

# CHAPTER 1

## INTRODUCTION

1.1 The Superannuation Complaints Tribunal (the Tribunal) began operating on 1 July 1994 to provide for the conciliation of complaints, and for the fair, economical, informal and quick review of the decisions of trustees if required.<sup>1</sup>

### **How the inquiry came about**

1.2 In response to the growth in superannuation membership and the increasingly complex administration that has ensued, the first report of the Senate Select Committee on Superannuation, *Safeguarding Super*, examined the need for dispute resolution mechanisms. That report recommended the establishment of an external disputes resolution mechanism.

1.3 The Tribunal was established under the *Superannuation (Resolution of Complaints) Act 1993* (the Act) which established a scheme for the external resolution of complaints by members and beneficiaries of superannuation funds and approved deposit funds.

1.4 Conscious of the need to ensure the Tribunal remain a low cost, informal and expeditious vehicle for resolving disputes, the Commonwealth Parliament considered the need to review the operation of the Tribunal, and whether to augment its operation with an independent advisory service.

1.5 On 22 November 1993, the Senate considered the House of Representatives' disagreement to the Senate's schedule of amendment to the Superannuation (Resolution of Complaints) Bill 1993. The Senate had proposed assistance to complainants in the making of their complaints. In response to the House of Representatives' rejection of the Senate amendments, the Senate resolved to refer the matter of assistance to complainants to the Senate Select Committee on Superannuation for inquiry and report.

1.6 Under the terms of reference established on 22 November 1993, the Senate Select Committee on Superannuation has undertaken a review of the Tribunal following its first twelve months of operation, examining whether it meets the needs of superannuation fund members, and the efficacy of establishing a funded superannuation consumer advice service.

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<sup>1</sup> Section 11, *Superannuation (Resolution of Complaints) Act 1993*

1.7 The terms of reference for inquiry and report are:

- (a) the operation of the Superannuation Complaints Tribunal in the first 12 months of its work;
- (b) whether the tribunal is adequately meeting the needs of superannuation fund members; and
- (c) whether an independent superannuation consumer advice service should be established and supported by grants from Consolidated Revenue.

1.8 The significant impact of superannuation trustee decisions and the importance of an avenue of review of decisions of superannuation trustees was highlighted in the decision of Bryson J in *Vidovic v Email Superannuation Pty Ltd*,<sup>2</sup> on 3 March 1995. That matter involved a total and permanent disability claim from 1986. In commenting on the discretionary nature of decisions of trustees, his Honour stated:

It is a marked anomaly to use mechanisms drawn from fields of law remote from employment and relating to trusts for bounty or charity to administer important entitlements in an employment relationship. I find it difficult to understand why the entrenchment of such important rights against review is so usual, and why this kind of arrangement is so commonly found acceptable to employees in view of the economic significance of such decisions and the economic function of superannuation, not well represented in the terms of the documents, as a contracted employment benefit for which value is given. These anomalies appear particularly clearly where, as in this case, the fund out of which benefits are paid is contributory and an employee claiming benefits is claiming to be paid, at least in part, in his own coin.

1.9 A pervasive theme in the evidence to this inquiry was the hearing of ‘medical evidence complaints’ by the Tribunal. The Senate Select Committee on Superannuation’s thirteenth report, *Super Regs I*, also gave consideration to the reception of medical evidence by the Tribunal.

1.10 More generally, the need for the Tribunal was borne out by the number of inquiries and complaints that were made. As noted by the Association of Superannuation Funds of Australia:

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<sup>2</sup> Supreme Court (NSW), Equity Division, File No 2745/86

The fact that there are currently close to 1000 complaints before the Tribunal, apart from those which have been settled by whatever means, suggests that people do know that it exists and that it is the right vehicle to go to.<sup>3</sup>

### Conduct of the inquiry

1.11 The Committee called for submissions on the reference by placing an advertisement in the *Australian* newspaper on 27/28 May 1995. It also contacted persons and organisations who had expressed interest in superannuation matters and were on the Committee's mailing list. The Committee received 35 written submissions.<sup>4</sup> Thirty-three witnesses<sup>5</sup> appeared before the Committee to give oral evidence during five hearings conducted in:

|           |                           |
|-----------|---------------------------|
| Sydney    | 9 August 1995             |
| Melbourne | 10 August 1995            |
| Canberra  | 24 August 1995            |
| Canberra  | 28 August 1995 (morning)  |
| Canberra  | 28 August 1995 (evening). |

1.12 In this inquiry, the Committee has particularly sought the evidence of those people who have had dealings with the Tribunal, or who have expressed an opinion as to changes that might improve the operation of the Tribunal.

1.13 To facilitate discussion of the issues raised in the terms of reference, and in accordance with the Committee's previous resolutions, unless otherwise ordered, written submissions were published on receipt and uncorrected Hansard transcripts were circulated as soon as they became available.

1.14 Oral evidence is cited by reference to Hansard as follows: 'Evidence, p XX'. Written submissions are referred to by their registration number: 'SCTREV Sub No XX'.

1.15 The Committee records its appreciation to those who made written submissions and gave oral evidence in the inquiry.

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<sup>3</sup> Lockery, Evidence, p 43

<sup>4</sup> See Appendix A

<sup>5</sup> See Appendix B