

**Superannuation Complaints Tribunal**  
**Annual report 2020–21**

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24 September, 2021

Senator the Hon Jane Hume  
Minister for Superannuation, Financial Services and the Digital Economy  
Minister for Women's Economic Security  
Parliament House  
CANBERRA ACT 2600

Dear Minister

**SUPERANNUATION COMPLAINTS TRIBUNAL ANNUAL REPORT 2020-21**

I am pleased to submit to you for presentation to the Parliament the twenty-seventh Annual Report of the Superannuation Complaints Tribunal for the year ended 30 June 2021, as required by s 67(1) of the *Superannuation (Resolution of Complaints) Act 1993*.

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.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Lynn Kelly', with a stylized flourish at the end.

Lynn Kelly  
Chairperson  
Superannuation Complaints Tribunal



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# Superannuation Complaints Tribunal report

## About the Superannuation Complaints Tribunal

The Superannuation Complaints Tribunal (Tribunal) was an independent dispute resolution body. The Tribunal managed a diverse range of superannuation-related complaints received on or before 31 October 2018 and offered a free, user-friendly alternative to the court system.

The Tribunal was required to provide mechanisms that were fair, economical, informal and quick for the purposes of inquiring into, conciliating and reviewing complaints.

On 18 December 2017, the Government announced that the Tribunal will cease by June 2020. In April 2019 the end date of the Tribunal was extended to December 2020.

## About this report

This report is a record of activities during the financial year 2020-21, with a focus on the six months during which the Tribunal was operational (July 2020 to December 2020).

This report was prepared in accordance with s 67 of the *Superannuation (Resolution of Complaints) Act 1993* (the SRC Act) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The focus of the reporting period was for the Tribunal to meet its objective of resolving open complaints and ceasing all operations by 31 December 2020.

All data in this report was correct at the time of reporting. Minor discrepancies between this and previous annual reports reflect the review of some data and reporting frameworks.

Many of the charts and tables in this report use percentages. Some percentages have been rounded to the nearest whole number or single decimal place. Because of this, the sum of the percentages in a chart or table may not add up to 100%.

## Chairperson's Review, January – June 2021

While the Tribunal ceased operations in December 2020, following completion or transfer to AFCA of its remaining complaints, its establishing legislation the *Superannuation (Resolution of Complaints) Act 1993* remained in force for the entire reporting period. The responsible Minister made new statutory appointments under that Act following the cessation of previous appointments to the Tribunal. The appointments were made on an acting, part time basis for no remuneration in recognition that the Tribunal has ceased operations.

I am the current acting Chairperson of the Tribunal, in addition to my role as First Assistant Secretary, Department of the Treasury. The acting Deputy Chairperson is Sarah Edmondson, Senior Executive Leader, Australian Securities and Investments Commission (ASIC). Apart from statutory appointees, the Tribunal did not have any staff from January-July 2021. Robert Jeremenko, Department of the Treasury served as Chairperson of the Tribunal from January to July 2021. Elizabeth Lee, ASIC served as acting Deputy Chairperson from January to February 2021.

Between 1 January and 30 June 2021, the Tribunal did not have any complaints to resolve. During that time, statutory appointees responded to requests for access to Tribunal documents from the Australian Financial Complaints Authority (AFCA).

Amendments to the *Putting Consumers First—Establishment of the Australian Financial Complaints Authority Act 2018* to facilitate the closure of the Tribunal are currently before the Parliament. These amendments transfer Tribunal records to ASIC and will allow ASIC to maintain and deal with Tribunal records following the Tribunal's closure, allow the Federal Court to remit cases to AFCA and creates a rule-making power for the responsible Minister to address any other transitional matters that arise.

The remainder of this report focuses on the period July – December 2020 during which the Tribunal was operating.

The costs of producing and printing this report were met by the Department of the Treasury.

Lynn Kelly

Acting Chairperson

Superannuation Complaints Tribunal



## Chairperson's Review, July – December 2020

Following 26 years of service to the superannuation sector and the Australian community, the Tribunal ceased operations on 31 December 2020. This Annual Report marks the final six months of operation – specifically covering 1 July 2020 to 31 December 2020.

The Tribunal commenced the period under review with 170 remaining 'in jurisdiction' complaints and by 31 December this number had been reduced to zero.

On 1 November 2018, the Australian Financial Complaints Authority (AFCA) commenced accepting all superannuation related complaints and in December 2020, The Australian Securities and Investments Commission (ASIC) approved an update to the AFCA Rules to provide for the transfer and handling of any remaining open complaints from the Tribunal to AFCA by 31 December 2020. Six incomplete complaints were transferred, and a further five complaints remained on appeal to the Federal Court at the time of closure.

The AFCA Rules changes also provided for AFCA to consider any matters that may be remitted back following appeal from the Tribunal to the Federal Court. The AFCA Rules changes did not otherwise affect the complaints AFCA had within its jurisdiction.

At the start of the period under review, the Tribunal had 31 team members and by closure, this number had declined to six with many being redeployed to ASIC and a smaller number to AFCA.

As with all workplaces – especially in Victoria – the Tribunal was heavily impacted by the working restrictions imposed by government directives in response to the COVID-19 pandemic. All staff worked remotely throughout the entire reporting period.

I want specifically to express my thanks and admiration to every member of our team for their professionalism and dedication to their tasks notwithstanding the many challenges imposed on them. Everyone understood the difficulties and made the best of the situation. Regular (virtual) team meetings helped keep the team together and focused on the work before us.

Of course, I extend my appreciation to each of our Tribunal Members (each appointed by the Minister) and thank them for their dedicated expertise and highly valued advice in formulating determinations during the period.

Importantly, I take this opportunity to thank several individuals personally. Ragini Rajadurai served the Tribunal for a period of almost 10 years as a Tribunal Member, then Deputy Chairperson and Acting Chairperson prior to my appointment. More than any other single individual, Ragini has worked tirelessly to keep the Tribunal operations running smoothly and effectively.

I sincerely thank Ragini for her professionalism, sound legal, governance and managerial advice, outstanding leadership and her friendship throughout my time as Chairperson.

I also wish to thank Elizabeth Lee as Tribunal Group Senior Manager. Bringing both her legal and administrative skills to the organisation, Elizabeth ensured we achieved our planned objective.

Importantly too, I wish to thank Sandy Stogiannou in her role as Executive Assistant to both the Chairperson and Deputy Chairperson. Sandy has been a central figure in keeping momentum going within the organisation. Having been firstly with ASIC and later with the Tribunal for over 17 years, Sandy had mastered the art of diplomatic problem solving and just getting things done.

There is no doubt in my mind that the Tribunal would not have achieved all that it has accomplished so professionally and efficiently without the wonderful and professional input from our entire staff, Ragini, Elizabeth and Sandy. They can each be very proud of all they have achieved.

Finally, I wish the team at AFCA every success in the very important work they are doing in the resolution of all financial service complaints from now on.

Kind regards,

A handwritten signature in blue ink, appearing to read 'John Simpson', enclosed in a thin blue rectangular border.

John Simpson

Chairperson – Superannuation Complaints Tribunal

July – December 2020

# Role and functions

## Role

The Tribunal was an independent statutory dispute resolution body that dealt with superannuation-related complaints received on or before 31 October 2018. It offered a free, user-friendly alternative to the court system.

The Tribunal dealt with a diverse range of complaints relating to the decisions and conduct of:

- > superannuation trustees
- > insurers
- > retirement savings account (RSA) providers
- > superannuation providers
- > and other relevant decision-makers in relation to:
  - > regulated superannuation funds
  - > approved deposit funds
  - > life policy funds
  - > RSAs
- > exempt public sector superannuation schemes that have sought the jurisdiction of the Tribunal.

The Tribunal did not, however, have unlimited jurisdiction to deal with all superannuation-related grievances. Stringent jurisdictional and standing provisions had been built into the SRC Act.

## Powers

The Tribunal was empowered under the SRC Act to require decision-makers to provide relevant documentation and information to enable it to inquire into complaints.

The Tribunal also treated complaints as withdrawn if, for example, it considered the complaint to be misconceived, lacking in substance, trivial or vexatious. It could also have been withdrawn if the subject matter could be more effectively dealt with by another statutory authority or had already been dealt with by the Tribunal.

The Tribunal could also require the parties to attend a conciliation conference to try to settle the complaint. If this was unsuccessful, and the complaint was not withdrawn, the complaint proceeded to review where the Tribunal had power to implement a range of remedies.

Depending on the circumstances of the complaint, the Tribunal could:

- > affirm a decision
- > remit a complaint to the trustee, insurer, RSA provider or other decision-maker for reconsideration of its decision in accordance with the directions of the Tribunal
- > vary a decision
- > set aside a decision and substitute its own decision.

If the Tribunal was satisfied that a decision in relation to a complainant operated fairly and reasonably in the circumstances, then the Tribunal affirmed that decision.

The Tribunal may have concluded that the decision or action complained of was unfair or unreasonable to the complainant. In this situation, when making its determination, the Tribunal:

- > must have complied with the law, the governing rules of the fund, the terms of the insurance contract or the terms and conditions of the RSA (as relevant)
- > may only have exercised its powers for the purpose of placing the complainant, as nearly as practicable, in such a position that the unfairness or unreasonableness no longer existed.

## Common complaints

The information below shows common complaints that were within jurisdiction for the Tribunal. Complaints must also have been made on or before 31 October 2018 to fall within the Tribunal's jurisdiction.

Complaints about the decisions and conduct of:

- > regulated superannuation funds (other than self-managed superannuation funds (SMSF)) and approved deposit funds (ADF)
- > people acting on behalf of the trustee
- > insurers in relation to insurance benefits provided under superannuation funds
- > life companies as providers of immediate and deferred annuities (annuity policies)
- > people acting on behalf of the life company
- > providers of retirement savings accounts (RSA provider)
- > people acting on behalf of the RSA provider and the decisions of insurers in relation to insurance benefits where the premiums are paid from the RSA.

Examples of complaints include:

- > a belief that a death benefit was paid or may be paid to the wrong person or people

- > unreasonable delay in a payment
- > miscalculation of a benefit, payment, or commutation
- > refusal to approve a claim for a disability benefit
- > misrepresentation about the terms and conditions of a life or annuity policy
- > errors in annual statements
- > error in information provided by a superannuation provider to the Australian Taxation Office (ATO) for the purposes of the superannuation surcharge, member contributions statements or increased contributions tax on high income earners
- > refusal by an insurer to approve a claim for a disability benefit where the insurance premium is paid from the RSA
- > a superannuation provider's conduct in administering the splitting of a superannuation payment between spouses in accordance with a binding agreement or Family Court Order under the family law legislation.

A complaint could have been made to the Tribunal that a decision or conduct was unfair or unreasonable in its practical outcome or consequence. While the Tribunal heard complaints about a wide range of decisions made by different superannuation entities, it had no jurisdiction to deal with the following complaints:

## Process and scope

Where the complainant has not, before coming to the Tribunal, first lodged a complaint with the fund or RSA provider via its internal complaints resolution arrangements under s 101 of the <i>Superannuation Industry (Supervision) Act 1993</i> (the SIS Act) or s 47 of the <i>Retirement Savings Accounts Act 1997</i> (the RSA Act) (as relevant) or, with respect to complaints in relation to another relevant decision-maker, has not made all reasonable efforts to have the complaint resolved by that decision maker – s 19 of the SRC Act.	Hasn't first been dealt with by the fund
Where the subject matter of the complaint is currently the subject of court proceedings – s 20 of the SRC Act.	Before a court
Where other statutory standing requirements set by the SRC Act have not been met by the complainant(s).	Doesn't meet SRC Act requirements
Where it is about 'management of the fund as a whole – ss 14(6), 15F(4) or 15J(4) of the SRC Act.	Not specific to the complainant

## Entity/product type

Are related to self-managed superannuation funds (SMSFs). SMSFs are regulated by the Australian Taxation Office (ATO) – s 5 of the SRC Act.	Relates to SMSFs
Are related to exempt public sector superannuation schemes which are not taken to be 'regulated' by s 4A of the SRC Act, or before being taken to be regulated, or in relation to which a State or Territory law has not expressly conferred functions on the Tribunal for s 12(2) of the SRC Act.	Relates to some unregulated public sector schemes
Are about financial advisers who are not acting as agents of a superannuation provider.	Relates to financial advisers
Are about decisions made by decision-makers who are not specifically caught by the SRC Act (for example, employers).	Relates to those not in the SRC Act

## Expired benefit

Total and permanent disability (TPD) complaints not made within the time limits set in ss 14(6A)-(6D), 15F(5)-(8) or 15J(F)-(8) of the SRC Act.	Time limit expired
In relation to the payment of death benefits made by persons who do not have an 'interest in the benefit' or not made by such a person within the prescribed time limit – ss 14(4) and 15(2), 15B(3) and 15F(3) and 15G(2), or 15J(3) and 15K(2) of the SRC Act.	No interest or time limits have expired

## Other

Are about decisions of trustees of regulated superannuation funds and approved deposit funds made before the fund was regulated. (See the judgement of Merkel J in <i>Briffa &amp; Ors v Hay</i> (1997) 147 ALR 226).	Decisions made before the fund was regulated
Are 'excluded complaints' concerning 'excluded subject matter' as declared in the <i>Superannuation Resolution of Complaints Regulations 2018</i> . (No complaints or subjects have been declared as excluded as at 30 June 2020).	Excluded complaints
Are made on or after 1 November 2018.	Complaint must be made to AFCA

## SRC Act amendments

The SRC Act and SRC Regulations were not amended during the reporting period.

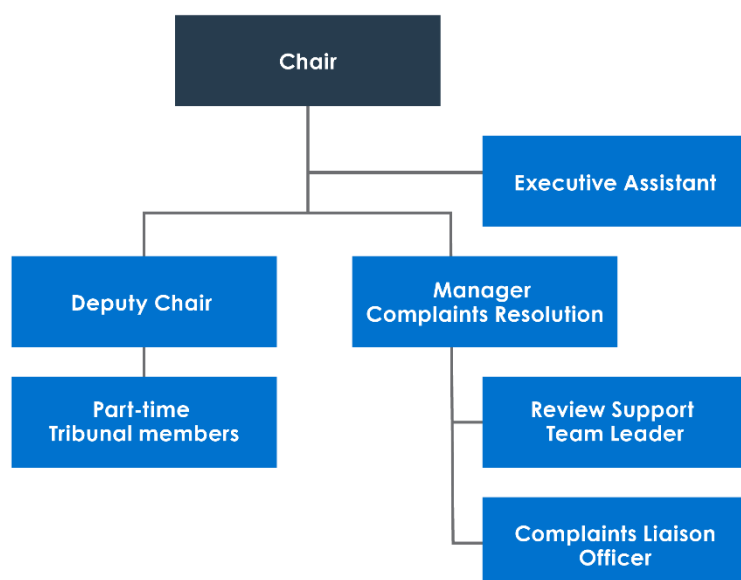
### Delegation

Under s 59(1) of the SRC Act, the Tribunal's inquiry and conciliation functions were exercisable on behalf of the Tribunal by the Chairperson, Deputy Chairperson and/or by members of the Tribunal staff who had been so authorised by the Chairperson.

The Tribunal's review powers rested directly in the Tribunal itself as constituted for review and may not be delegated.

# Organisation and structure

## Organisational chart as at 31 December 2020



## Staff numbers as at 31 December 2021

Budget for employee expenses in 2020–21 was \$1,380,875 (not including Tribunal Members sitting fees).

2021	6	3	3	0	6
	Team member numbers	Female	Male	Part-time	Full-time

2020	41	24	17	2	39
	Team member numbers	Female	Male	Part-time	Full-time

# Human resources

## Team member movements, July – December 2020

John Simpson continued the role of Chairperson and Ragini Rajadurai the role of Deputy Chairperson.

From July to December 2020 the Tribunal had a significant decline in team members due to the impending closure on 31 December 2020. Several team members obtained roles within ASIC and several permanent and temporary team members finished their employment with the Tribunal.

## Performance management

The Tribunal continued to apply its existing performance management framework, which helps team members perform, develop and achieve workplace results.

## Career development and training

During the year the Tribunal provided team members access to ongoing learning and development opportunities for them to enhance their skill base.

## Workplace health and safety

There were no medical incidents, non-compensable rehabilitation cases or compensation claims in the reporting year. Two Tribunal team members who were trained First Aid Officers commenced roles within ASIC.

The Tribunal continued to face its biggest workplace health and safety issue being COVID-19. Team members continued to work from home to reduce any physical risks and minimise accompanying anxiety. This action proved beneficial, with no Tribunal team members being diagnosed with COVID-19. Team members also continued to be productive and engaged whilst working away from the office.

## Team member numbers

The following tables detail the Tribunal's team member numbers for 2020–21. At 31 December 2020, the Tribunal employed six team members, a decrease of 85.3% from 30 June 2020.

The Tribunal had no team members who identify as Aboriginal or Torres Strait Islander.

All Tribunal team members were located in Melbourne during the 2020–21 reporting period.



**Table 6.1 Tribunal team members at 31 December 2020**

	PERMANENT				TEMPORARY				TOTAL
	Full-time		Part-time		Full-time		Part-time		
	Female	Male	Female	Male	Female	Male	Female	Male	
CHAIR						1			1
DEPUTY CHAIR					1				1
EXEC 2									
EXEC 1		1							1
ASIC4	1	1							2
ASIC3	1								1
TOTAL	2	2			1	1			6

**Table 6.2 Workforce planning, retention and turnover during the reporting period at 31 December 2020**

	PERMANENT		TEMPORARY		Total
	Female	Male	Female	Male	
<b>Hires</b>					
CHAIR					
EXEC 2					
EXEC 1					
ASIC4					
ASIC3					
<b>Exits</b>					
CHAIR					
EXEC 2	2				2
EXEC 1	2	4			6
ASIC4	5	2	2	2	11
ASIC3	2		1		3

\* Secondments and transfers to and from ASIC are not included in this table.

**Table 6.3 Salary range by classification 2020–21**

Grade	Minimum	Maximum
ASIC 3	\$69,409	\$79,562
ASIC 4	\$83,056	\$93,093
Executive Level 1	\$108,843	\$125,901
Executive Level 2	\$123,301	\$172,775

**Table 6.4 Performance pay by classification 2020–21**

Classification	No of Recipients	Aggregate	Minimum	Maximum	Average
ASIC 4	12	\$44,766	\$1,507	\$6,265	\$3,731
Executive Level	9	\$89,635	\$4,563	\$15,613	\$9,959
Total	21	\$134,402	\$1,507	\$15,613	\$6,400

\* Includes pro-rata payments for the 2020–21 performance year for team members who left ASIC in 2020–21.

## Enterprise Agreement

All Tribunal team members were employed under the ASIC Enterprise Agreement 2019–2022. Information on the Enterprise Agreement and performance pay arrangements are publicly available.

## Appointment of Tribunal Members, July – December 2020

The Chairperson and Deputy Chairperson were appointed by the Governor-General and remunerated in accordance with determinations made under the *Remuneration Tribunal Act 1973* (the Remuneration Act).

Tribunal Members were appointed by the responsible Minister and also remunerated in accordance with determinations made under the Remuneration Act.

## National operations

The Tribunal team members were located at Level 18, 140 William Street, Melbourne.

The Tribunal had discretionary powers under ss 29 and 35 of the SRC Act and the Chairperson's Guidelines and Procedural Rules (see Appendices 4 and 5) to decide its mode of service delivery. The Tribunal determined its conciliations and reviews by telephone, video conferencing or by 'any means of communication'.

## Relationships

### Australian Securities and Investments Commission (ASIC)

The Tribunal had a relationship with ASIC, which began on 1 July 1998. Under s 62 of the SRC Act, ASIC provided the staff and facilities as necessary or desirable to enable the Tribunal to perform its functions.

As of 6 May 1999, the Tribunal and ASIC worked under a non-legally binding memorandum of understanding (MOU) (see Appendix 2). The MOU satisfied relevant statutory provisions and recognised each body's independence.

In addition, the Tribunal and ASIC observed a mutual, non-legally binding service level agreement (SLA). This covered each agency's responsibilities for information technology, learning and development, finance, human resource management/payroll and office services.

Under the SRC Act, ASIC provided the Tribunal with resources and budget to function. Procurements were made in accordance with the PGPA Act.

### Australian Prudential Regulation Authority (APRA)

APRA oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, private health insurance, friendly societies and most of the superannuation industry.

The regulator also collects an annual levy on superannuation entities, under the *Financial Institutions Supervisory Levies Collection Act 1998*, which is paid into consolidated revenue.

The Tribunal's operating costs were appropriated by Parliament as part of the ASIC appropriations.

## Referral of complaints

The Tribunal had to provide ASIC and/or APRA with certain details of complaints.

### Contraventions

Under the SRC Act, the Tribunal's Chairperson had to report details about contraventions of any:

- > law
- > governing rules of a superannuation fund
- > terms and conditions of an annuity policy, life policy or RSA.

Under ss 64, 64A and 65, the Chairperson had to give the particulars to ASIC and/or APRA on becoming aware there may be a contravention and/or that a party to a complaint had refused or failed to give effect to a determination made by the Tribunal.

This reporting year no contraventions were reported to ASIC or to APRA.

### Determinations

Under s 65 of the SRC Act, the Chairperson had to report details of any refusals or failures to give effect to a determination made by the Tribunal.

On becoming aware that a party to a complaint had failed or refused to give effect to a determination, the Chairperson had to give particulars to ASIC and/or APRA.

This reporting year there were no reportable failures or refusals to give effect to a determination.

### Settlements

Under s 31(2) of the SRC Act, the Tribunal had discretionary power to give details of a conciliation settlement to the 'regulator' if it thought the settlement may require investigation. 'Regulator' is defined in s 10(1) of the SIS Act. It may be either ASIC, APRA or the Commissioner of Taxation, as relevant.

This reporting year there were no settlements requiring investigation.

## The responsible Minister

The responsible Minister has certain statutory powers under our Act. They are mostly concerned with various appointment and administrative matters concerning the Chairperson, Deputy Chairperson and Tribunal Members. The Minister has no statutory powers of direction over the Tribunal in the exercise of its s 12 functions.

The Tribunal's portfolio Minister was Senator the Hon Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy, Minister for Women's Economic Security.

The Tribunal's enabling Act, the SRC Act, is administered by the Department of the Treasury.

## Jurisdiction

The Tribunal did not have jurisdiction to receive complaints during 2020–21. All enquiries regarding new complaints were directed to AFCA.

## Complaints finalised

During the reporting period 166 complaints were finalised.

**Table 6.5 Complaints finalised, resolved or withdrawn in 2020–21.**

	Number of complaints	%
<b>Withdrawn by the Tribunal</b>	<b>37</b>	<b>21.77%</b>
Complainant does not wish to proceed	7	
Lacking in substance	26	
Misconceived	4	
<b>Withdrawn by complainant</b>	<b>26</b>	<b>15.29%</b>
Before conciliation conference	3	
After conciliation conference	17	
After listing for review	2	
Without resolution	4	
<b>Review matters determined</b>	<b>107</b>	<b>62.94%</b>
Decision affirmed	80	
Decision varied	1	
Decision set aside	25	
<b>Outside of jurisdiction</b>	<b>1</b>	
Total number of complaints closed	170	100%

## Conciliation

The Tribunal held eight conciliation conferences in 2020–21.

**Table 6.6 Conciliation conferences held in 2020–21**

	2020–21		2019–20	
	Number	%	Number	%
<b>Type</b>				
Administration	8	100%	151	44.3%
Death	0	0%	74	21.7%
Disability	0	0%	116	34.0%
<b>Outcome</b>				
Pending	0	0%	49	14.4%
Settled	1	12.5%	93	27.3%
Not settled	7	87.5%	199	58.4%
<b>Total</b>				
Total complaints heard in conciliation	8		341	
% of all complaints within jurisdiction		4.82%		30.3%

## Review

107 matters were determined at review in 2020–21.

**Table 6.7 Review determination outcomes in 2020–21**

	2020–21		2019–20	
	Number	%	Number	%
<b>Outcomes</b>				
Affirmed	80	74.78%	152	70.7%
Remitted	0	0%	2	00.93%
Varied	1	0.93%	2	00.93%
Set aside	25	23.36%	59	27.44%
No jurisdiction	1	0.93%	0	0%
<b>Type</b>				
Administration	48	44.86%	38	17.7%
Death	3	2.80%	99	43.0%
Disability	56	52.34%	78	46.1%
Total complaints determined in review	107		215	
% of all complaints within jurisdiction		64.46%		19.1%



## Chairperson and Deputy Chairperson, July – December 2020

The terms of the Chairperson and Deputy Chairperson ended on 31 December 2021.



### **Chairperson John Simpson**

John took up his appointment as Chairperson of the Tribunal on 16 December 2019. Bringing extensive private and public sector experience to the role, John was Chairperson of ESSSuper for several years prior to joining the Tribunal and held a senior executive role at National Australia Bank for four years.

Prior to working at NAB, John had a career in the energy sector working with Shell Australia and Shell International during the 1980s/90s. He was appointed a Director of Shell Australia and Shell Energy Holdings Australia Limited in 2003. John holds a Degree in English from the University of Melbourne. He has a long-standing interest in education and currently serves as a Member of Council at Monash University and as an adviser to Teach for Australia. John is a Fellow of the Canberra based Centre for Strategy & Governance.

John has served as a director of a number of community and philanthropic organisations. He was Deputy Chair of the National Science & Technology Centre (Questacon) based in Canberra, a Director the Melbourne Symphony Orchestra, and a Director of the food rescue charity, SecondBite.



**Deputy Chairperson  
Ragini Rajadurai**

Ragini was appointed as Deputy Chairperson of the Tribunal in April 2015 for a five year term and was appointed Acting Chairperson of the Tribunal in August 2019. She resumed her role as Deputy Chairperson on 16 December 2019 and in April 2020 Ragini's appointment as Deputy Chairperson was extended until 31 December 2020 to see the Tribunal through to closure. Prior to her appointment as Deputy Chairperson, Ragini was a Tribunal Member for three years.

Ragini has a strong commitment to alternate dispute resolution and has extensive experience in the law and financial services. She has been a barrister practicing at the Victorian Bar, lecturer in law, Deputy Tolling Customer Ombudsman and has also held senior executive roles with both the General Insurance Ombudsman Service and the Financial Ombudsman Service. Ragini holds a Bachelor of Laws, a Bachelor of Jurisprudence and a Master of Business Administration, and is an experienced mediator.

## Tribunal Members

The Tribunal operated with a number of Tribunal Members appointed by the Minister, with each member serving a set term. They were drawn from superannuation, insurance, government, legal, medical and actuarial backgrounds.

### Tribunal Members

Member	Commencement of current term	End of current term
Andrew Boxall	14 December 2016	13 December 2020
Amanda MacDonald	5 August 2019	4 August 2021
Angela Williams	14 December 2016	13 December 2020
Annette Carruthers	14 December 2016	13 December 2020
Beth McConnell	5 August 2019	4 August 2021
Brian Collopy	14 December 2016	31 December 2020
Brian Frazer	14 December 2016	13 December 2020
Brydget Barker-Hudson	14 December 2016	13 December 2020
Catherine O'Sullivan	14 December 2016	13 December 2020
Jane Abbott	1 February 2017	31 January 2021
Jocelyn Furlan	20 December 2018	19 December 2021
Justin Malbon	14 December 2019	13 December 2021
Katie Valentine	14 December 2016	13 December 2020
Laurie Warfe	14 December 2016	13 December 2020
Lynda Purcell	14 December 2016	13 December 2021
Lynn Ralph	14 December 2016	13 December 2020
Pamela McAlister	20 December 2018	19 December 2021
Roderick McRae	14 December 2016	13 December 2020
Stephen Duffield	5 August 2019	4 August 2021

# Corporate Governance

## The Executive

The Chairperson was the Executive Officer of the Tribunal. They were responsible for the overall operation and administration of the Tribunal's powers and functions in accordance with its statutory objectives under ss 7A and 59(1) of the SRC Act.

The Chairperson was responsible for the constitution and reconstitution of the Tribunal at review; the selection of Tribunal Members for review panels; and for the establishment of procedural rules for the conduct of review meetings under s 9.

The Chairperson was also a repository of a range of specific powers and responsibilities such as formulating written guidelines for the allocation of work among Tribunal Members – ss 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 – s 9(2A).

## Internal scrutiny

The Tribunal operated according to a team model. Scrutiny of Tribunal processes was routinely carried out at all levels by team members in line with their seniority and experience. More complex issues were dealt with by the senior management team.

## Fraud prevention, detection and control

ASIC, on behalf of the Tribunal, operated in accordance with the Commonwealth Fraud Control Framework. This Framework ensured the following measures were in place for the Tribunal:

- > fraud risk assessments
- > fraud control plans
- > mechanisms for preventing, detecting, investigating, dealing with and recording fraud.

## External scrutiny

The Tribunal was scrutinised by external entities including the Parliament, various parliamentary committees, the courts and certain Commonwealth departments and statutory bodies. Significant developments during the period are listed in the table below.

**Table 6.8 External scrutiny developments and response for 2020–21**

External entity	Development(s)	Tribunal's response
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.	The Tribunal provided its biannual indexed lists of files to be tabled before the Senate in accordance with Senate Standing Order No 12.
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 s 46 of the SRC Act, under the <i>Administrative Decisions (Judicial Review) Act 1977</i> and under s 39B of the <i>Judiciary Act 1903</i> . Also, under s 39 of the SRC Act, the Tribunal may refer a question of law arising in relation to a complaint to the Federal Court to consider.	This reporting period five (5) appeals from Tribunal determinations were filed with the Federal Court pursuant to s 46 of the SRC Act. All court matters involving the Tribunal over the reporting year are listed in Appendix 9.
Commonwealth Ombudsman	One formal enquiry was made by the Commonwealth Ombudsman under the <i>Ombudsman Act 1976</i> this reporting year.	This matter required no further action and no matters remain pending at 31 December 2020.
Auditor-General or Parliamentary Committees	The Tribunal's operations were not the subject of any report by the Auditor-General or any parliamentary committee during the reporting period.	Not applicable.
Information Commissioner	One report was made by the Office of the Australian Information Commissioner (OAIC) under the <i>Privacy Act 1988</i> . There were no reports made under the <i>Freedom of Information Act 1982</i> in respect of the Tribunal during this reporting period.	The OAIC matter was resolved through conciliation.

## Consultants

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.

## Summary

During 2020–21, no new consultancy contracts were entered into and no ongoing consultancy contracts were active.

## Policies, procedures and categories

ASIC's use of Commonwealth resources and expenditure of public money is primarily governed by the PGPA Act and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

Responsibility for compliance with the Commonwealth Procurement Rules (CPRs) lies with the appropriate financial delegates. The delegates are supported by a central procurement team of qualified procurement officers who:

- > develop and maintain ASIC's procurement processes and systems which are designed to promote compliance with the PGPA Act, PGPA Rule and the CPRs for all levels of procurement
- > manage complex and/or high-risk procurement activities, including procurements that are subject to the mandatory procurement procedures of the CPRs.

ASIC's procurement framework aims to facilitate compliance with the core principles and policies of the CPRs including 'value for money', 'encouraging competition', 'efficient, effective, ethical and economical use of resources' and 'accountability and transparency'.

## Supporting small businesses through procurement

The Tribunal supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website.

The Tribunal's procurement practices supported SMEs by ensuring requests for quotations were clear, written in plain English and presented in an accessible format.

## Advertising campaigns

No advertising campaigns were undertaken by the Tribunal during the reporting year.

## Privacy

The Tribunal complied with the requirements of the *Privacy Act 1988* in relation to collecting, processing, storing, using and disclosing personal information.

## Freedom of information

Part II of the *Freedom of Information Act 1982* (the FOI Act) requires agencies to publish information to the public as part of the Information Publication Scheme (IPS).

This reporting year, the Tribunal received no FOI applications.

### Documents held

The types of documents the Tribunal held include:

- > documents relating to complaints made to the Tribunal including Tribunal determinations and reasons for determinations
- > an electronic case management system containing information in relation to complaints made to the Tribunal
- > Tribunal practice and procedure guidelines
- > documents and other materials containing information on the Tribunal processes, including information sheets and brochures.

### Lodging an FOI request

If you want to access documents, you must send a request in writing by mail or email. You should state the request is an application for the purposes of the FOI Act and provide sufficient information so the documents can be readily identified. You should also advise how you would like to receive the documents and provide a postal or email address.

The application may be posted to:

Senior Manager – Freedom of Information

GPO Box 9827

Brisbane QLD 4001

Or email: [FOIrequest@asic.gov.au](mailto:FOIrequest@asic.gov.au)

### Process for applications

On receiving an FOI request, generally permission is sought from the provider of the information to release the information pursuant to s 63(3)(b) of the SRC Act.

If the information provider agrees, this usually provides a faster, cheaper and more satisfactory result for all. It also accords with s 3A 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 information, then the FOI application is processed in the normal way within the requisite statutory timeframe.

## Appendices

Appendix 1.0	Financial statement
Appendix 2.0	Memorandum of understanding with ASIC
Appendix 3.0	Service Charter
Appendix 4.0	Chairperson's guidelines and procedural rules – signed by Tribunal Chairperson in February 2020
Appendix 5.0	Conciliation attendance guidelines
Appendix 6.0	Delegations – signed by Tribunal Chairperson in February 2020
Appendix 7.0	External scrutiny



## Appendix 1.0 Financial statement

Pursuant to s 62 of the SRC Act, ASIC provides the staff and facilities as are necessary or desirable to enable the Tribunal to perform its functions.

ASIC incurred \$2.024m on behalf of the Tribunal in 2020–21.

**Figure 1.0 ASIC’s financial expenditure for the Superannuation Complaints Tribunal**

Year	20-21	19-20	18-19
\$Millions	2.024	7.686	7.502

**Figure 1.1 Tribunal member sitting fees**

Year	20-21	19-20	18-19
\$Thousands	274	850	912

**Figure 1.2 Salary and wages**

Year	20-21	19-20	18-19
\$Millions	1.308	5.919	5.404

**Figure 1.3 Property expenses**

Year	20-21	19-20	18-19
\$Thousands	140	276	420

**Figure 1.4 Other operating expenses**

Year	20-21	19-20	18-19
\$Thousands	302	641	766

**Figure 1.5 Staff numbers**

Year	20-21	19-20	18-19
Average over 12 months	15.6*	41.4 (5.641)	46

\* Average from July to December FTEs

## Appendix 2.0 Memorandum of understanding with ASIC

### 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 any 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, Regulations, 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 authorized 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. Objective**

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

- 10.3. The SCT is funded from the same budget allocation as ASIC. The SCT budget preparation, allocation and, where appropriate, review, will be carried out in conjunction with ASIC's procedures, as determined from time to time.

## **11. Disputes**

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

## **12. Review of the MOU**

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

## **13. Termination**

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

Dated this .....6th.....day of.....MAY.....1999

### **A Cameron**

(then Chairman)

Australian Securities and Investments Commission

### **Neil Wilkinson**

(then Chairperson)

Superannuation Complaints Tribunal

## Appendix 3.0 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.

In this charter, the term 'superannuation providers' includes:

- > trustees of regulated superannuation funds and approved deposit funds
- > retirement savings account providers (RSAs)
- > life companies providing annuity policies.

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

On review the Tribunal will determine whether the decision or conduct complained about operated unfairly or unreasonably in relation to you in the circumstances. This will focus on the consequence or outcome of the decision in its practical operation and any loss or detriment arising.

### 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 phone number on all our letters
- > careful assessment of every complaint
- > individual case officers for matters we are able to deal with
- > independent and impartial inquiry
- > a process that abides by the rules of procedural fairness respect for the privacy of confidential information telephone access to the staff at the Tribunal for the cost of a local call from any landline in Australia access to interpreter assistance referral to the appropriate organisation when we cannot help 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 is in relation to a disability benefit or the distribution of a death benefit.

For further details please visit our website at [www.sct.gov.au](http://www.sct.gov.au) or call one of our officers on 1300 884 114 for further details.

When you lodge your complaint, provide us with any documents which relate to your complaint, such as correspondence between you and your fund.

## Feedback or complaint about our service

Because we are committed to continually improving our service to the community, we welcome your views. If you have been particularly pleased with your dealings with us, please let us know. If you have any feedback or if you want to complain about our service, please visit our website at [www.sct.gov.au](http://www.sct.gov.au) or email us at [info@sct.gov.au](mailto:info@sct.gov.au).

Alternatively, you can contact us by writing to the following address:

The Chairperson  
Superannuation Complaints Tribunal  
Locked Bag 3060  
Melbourne VIC 3001

### **If you are still not satisfied**

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

The Ombudsman has an office in every state and territory. Complaints can be made in writing, by telephone or by using the Ombudsman's online complaint form.

The Ombudsman's office can be contacted by telephone on 1300 362 072. Address and further information about the Ombudsman can be found at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).



## Appendix 4.0 Chairperson's guidelines and procedural rules

### 1. Interpretation and application

- (1) In this document:
  - a) a reference to "the Act" is a reference to the Superannuation (Resolution of Complaints) Act 1993;
  - b) a reference to "presiding member" is a reference to the person identified in s.9(3), s.9(3A) or s.9(3B) of the Act and, where the context requires for the purposes of the procedural rules, is also a reference to a single Tribunal member constituting the Tribunal.
- (2) Clause 2 is made for the purposes of s.7A(3), s.9(1), s.9(2) and s.9(2A) of the Act. The guidelines in clause 2 will also apply in relation to any reconstitution of the Tribunal under s.9(1A) and s.10(4) of the Act.
- (3) Clauses 3 to 7 are made for the purposes of establishing procedural rules for the conduct of review meetings for the purposes of s.9(4) of the Act.

### 2. Guidelines for the constitution of the Tribunal for a review meeting

- (1) For the purposes of dealing with a complaint about a decision that relates to the payment of a death benefit and which primarily concerns the distribution of the death benefit, the Tribunal will usually be constituted:
  - a) where the sum involved is below \$100,000 – by a single Tribunal member;
  - b) where the sum involved is not less than \$100,000 – by 2 Tribunal members.
- (2) For the purposes of dealing with a complaint about a decision relating to the payment of a disability benefit where it would be likely that the Tribunal would be required to undertake the evaluation or assessment of medical evidence or reports, the Tribunal will, if possible, usually be constituted by 2 Tribunal members, one of whom will be a member of the medical profession.
- (3) For the purposes of dealing with a complaint, other than a complaint referred to in paragraphs (1) or (2), the Tribunal will usually be constituted:
  - a) where the complaint involves a sum of less than \$50,000 – by a single Tribunal Member; or
  - b) where the complaint involves a sum of not less than \$50,000 – by 2 Tribunal Members.
- (4) Where:
  - a) a party to a complaint notifies the Tribunal in advance of any Tribunal being constituted in relation to that complaint that there is an issue of principle to be determined, or

- b) where the Tribunal identifies such an issue or there is some unusual difficulty associated with the complaint

the Tribunal Chairperson may, where the Tribunal under paragraphs (1) or (3) may otherwise be constituted by a single Tribunal member, constitute the Tribunal by 2 Tribunal members.

- (5) The Tribunal Chairperson will select the Tribunal members and constitute the Tribunal in relation to a particular complaint:
  - a) in writing signed and dated by the Tribunal Chairperson; and
  - b) at a reasonable time before the scheduled time of commencement of the review meeting.

### **3. Commencement, adjournment and conclusion of review meetings**

- (1) The review meeting commences at the date and time fixed under s.32(l) of the Act in relation to the complaint.
- (2) The presiding member may exercise the power to adjourn a review meeting under s.42 of the Act and to re-convene the meeting for further deliberations. If a review meeting is adjourned the presiding member must inform the Tribunal secretariat.
- (3) If a review meeting is adjourned because the Tribunal considers that further information is required, the presiding member must direct the Tribunal secretariat to request the further information from the parties.
- (4) The review meeting concludes when the presiding member signs and dates the determination and reasons.

### **4. The review meeting**

- (1) If a question as to the Tribunal's jurisdiction in relation to the complaint arises the Tribunal is to consider the question at the review meeting. If:
  - a) the Tribunal's view is that the complaint appears to be outside the Tribunal's jurisdiction; or
  - b) the Tribunal members constituting the Tribunal do not agree with the Tribunal secretariat that the complaint appears to be within the Tribunal's jurisdiction

the presiding member must adjourn the review meeting and refer the question to the Tribunal Chairperson or, where the presiding member is the Tribunal Chairperson, to the Tribunal Deputy Chairperson for guidance.

- (2) If the guidance of the Tribunal Chairperson or the Tribunal Deputy Chairperson is that the complaint is:
  - a) within the Tribunal's jurisdiction, the presiding member will reconvene and complete the review meeting consistent with that guidance; or

- b) outside the Tribunal's jurisdiction, the review meeting in relation to that complaint will be abandoned and taken not to have commenced.
- (3) Where, after the receipt by the Tribunal member or members constituting the Tribunal of material in relation to a complaint under the Tribunal's submissions processes for the purposes of s 32 and s 33 of the Act, a party provides further material, the presiding member may direct the Tribunal secretariat that, in his or her opinion, it is necessary on the grounds of procedural fairness that the other parties be invited to make comments in relation to the further material.
- (4) The presiding member must consult with the Tribunal Chairperson or, where the presiding member is the Tribunal Chairperson, with the Tribunal Deputy Chairperson before the Tribunal refers a question of law to the Federal Court for decision under s.39 of the Act.

## **5. Oral submissions**

- (1) The Tribunal Chairperson or the Tribunal Deputy Chairperson will generally only make an order under s.34(2) of the Act to allow the parties to make oral submissions in exceptional circumstances.
- (2) An order to allow oral submissions will only be made where the parties also present written submissions prior to the review meeting.
- (3) Any oral submissions allowed shall be presented in an order determined by the presiding member, who shall provide the opportunity for reply as procedural fairness requires.
- (4) At a review meeting, the presiding member shall allow parties to raise questions of another party through the presiding member and shall also allow questioning of any party by any Tribunal member.
- (5) No determination shall be made at the review meeting. Part 6 of the Act specifies that a determination and the reasons shall be in writing.

## **6. Preparation and making of determinations**

- (1) The Tribunal Chairperson will, for each Tribunal constituted to deal with a complaint, nominate the Tribunal member or members who are to draft the wording of a determination.
- (2) All determinations and reasons should basically follow the outline in the pro-formas approved from time to time by the Tribunal Chairperson. Such pro-formas will include a layout for the cover pages and final signature. The pro-formas may include standard sub-headings which may assist both Tribunal members and staff of the Tribunal 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.
- (3) Consistent with the secrecy provisions under s.63 of the Act, the Tribunal's 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.

Descriptive terms like Complainant, Trustee, Member, Deceased Member, Insurer, Employer, Infant Son, Daughter, Spouse, De facto Spouse etc should be used.

- (4) The reasons for the determination should generally not include:
- a) observations as to whether a contravention of any law, the governing rules of a fund or the terms and conditions of retirement savings account or an annuity policy has or may have occurred; or
  - b) comments with respect to the design of a product relevant to the complaint or the actions of persons in the operation or administration of that product

outside the context of providing adequate reasons for the determination in relation to the decision under review for the purposes of s.40 of the Act.

- (5) The reasons for the Tribunal's determination must not include or discuss a direction under s.44(2), s.44(2A) or s.44(2B) of the Act. The presiding member must inform the Tribunal Chairperson if the Tribunal intends to give such a direction.
- (6) The presiding member shall seek to ensure that a draft determination is prepared within 4 weeks of the conclusion of a Tribunal's deliberations at the scheduled or re-convened review meeting, for signing off within a further 4 weeks.
- (7) The date of signing is to be indicated at the end of the determination. The date on which the scheduled review meeting was held, and any date(s) on which the review meeting was re-convened for further deliberations shall be listed on the cover page of the determination.
- (8) The date on which the determination is signed is the date on which the determination is made.

## **7. Disagreement between Tribunal members**

- (1) The presiding member shall ensure that the views of all Tribunal members that constitute the Tribunal in relation to the complaint are heard and considered at the review meeting, and that all reasonable steps are taken to achieve agreement to the determination and reasons.
- (2) Where a Tribunal is constituted by 2 Tribunal members, disagreement as to some of the reasoning but not as to the determination, may, by agreement of the Tribunal members constituting a Tribunal, be acknowledged from time to time within the wording of the reasons.
- (3) Where a Tribunal is constituted by 2 Tribunal members and they disagree as to the determination, the decision of the presiding member is taken to be the decision of both of them.

- (4) A Tribunal member who is not the presiding member of a Tribunal constituted by 2 Tribunal members and who does not agree with the presiding member as to the determination to be made by the Tribunal may prepare, to the extent necessary, a separate statement of reasons which will be attached to and distributed with the determination and reasons of the presiding member.

John Simpson

Tribunal Chairperson

19 February 2020

## Appendix 5.0 Conciliation attendance guidelines

### 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 about 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 require the parties to the complaint or others whose presence is likely to be of assistance in settling the complaint to attend a conciliation conference. This will be done by written notice.

The Tribunal is also required to have regard to the objectives in section 11 of the SRC Act, which requires establishing mechanisms for the conciliation of complaints "that are fair, economical, informal and quick."

### Typical circumstances requiring attendance at a conciliation 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. 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 matters.

#### 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 in writing.
2. In the event of a party expressing 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. Because of the varied locations of the parties, the conferences will, unless otherwise decided by the Tribunal, be conducted by telephone.
4. Documents as to factual events and medical reports where relevant to a matter, may be provided by the Tribunal to the parties prior to the holding of a conference.
5. When a conference results in resolution of the complaint or an undertaking being given by one of the parties to conduct further enquiry or obtain further reports, the Tribunal will confirm the outcome in writing to all parties.
6. There is a presumption against representation contained in section 23 of the *Superannuation (Resolution of Complaints) Act 1993*, 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 directly.

[Note: For those parties who have been given leave by the Tribunal to be legally represented, the Tribunal has no power to award costs, i.e. any party who has legal representation at a conference before the Tribunal must to bear their own legal costs.]

#### Failure to attend a conference

If a complainant fails to attend the conference, the Tribunal may treat the complaint as if it had been withdrawn by the complainant under section 21 of the SRC Act.

A person other than a complainant commits an offence if they fail to attend the conference when required to do so. The penalty is 30 penalty units or imprisonment for six months.

## Appendix 6.0 Delegations

Instrument of Authorisation under subsection 59(1) of the Superannuation (Resolution of Complaints) Act 1993

I, John Simpson, Chairperson of the Superannuation Complaints Tribunal appointed from 16 December 2019, pursuant to subsection 59(1) of the *Superannuation (Resolution of Complaints) Act 1993*, authorise members of staff of the Tribunal holding a position that is included in a category of positions identified in Column 2 of the Table to exercise the powers of the Tribunal identified in respect of that category in Column 1 of the Table.

**Table 4.1 Category of Positions to exercise Tribunal powers**

Column 1	Column 2				
Power	EL2	EL1	ASIC 4	ASIC 3	ASIC 2
s12(1)(a) to inquire into complaint and try to resolve by conciliation	•	•	•	•	
s13 to prepare and make available memorandum explaining how complaints dealt with	•				
s16 to help complainants to make their complaints	•	•	•	•	•
s17 to give written notice when complaint received	•	•	•	•	
s17A to give written notice when party joined	•	•	•	•	
s18(1)(c),(d) & (e), s18(2)(c) & (d), s18(3)(c), s18(3A)(c), (d) & (e) and s18(3B)(c), (d) & (e) whether to decide that a person should be made a party to complaint	•	•	•	•	
s19 whether to be satisfied complaint was first made to trustee or RSA provider / that all reasonable efforts made to first resolve complaint with insurer or superannuation provider	•	•	•	•	
s22(1) & (2) whether to decide to treat complaint as withdrawn (satisfied that complainant doesn't intend to proceed) and to give notice of withdrawal	•	•	•	•	



Column 1	Column 2				
Power	EL2	EL1	ASIC 4	ASIC 3	ASIC 2
s22(3) & (4) whether to decide to treat complaint as withdrawn (other reasons) and to give notice of withdrawal	•	•			
s23(2) & (3) whether to allow complainant to be represented by an agent	•	•	•	•	
s24(1) whether to allow a period longer than 28 days for trustee, insurer, RSA provider to give documents	•	•	•		
s24(2) whether to allow a relevant person a period longer than 28 days to give documents	•	•	•	•	
s24(4) whether to allow trustee, insurer, RSA provider or other decision maker to give a summary of documents	•	•			
s24(5) whether to allow longer period to request giving of summary of documents	•	•			
s24(6) whether to give notice to joined party to give Tribunal copies of specified documents	•	•			
s24(6) whether to allow longer period for joined parties to give documents	•	•			
s24AA(1) whether to allow to a period longer than 28 days for superannuation provider to give documents	•	•	•	•	
s24AA(2) whether to allow superannuation provider to give a summary of documents	•	•			
s24AA(3) whether to allow longer period to request giving of summary of documents	•	•			
s24AA(4) whether to give notice to joined party to give copies of specified documents	•	•			
s24AA(4) whether to allow longer period for joined parties to give documents	•	•			
s24A(1), (2), (2A) & (2B) whether to allow a period longer than 28 days re death benefit notifications by trustee/insurer/ RSA provider	•	•			

Column 1	Column 2				
Power	EL2	EL1	ASIC 4	ASIC 3	ASIC 2
s24A(3) whether to allow a period further than 28 days to be given in death benefit notification	•	•			
s24A(5) whether to join party if party applies outside time notified	•	•	•	•	
s27(a) to determine whether a complaint has been made	•	•	•	•	
s27(b) to determine whether a complaint has not been withdrawn	•	•	•	•	
s27(c) whether to be satisfied that the Tribunal can deal with the complaint	•	•	•	•	
s27 where s 27(a)-(c) met, to inquire into a complaint and try to settle it by conciliation	•	•	•	•	
s28(2) whether to give notice to require persons to attend conciliation conference	•	•	•	•	
s28(4) whether to treat complaint as withdrawn (failure to attend conference)	•	•	•	•	
s28(6) whether to recommend that conference proceed with interpreter	•	•	•	•	
s28(7) to formulate and make available guidelines as to when persons required to attend conferences	•				
s29 to determine manner in which conciliation conference to be conducted	•	•	•		
s31(1) to treat complaint as withdrawn (upon settlement)	•	•	•	•	
s32(1) to determine whether conciliation has not been successful	•	•	•	•	
s32(1) to fix review meeting	•	•	•	•	
s32(2) to invite submissions by date specified	•	•	•	•	

**John Simpson**

Tribunal Chairperson  
19 February 2020

## **Appendix 7.0 External scrutiny**

The following court matters involved the Tribunal between 1 July 2020 and 31 December 2020.

### **SECTION 46 FEDERAL COURT APPEALS FILED**

*Damien Brown -v- Commonwealth Superannuation Corporation QUD 248/2020*

*MetLife Insurance Ltd -v- Marie Hart &Ors. NSD 1260/ 2020*

*Riseley -v- Suncorp Portfolio Ltd WAD 155/2020*

*Singh Sawhney-v- AustralianSuper Pty Ltd VID 504/2020*

### **FEDERAL COURT JUDGMENTS HANDED DOWN**

*EEU 20 By her litigation representative EEV20 -v- Meat Industry Employees' Superannuation Fund Pty Ltd as Trustee of the Meat Employees' Superannuation Fund VID 946/ 2019*

### **FEDERAL COURT APPEALS SETTLED OR DISCONTINUED**

*Scott Steele v Superannuation Complaints Tribunal [WAD71/2020]*

*Damien Brown -v- Commonwealth Superannuation Corporation QUD 248/2020*

*Singh Sawhney-v- AustralianSuper Pty Ltd VID 504/2020*

*David Joseph Carmody -v- SCT QUD 481/ 2018*

### **FEDERAL COURT MATTERS PENDING AT 31 DECEMBER 2020**

*Agnes Tito (As Administrator of the Estate of the Late Mita Atkins) & Ors [NSD489/2020]*

*Tracey Ann Clarke v SCT & Ors [VID388/2020]*

*MetLife Insurance Ltd -v- Marie Hart &Ors. NSD 1260/ 2020*

*Riseley -v- Suncorp Portfolio Ltd WAD 155/2020*

## Glossary

Term	Meaning
<b>AFCA</b>	Australian Financial Complaints Authority
<b>ADF</b>	Approved deposit funds
<b>APRA</b>	Australian Prudential Regulation Authority
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ATO</b>	Australian Taxation Office
<b>CPRs</b>	Commonwealth Procurement Rules
<b>COVID-19</b>	Coronavirus disease caused by the SARS-CoV2 virus of 2019
<b>FOI</b>	Freedom of Information
<b>FOI Act</b>	<i>Freedom of Information Act 1982</i>
<b>IPS</b>	Information publication scheme
<b>MOU</b>	Memorandum of Understanding
<b>OAIC</b>	Office of the Australian Information Commissioner
<b>PGPA Act</b>	<i>Public Governance, Performance and Accountability Act 2013</i>
<b>PGPA Rule</b>	<i>Public Governance, Performance and Accountability Rule 2014</i>
<b>Remuneration Act</b>	<i>Remuneration Tribunal Act 1973</i>
<b>RSA</b>	Retirement savings account
<b>SMSF</b>	Self-managed superannuation funds
<b>SLA</b>	Service level agreement
<b>SME</b>	Small to medium enterprise
<b>SCT</b>	Superannuation Complaints Tribunal
<b>SRC Act</b>	<i>Superannuation (Resolution of Complaints) Act 1993</i>
<b>SIS Act</b>	<i>Superannuation Industry (Supervision) Act 1993</i>
<b>TPD</b>	Total and permanent disablement/disability