promotion of the conciliation process, coupled with the statutory requirement for parties to proceed to conciliation where notified, has resulted in a marked increase in throughput while maintaining a high resolution rate.
- Following the receipt of comments on the guidelines indicating the circumstances in which parties would ordinarily be required to attend a conciliation conference, the final document was issued and posted on the Tribunal's website.

- The Tribunal continued to make opportunities available to complaints analysts to pursue formal conciliation training in the course of the year. This ensures the requisite skilled staff are at hand to cover the increase in cases proceeding to conciliation.

Review Meetings

In the 2004–2005 reporting year, 219 (2003-2004 – 216) matters were determined at Review. Of these, the Tribunal affirmed 140 trustee decisions (63.9%); set aside 69 trustee decisions (31.5%); remitted 5 decisions back to the trustee (2.3%) and varied 3 decisions (1.4%)—see Table 9 below.

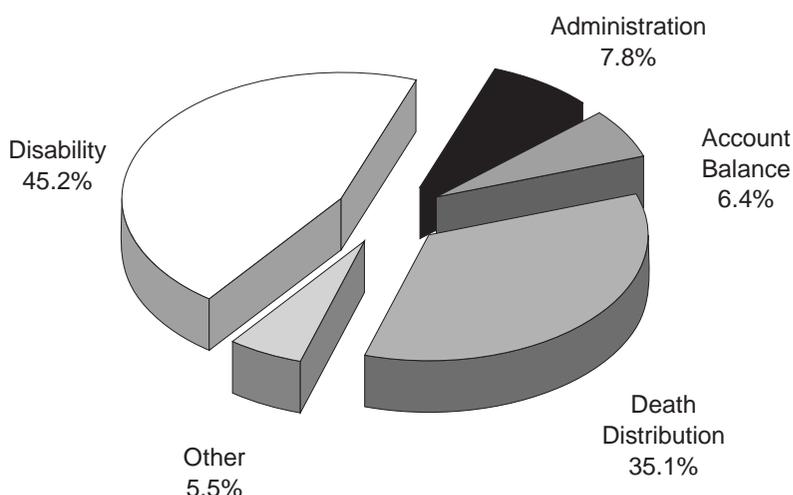
Table 9: Review Determination Outcomes for 2004 – 2005

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.
140	5	3	69	2	219

Nature of Review Determinations

This reporting year the largest category of complaints determined at review was medical disability—99 (45.2%). Death benefit distribution complaints made up the second largest category—77 (35.1%). Comparatively, in the 2003–2004 reporting year 34.7% of complaints determined at review were medical disability cases, and 33.3% 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

Corporate Plan

The first *Superannuation Complaints Tribunal Business Plan* was implemented in April 1999. It outlines the strategies for meeting the Tribunal's objectives which are reviewed annually or as required to reflect changes in the superannuation arena.



Mission Statement

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

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

Corporate Objectives

Short Term Objectives — under 12 Months

In the short term the Tribunal aims to:

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

- 1062 written complaints being finalised in the year by Inquiry, Conciliation and Review;
- 342 conciliation conferences being held;
- 219 complaints dealt with at Review Meetings; and
- 201 determinations issued.

Other initiatives included:

- Connection to the Banking Insurance & Investment Assist 'BIIA', a consumer single point of inquiry line for financial services. As a consequence the Tribunal's direct inquiry line number is to cease from 30 June 2006.
- The publication of the revised 'Memorandum' on the Tribunal's processes as required pursuant to section 13 of the SRC Act.
- Preliminary work on enhancements to the Tribunal's Case Management System (CMS) and a scoping exercise for the creation of an Electronic Document Management System (EDMS).

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.
- The attendance of Tribunal Members and staff at seminars which provided specific insights into changes impacting on the Tribunal's functions under the government's initiatives on choice of fund.

Stakeholders

- 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.

Systems and Procedures

- Major work is to be undertaken on the Tribunal's information systems providing for enhancements to the CMS and creation of an EDMS to deal with:
 - the provision of prompt and accurate data to management, the superannuation community and the public.
 - improving efficiencies in case management and review timelines.

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 issues affecting members' interests. Arrange regular meetings of the Consultative Committee to assist in this process.

Public Awareness

The Tribunal published its revised Memorandum pursuant to section 13 of the SRC Act in September 2004 and is monitoring forecast legislative amendments for addendum or revision to the publication.

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 and seminars to deal with current issues in superannuation.
- Biannual meetings of Tribunal Members for the purpose of maintaining communication standards and consistency in decisions.

Corporate Strategies

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

Senior Management

<p>Liaison</p>	<p>Industry: Ongoing liaison by the Chairperson and 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>Government: 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>ASIC: Continued liaison, principally by the Chairperson and the Director, with ASIC in relation to matters that fall under the MOU and the SLA.</p> <p>APRA: continued liaison on matters of interest to it and its stakeholders.</p>
<p>MOU & Related Documents</p>	<p>Observance of the MOU and the continuing development and implementation of the underlying Operational Procedures and SLA by the Director.</p>
<p>Information to Staff</p>	<p>Exchange of information with staff to keep them apprised of developments in respect of the Tribunal's functions and future. Review of communication mechanisms in consultation with staff.</p>
<p>Learning and Development</p>	<p>Management recognises the 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>Structure and Procedure</p>	<p>Management continues to monitor the Tribunal's structure and procedures in consultation with staff to ensure that the Tribunal continues to operate in the most efficient and effective manner possible.</p>
<p>Information Technology</p>	<p>The continual review of information systems is essential to provide for efficiencies in processes and 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>Public Education</p>	<p>Management is committed to public education initiatives to achieve its long-term objective of ensuring that the Tribunal's role is better understood, accepted and appreciated by all stakeholders.</p> <p>Management is also committed to improving access to the Tribunal in accordance with the Government's access and equity strategy by extending its public education program.</p>
<p>Budget and Administration</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>Since 1 July 2003 and for the following four years the Tribunal is funded on a formula funding model.</p> <p>In November 2004 the Tribunal took up occupation of Level 15, 31 Queen Street Melbourne, on a lease agreement for 10 years.</p> <p>In January 2005 the government committed additional funds to the Tribunal under its choice of fund initiatives, for enhancement and upgrading of its information systems.</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>Public Relations</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>General</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>Legislation</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>

Casework	There is an ongoing requirement for the provision of legal advice to the Tribunal in relation to individual cases and other aspects of the SRC Act, related legislation and the Tribunal's procedures.
Litigation	<p>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.</p> <p>To comply with court requests for documentation in accordance with the SRC Act and to keep a watching brief on all court cases relevant to the Tribunal and interpret the significance of outcomes for Tribunal policy.</p>
Annual Report	The Director will ensure that the operations and functions of the Tribunal are appropriately monitored and statistically recorded in a consistent manner from year to year to facilitate the accurate compiling of the Annual Report.

Team Leaders

Information Flow	<p>Team leaders facilitate the flow of information between different areas of the Tribunal by conducting regular team meetings and providing feedback to senior managers.</p> <p>Team leaders participate in regular management meetings, providing input to the development of corporate goals and Tribunal procedures and structures.</p>
Team Building	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.
Performance Management	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.

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>Members</p>	<p>The <i>Financial Sector Legislation Amendment Act (No. 1) 2000</i> (Cwlth) commenced operation on 18 January 2001. Schedule 4 amended s.7 of the SRC Act to remove the upper limit of 10 members. As a consequence, the cap of 10 Members was removed. As at 30 June 2004 there are 17 Members.</p>
-----------------------	--

Inquiry And Conciliation

<p>Delegations and Complaint-Handling Procedures</p>	<p>The Tribunal continues to review complaints handling procedures and delegations to identify areas of greater efficiency and avoid unnecessary 'double-handling'.</p>
<p>Reducing Inconsistency</p>	<p>The Tribunal continues to develop strategies to identify inconsistencies between the senior staff in the reviewing of Complaint Reports.</p>
<p>Case Allocation, Inquiry and Conciliation</p>	<p>The Tribunal 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 complaints analyst 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, a report for conciliation is completed 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 complaints analyst who completes the inquiry into the complaint and prepares a Review Report.</p> <p>This procedure is under constant review.</p>

Staffing	<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>A small core of temporary staff is engaged from time to time to meet the Tribunal's operational needs.</p> <p>The 'team model' continues to perform well and delivers improved outputs annually.</p>
-----------------	--

Budget And Administration

Administration	<p>Financial system processing: The Tribunal works within ASIC's financial processing system, fully embracing accrual accounting practices.</p> <p>Records Management: Records are stored in the course of the year in accordance with the Tribunal's archiving policy.</p> <p>Business Continuity Plan: The Administration Unit is responsible for the ongoing monitoring and updating of the Business Continuity Plan in liaison with ASIC.</p>
Budget	<p>Purchasing: The Tribunal undertakes its purchasing responsibilities in accordance with government procurement guidelines and ASIC purchasing procedures.</p> <p>Assets Management: 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 remains with ASIC.</p> <p>Consultants and Competitive Tendering and Contracting: The Tribunal adheres to government guidelines and ASIC procedures.</p>
Staff	<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 2005.

Table 10: Superannuation Complaints Tribunal—Workplace Diversity Target Groups (as at 30 June 2005)

Total Staff	Target Groups				
	NESB1	NESB2	ATSI	PWD	Women
EO	5	1	1	0	3
ASICO	21	3	3	0	18
Total	36	4	4	0	21

(See over for Key)

Key

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

Occupational Health & Safety

The Tribunal has an Occupational Health and Safety Officer and a trained First Aid Officer. There were two incidents of work-related injury and one compensation claim 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 one freedom of information application 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

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

Compliance Index

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

Advertising & Market Research	n/a
Chairperson's Review	7
Consultancies	Chapter 4
Contact Officer	79
Environmental performance	Chapter 4
External Scrutiny	Chapter 2
Financial performance	Chapter 4, Appendix 9
Financial Statement	Appendix 9
Freedom of Information Statement	Appendix 5
Glossary	50
Human Resources Management	Chapter 4
Index	80
Internet Homepage Address and for Annual Report	79
Judicial & Tribunal Decisions	Chapter 2
Letter of Transmittal	3
OH&S	Chapter 4
Organisational Structure	Chapter 1, Appendix 1
Outcome and Output Structure	Chapters 1 & 3
Overview description of Tribunal	Chapter 1
Performance	Chapter 3
Performance – against Service Charter	38
Purchasing	Chapter 4
Role and Functions	Chapter 1
Social Justice & Equity impacts	Chapter 4, 49
Staffing Statistics	Appendix 1
Table of Contents	5

Appendix 1

Tribunal Organisation Chart

(as at 30 June 2005)

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	2								2
Exec 1	1	2							3
ASIC 4	3	4							7
ASIC 3	8	3			1	1		1	14
ASIC 2	1	1	1			2	2	1	8
ASIC 1						1	1		2
Total	15	11	1	0	1	4	4	2	38

Appendix 2

Delegations

Sub-Section 59(1) *Superannuation (Resolution Of Complaints) Act 1993*
(as at 30 June 2005)

Section	E2	EL2	E1	ASIC4	ASIC3	ASIC2
s12(1)(a) inquire into complaint & try to resolve it by conciliation	●	●	●	●	●	●
s13 to issue memorandum	●	●	●			
s16 to help complainants to make complaints	●	●	●	●	●	●
s17 cause written notice to be given when complaint received	●	●	●	●	●	●
s17A cause written notice to be given re joinder of parties	●	●	●	●	●	●
s18(1)(c)(d)(e), (2)(c)(d), (3)(c), (3A)(c)(d)(e), (3B)(c)(d)(e) allow certain persons to be made party to complaint	●	●	●	●	●	●

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

Graham McDonald
Chairperson
February 2004

Appendix 3

Complaint Resolution Outcomes

	Retail	Employer	Industry	Public Sector	Other	Total
Tribunal Unable to Deal With						
Non-Compliance with s.19	210	45	86	16	96	453
Outside Jurisdiction	165	27	60	24	143	419
Withdrawn by Tribunal						
s.22(1)	61	13	30	7	8	119
s.22(3)(a)(b) ¹	153	33	39	11	8	244
s.22(3)(c)(d)(e) ²	9	0	1	2	2	14
Withdrawn by Complainant						
Resolution Without Conference	104	23	44	11	14	196
Resolution With Conference	106	40	63	8	11	228
Without Resolution	22	6	8	3	3	42
Review						
Decision Affirmed	62	19	34	24	1	140
Remit to Trustee	2	1	1	1	0	5
Decision Varied	2	0	0	1	0	3
Decision Set Aside	24	20	17	8	0	69
No Jurisdiction to Determine	0	2	0	0	0	2
Total	920	229	383	116	286	1,934³

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

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

³ 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* (Cwth.) 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.

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

Guidelines about when the Tribunal would ordinarily require persons to attend a conciliation conference

Purpose of the guidelines

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

Conciliation by its very nature entails a consensual arrangement by the parties with the aim of reaching an agreement for resolution of the complaint. The Tribunal's conciliation process is a facilitative process. This means the Tribunal provides the forum for the parties to the complaint to engage in open discussion of the complaint with the aim of reaching an agreement. The

Tribunal cannot compel the parties to reach agreement. The Tribunal's role is one of hosting the conference and providing assistance and information to the parties to arrive at an amicable settlement of the complaint or in narrowing the range of issues in the complaint.

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

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

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

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

Typical circumstances requiring attendance at a conciliation conference

Having regard to the documents provided to the Tribunal and where all parties to the complaint agree to participate in a conciliation conference, then the Tribunal will schedule a conference.

Death benefit distribution

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

Disability benefits

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

Administrative actions, disclosure issues etc.

- Decisions by trustees and other decision makers comprising administrative action, account balance advice, benefit calculation, rollover request, account interest crediting and disclosure issues relating to the provision of information and advice (just to mention some), are matters ordinarily regarded as appropriate to the conciliation process.

What procedures does the Tribunal follow relating to conciliation conferences?

The following steps will be taken:

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

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

5. Because of the varied locations of the parties, the conferences will, unless otherwise decided by the Tribunal, be conducted by telephone.
6. Where a conference results in resolution of the complaint or an undertaking being given by one of the parties to conduct further enquiries or obtain further reports, the Tribunal will confirm the

outcome in writing to all parties.

7. There is a presumption against representation contained in s.23 of the Complaints Act, except where the complainant has a disability (as defined in the Disability Discrimination Act 1992) or where the Tribunal "considers it necessary in all the circumstances". Where the Tribunal has, prior to the holding of a conference, exercised its discretion to allow an individual to be represented by an agent (which term extends to include legal representation), then the individual may be represented by that agent. Where no application to the Tribunal has been made for representation, then a person wishing to be represented at a conference must either seek the Trustee's agreement in advance, or at least have the arrangement agreed in advance with all of the other parties to the conference. Where the Tribunal has refused representation by an agent then the person must participate himself/herself.



Graham McDonald
Chairperson
30 June 2005

[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 2005.

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

Documents Available To The Public Free Of Charge

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

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

- *Guidelines about when the Tribunal would ordinarily require persons to attend a conciliation conference.*
- **Registration of Complaint Form.**
- **Information Kit** containing a number of the above.

Documents Made Available To The Public For A Fee

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

- **Annual Reports:** *Superannuation Complaints Tribunal Annual Report* (available for purchase from the Tribunal or from Commonwealth Government Bookshops);
- **Superannuation Complaints Tribunal Procedures Manual:** Available for purchase from the Tribunal.
- **Review Determinations:** Available for purchase from Commonwealth Government Bookshops.
- **Papers** given by the Tribunal Chairperson, Deputy Chairperson and other members of the Tribunal staff are available for purchase from the Tribunal. (See the 2004–2005 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 **15th Floor, 31 Queen Street, Melbourne**, or by telephoning **1300 780 808** (for the cost of a local call).

How To Make An FOI Request To The Tribunal

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

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

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

Appendix 6

Memorandum Of Understanding

SCT & ASIC

1. Objective

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

2. Responsibilities

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

3. Mutual Assistance

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

4. Information Sharing

- 4.1 Information available to one party which is relevant to the other in terms of legislation or this MOU will be provided as soon as is reasonably practicable, with due regard to the urgency of doing so, subject to relevant law, operational considerations and any conditions which the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege.
- 4.2 The parties will bear their own costs in relation to referred and requested matters outlined in this MOU.
- 4.3 The SCT will provide ASIC with copies of reports, media releases and other similar documents (other than documents specifically created for ASIC or for the purpose of a particular complaint) as soon as practicable after they are provided to a third party. ASIC will provide copies of Policy Statements and media releases relevant to the SCT's functions as soon as practicable after their release.

5. Referrals to ASIC

- 5.1 The SCT may refer to ASIC details of a settlement that it thinks may require investigation under subsection 31(2) of the SRC Act and the Tribunal Chairperson is obliged to report to ASIC the following matters under sections 64, 64A and 65 of the SRC Act :
 - a) a contravention of any law or the governing rules of a fund that may have occurred ;
 - b) a breach in the terms and conditions relating to an annuity policy, or a retirement savings account ; and
 - c) the refusal or failure of a party to a complaint to give effect to a determination made by the SCT.
- 5.2 Referrals will be made as soon as practicable after the SCT or the Tribunal Chairperson, as the case may be, becomes aware of the contravention, possible contravention, breach or refusal or failure to give effect to a determination and in accordance with times and standards agreed with ASIC under separate operational procedures.
- 5.3 The SCT acknowledges that ASIC will form its own opinion as to whether, on the basis of the information provided, it has reason to suspect a contravention of the legislation for which it has jurisdiction, or reason to take any regulatory action, and that ASIC cannot form any such opinions solely on the basis of any opinion of the SCT.

- 5.4 Where the SCT believes that a particular person may have information which may assist ASIC in relation to a referral, the SCT may nominate that person as a possible source of additional information when making the referral.
- 5.5 After the commencement of any action in respect of a referred matter, ASIC will advise the SCT of the contact details of an officer to whom inquiries can be made by the Tribunal Chairperson or his appropriately authorised delegate.
- 5.6 Subject to any relevant law, ASIC will on completion of all action in relation to a particular referral, inform the SCT of the outcome of ASIC's actions.

6. Requests by ASIC

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

7. Referrals to the SCT

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

8. Confidentiality

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

9. Liaison Between the Parties

- 9.1 The parties agree that there will be regular liaison:
- (a) at least annually between the Chairman of ASIC and the Tribunal Chairperson in relation to matters of common interest.
 - (b) at least once every two months between relationship managers as appointed by the parties from time to time, in relation to more immediate operational matters which may arise under this MOU, and
 - (c) on an “as needed” basis between contact officers specified in the operating procedures and service level agreement in relation to matters arising in respect of ASIC’s responsibilities to make available staff and facilities to the SCT under the SRC Act.

10. Staff and Facilities

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

11. Disputes

- 11.1 Where there is dispute over any matter dealt with in this MOU, the parties will seek to resolve the issue by negotiation between the National Director, Regulation and the Tribunal Chairperson. If

resolution cannot be achieved, then negotiation will be between the Tribunal Chairperson and the ASIC Chairman.

12. Review of the MOU

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

13. Termination

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

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

A CAMERON
(then Chairman)
Australian Securities and
Investments Commission

NEIL WILKINSON
(then Chairperson)
Superannuation
Complaints Tribunal

Appendix 7

Papers, Presentations and Publications

Papers

July 2004	AIAL Conference Hobart – "Private Dispute Resolution Schemes & Public Law"	Graham McDonald
July 2004	South Australian Law Society Conference – "Estate Planning & Superannuation"	Graham McDonald
October 2004	PSS Conference – "Managing Disability Claims"	Graham McDonald
October 2004	FPA National Principals' Forum Sydney – "Advising in respect of Regulated Superannuation Funds"	Graham McDonald
January 2005	SCT website & CCH – "Interdependency Relationships (IRs)"	Marita Wall
February 2005	ASFA Superfunds magazine – "IRs"	Marita Wall
April 2005	ASFA Superfunds magazine – "TPD Benefits & Choice"	Graham McDonald

Presentations

July 2004	Centrelink	Graham McDonald
November 2004	ASFA Conference – "TPD Best Practice or a Maimed Process"	Graham McDonald
November 2004	Deacons – Sydney seminar – "IRs"	Marita Wall
November 2004	Deacons – Melbourne seminar – "IRs"	Dharmika Amukotuwa
February 2005	Law Council Superannuation Conference – "TPD"	Marita Wall
March 2005	ASFA seminar – "IRs"	Marita Wall
April 2005	Aus Superannuation Law conference – Sydney – "IRs"	Marita Wall
June 2005	Audio interview for Television Education Network – "Stepchildren"	Marita Wall

Publications

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

SCT Quarterly Bulletin

- Issue No 37 1 July 2004–30 September 2004
- Issue No 38 1 October 2004–31 December 2004
- Issue No 39 1 January 2005–31 March 2005
- Issue No 40 1 April 2005–30 June 2005

Superannuation Complaints Tribunal—How it can help you

(Memorandum: revised and reprinted—May 2004)

How to resolve a complaint about your superannuation

(Brochure: updated—March 2000)

Information sheets

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

Registration of Complaint Form

May be used to lodge a complaint with the Tribunal.

Rules & Guidelines

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

Guidelines about when the Tribunal would ordinarily require persons to attend a conciliation conference.

Contact

Mr Frank Stasiak
Public Education & Media Liaison

Telephone: 03 8635 5500
Facsimile: 03 8635 5588

Appendix 8

Staff Training

Training	Provider	Staff
Case Discussion - Representation of Minors & TPD matter.	Internal	Executive Staff and Complaints Analysts
FOI Exemptions	External	FOI Officer
Case Discussion - Complaints Involving Fraud	Internal	Executive Staff and Complaints Analysts
Developing Strategic Mediation Strategies	External	Senior Conciliator
APS Values & Code Of Conduct	External	All Staff
Practitioner's Certificate in Mediation and Conciliation	External	Complaints Analysts (2)
Case Discussion - Agency Issues and Advice Related Complaints	Internal	Executive Staff and Complaints Analysts
Case Discussion - General	Internal	Executive Staff and Complaints Analysts
FOI Training	External	FOI Officer
Giving Great Service Workshop	External	Complaints Analysts (2)
Case Discussion – Pre Conciliation Resolution	Internal	Executive Staff and Complaints Analysts
OH&S Representatives 5 Day Training Program	External	OH&S Officer
Case Discussion - General	Internal	Executive Staff and Complaints Analysts
SCT Conference 2005 – New Legislation (Interdependency & Fund Choice), Myers Briggs Jung Typology	Internal and External	All Staff
Successor Fund Transfers	Internal	Executive Staff and Complaints Analysts
FSR – Disclosure of fees and costs	External	Complaints Analysts (3)
<hr/>		
Formal Studies	Provider	Staff
Staff undertaking part-time studies at tertiary institutions	Various	2

Appendix 9

Financial Statement

Financial And Staffing Resources Summary 2004–2005

The following is a summary of the direct cost of the Superannuation Complaints Tribunal for 2004–2005. These figures are derived from the audited statements of the Australian Securities and Investments Commission.

	(2004–2005) \$(000)
ACCRUAL BASIS	
Employee expenses	2,874
Suppliers expenses	1,061
Depreciation Expenses including write downs	30
Net Cost	<u>3,965</u>
TOTAL ASSETS	968
TOTAL LIABILITIES	1,140
STAFFING	
Average Staffing	36.5
MEMBERS FEES	372

Consultants and Competitive Tendering and Contracting

The Tribunal relocated premises from 60 Collins Street to 31 Queen Street Melbourne during the financial year. The project was managed by the Property and Contracts Unit, ASIC who issued contracts on the Tribunal's behalf as follows:

(1) Building works and services	\$ 520,000
(2) Office furniture and equipment	\$ 164,887
(3) Consultants	\$ 77,600

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 complaints analyst 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) 8635 5588

People from all around Australia can call the Tribunal on **1300 780 808** for the cost of a local call.

Appendix 11

Tribunal Location & General Information

Location:

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

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

Facsimile: (03) 8635 5588

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

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

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

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

Telephone: (03) 8635 5500

Facsimile: (03) 8635 5588

Access To Review Determinations:

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

INDEX

A

Administration, 18
Australian Prudential Regulation
Authority (APRA), 20
Australian Securities and
Investments Commission (ASIC),
18

C

Chairperson, 7, 10
Commonwealth Departments,
scrutiny by, 25
complaints,
age and gender, by, 30
death, 31
disability, 31
disclosure/fees, 31
fund type, by, 32, 33
outside jurisdiction, 23, 30, 56
payments, 31
resolution outcomes, 56
section 19, 23, 30, 56
state/territory distribution, 30
statistical overview of, 29
surcharge, 31
withdrawn, 34, 56
within jurisdiction, 31
written, 29-30
conciliation, 17, 34
consultants, 46
corporate objectives, 39
corporate plan, 39
corporate strategies, 41
courts, scrutiny by, 26

D

delegation of powers, 53
Deputy Chairperson, 11
determinations, *see* review
Director, 11

E

environmental awareness, 48
establishment of Tribunal, 9
excluded complaints, 23
excluded subject matter, 23
exempt public sector
superannuation schemes
(EPSSS), 23, 33
external scrutiny of the Tribunal, 25

F

Financial Statement, 76
freedom of information (FOI), 48, 65
functions of Tribunal, 9

G

general strategies, 46

I

Inquiry & Conciliation, 17
internal scrutiny of Tribunal, 25

J

jurisdiction of Tribunal, 23

L

Legal Adviser, 18

M

management of fund as a whole, 23
Memorandum, 66, 74
Memorandum of Understanding
with ASIC (MOU), 19, 68
Minister, *see* Responsible Minister

N

national operation of Tribunal, 18
New Legislation, 22

Index

O

objectives of Tribunal, 9
Occupational Health and Safety
(OH&S), 48
Ombudsman, scrutiny by, 28

P

Parliament, scrutiny by, 25
powers of Tribunal, 24
Procedural Rules & Guidelines, 57
privacy, 48
Privacy Commissioner, scrutiny by,
28
program strategies, 45
public education, 49

Q

Quarterly Bulletin, 74

R

Records management, 46
referral of complaints to APRA, 19
referral of complaints to ASIC, 19
Responsible Minister, 20
review, 12, 37, 56
Review Support, 17
role of Tribunal, 9

S

Service Charter, 38, 77
social justice and access & equity,
49
staff of Tribunal, 19, 46, 47, 52
structure of Tribunal, 10

T

telephone enquiries, 29
training, staff, 75
Translating & Interpreting Service
(TIS), 49
Treasury, Department of, 21
Tribunal Members, 4, 12

W

website, 79
withdrawal of complaints, 34, 56
workplace diversity, 47