

CHAPTER 6

AN INDEPENDENT CONSUMER ADVICE SERVICE

6.1 The Committee examined the evidence for and against the establishment of an independent advice service and whether such a service should be government funded.

Yes please - the case for an independent consumer advice service

For consumer protection

6.2 Throughout the evidence there was an impression of the complexity of superannuation arrangements producing confusion and an imbalance in the relationship between funds and their members. Ms Jenni Mack, former Director of Australian Federation of Consumer Organisations (AFCO), was clear in her view:

there is an obvious need for a special community based superannuation legal service. The limitations of the tribunal are obvious. It is not able to provide detailed advice to consumers and it does not provide legal representation, nor should it.¹

6.3 Ms Mack indicated how the need for special legal centres had been well acknowledged and already existed in the tenancy, credit and welfare areas. She said:

Superannuation is very complex and the public is very confused about it. I think there is a need for such a service to provide advice, education, legal representation, policy advice to government and to negotiate with industry to improve its practices.²

6.4 The role of such a service in education and information was highlighted by Mr John Goldberg who considered 'the consumer elements of it have to be addressed'. He considered:

Tribunals, disputes resolution, complaints, et cetera all have that adversarial feel about them.³

¹ Evidence, p 162

² Evidence, p 162

³ Evidence, p 132

6.5 Educational needs were also considered by Mr Philip Noonan, Executive Director of the Federal Bureau of Consumer Affairs (FBCA). He said of superannuation:

because of its inherent complexity, consumers need not only access to information, but also assistance in interpreting that information. Ideally, that interpretation or oral advice needs to be independent.⁴

6.6 The FBCA recommended the establishment of a superannuation advisory service through the use of an existing consumer credit legal centre. If such a service were to be funded by government 'it could be reviewed after two years to ascertain its effectiveness'.⁵

6.7 Superannuation is becoming something of a specialised field with lawyers becoming important players. With the great percentage of all workers now members of superannuation funds as a result of the government's initiatives, there is a push for lower income workers to be protected. The Australian Council of Social Service (ACOSS) indicated the need for 'separate and distinct services' and said:

There are advantages in locating such services within community legal centres; which have a high profile in the local community and can provide much of the infrastructure such a service requires.⁶

As a means of comparing funds

6.8 One of the problems for members and potential members of superannuation funds is how to assess the relative performance and integrity of different funds. Where choice of fund is available to an individual, the question is then on what rational basis can the choice be made. The WA Shearing Contractors Association submitted:

if a consumer advisory service was established, it would be the ideal organisation to ensure that a mechanism to provide a uniform comparison of the performance of all superannuation funds, especially those open to the general public, could be implemented.⁷

⁴ Evidence, p 202

⁵ SCTREV Sub No 16

⁶ SCTREV Sub No 30

⁷ SCTREV Sub No 8

The last word - from a consumer

6.9 Given the potential complexity of a superannuation dispute it was put to the Committee that assistance from a specialist legal service was considered appropriate:

A private Lawyer at \$180.00 per hour is not a viable option.⁸

No thanks - the case against an independent consumer advice service

6.10 The Insurance and Superannuation Commission (ISC) did not consider such a Government funded service to be 'necessary or desirable'. It submitted two 'administrative and policy reasons for this view'.⁹ First, it considered such a service could jeopardise the ability of the Tribunal to operate as a fair, economical, informal and quick disputes resolution mechanism as it is required to do under the Act. Lawyers from such a service would apply pressure to represent complainants before the Tribunal according to the ISC. It said:

This could make the SCT more legalistic in its approach and expanded members of staff would be needed to interpret complex legal submissions. The result would be a Tribunal that is slow, expensive, formalistic and unlikely ... to produce outcomes that are any fairer.¹⁰

6.11 Secondly, the ISC pointed to the 'range of administrative measures to assist consumers in making complaints' already put in place by the Government. These measures were listed as:

- the obligation imposed on the Tribunal (section 16 of the Act) to assist persons in making a complaint (for example the Tribunal assists persons in putting their complaint in writing);
- the Tribunal provides an interpreter service where necessary;
- the Tribunal can be rung from anywhere in Australia for the cost of a local call;
- regional offices of the ISC can assist people wanting to make complaints to the Tribunal;

⁸ SCTREV Sub No 34

⁹ SCTREV Sub No 17

¹⁰ SCTREV Sub No 17

- the existence and functions of the Tribunal are required to be disclosed to all members on joining a fund and each year in annual statements;
- the ISC and the Tribunal are conducting a joint educational campaign about the Tribunal (including advertising in community newspapers);
- the Tribunal has distributed over 32,000 copies of its publication on how to lodge complaints; and
- there is no application fee for lodging a complaint with the Tribunal and no costs are charged to the member or the fund.¹¹

6.12 The ISC considered the Tribunal and its secretariat can be relied upon to provide accurate and impartial assistance in resolving complaints.¹²

6.13 Mr Mikula, who at the time of the inquiry was the only community lawyer with the specific brief of superannuation, responded to the ISC's assertion that it could assist complainants. He told the Committee that 'the ISC has already approached me to see where and how it can refer people to me where it is basically unable to assist them'.¹³

6.14 Perhaps the best summary of the ISC case was put by its Commissioner, Mr George Pooley, when he said the 'formal, adversarial and selective approach of a consumer legal service is in contrast to the Tribunal's charter to be informal, quick and low cost'. He continued:

The tribunal is intended to provide an alternative to legal avenues, not an extension of them. In effect, consumer legal services seek to uncover and litigate disputes in a selective manner, while the intention with an informal complaints handling body is, ultimately, to encourage better industry practices so that disputes do not arise in the first place or else are resolved through internal processes.¹⁴

Additional bureaucracy

6.15 Always a legitimate question when proposing additional government funded bodies is the potential for increasing the administrative complexity of a situation for no added value. UniSuper considered that an independent advisory

¹¹ SCTREV Sub No 17

¹² SCTREV Sub No 17

¹³ Mikula, Evidence, p 70

¹⁴ Evidence, p 191

service should not be established regardless of the source of funding. It submitted:

A fourth bureaucracy, alongside the ISC, SCT and ATO, would add to the confusion about superannuation which has already been observed in the community.¹⁵

6.16 UniSuper considered the boundaries between superannuation and other financial services as blurred. Accordingly, 'any consumer service should refer to all financial services'.¹⁶

The Tribunal in the advisory role

6.17 The role of the Tribunal in providing advisory services to people was alluded to by the ISC in evidence discussed earlier in this chapter. However, that tends to be only at the stage when people are ready to lodge a complaint against a fund. It was suggested that the Tribunal could play the role of a consumer advice centre in the way that 'equal opportunity tribunals around the country have a similar sort of role'.¹⁷

6.18 The Law Society of New South Wales submitted that the Tribunal was 'not an appropriate body to provide legal advice to consumers given its functions'.¹⁸ It submitted:

The Tribunal is there to determine rights between parties, and it would detract from its public standing if it were to agitate on behalf of one party.¹⁹

The final word - from a lawyer

6.19 Mr George Raitt is a partner in the legal firm of Blake Dawson Waldron, a superannuation lawyer and a mediator accredited with the Australian Commercial Disputes Centre in Sydney and the Law Institute of Victoria. Mr Raitt submitted that an independent superannuation advisory service would be:

an unnecessary expense ...[given] ... the focus of SIS upon internal complaints handling procedures and review by the Tribunal.²⁰

¹⁵ SCTREV Sub No 6 (Supp)

¹⁶ SCTREV Sub No 6

¹⁷ Paatsch, Evidence, p 118

¹⁸ SCTREV Sub No 10

¹⁹ SCTREV Sub No 10

The role of the service

6.20 It was submitted that a specialised superannuation consumer advisory service should operate within the current structures.²¹ The existing legal advice structures are the private legal sector and the community legal service sector. Representatives from both of these sectors supported an advisory service.²²

6.21 In response to the ISC's concern that such a service might make the Tribunal too legalistic, the community legal sector submitted that what the advisory service would provide would be:

ongoing support to people who were able to represent themselves ... [who] might ring up for advice occasionally or need to be told what documents to collect or to discuss particular issues that arise within those documents.²³

6.22 It was also put to the Committee that in cases where legal argument is needed, 'the Tribunal clearly would benefit by having them properly argued before it'.²⁴

6.23 ACOSS envisaged the role of such services extending to 'information provision and education about consumer rights, as well as individual casework with clients who have complaints'.²⁵

Should the Commonwealth government fund such a service?

6.24 If the decision is made to establish an independent advisory service, the Commonwealth's 'policy decision to promote superannuation as the vehicle for national savings' provides a strong argument for government funding of advice services for consumers.²⁶

6.25 Certainly the industry would be particularly unhappy with funding such a service.²⁷ ASFA commented on a proposal to establish an industry-funded legal centre to redress the imbalance between consumers and superannuation

²⁰ SCTREV Sub No 33

²¹ Mikula, Evidence, p 65

²² Mikula, Evidence, p 65; Goldberg, Evidence, p 132

²³ Mikula, Evidence, p 65

²⁴ Mikula, Evidence, p 65

²⁵ SCTREV Sub No 30

²⁶ SCTREV Sub No 10

²⁷ Lockery, Evidence, p 35

trustees. It said there was 'no merit' in requiring funds to support another organisation as they already finance the Tribunal, and added:

If there are any shortcomings in the roles of the SCT it would be much better to extend its function than to require funds to support another body ...²⁸

6.26 The Committee concurs with the comments of John Berrill, a partner in the legal firm of Maurice Blackburn & Co:

It is our experience that there is much public ignorance and misunderstanding of superannuation. Many fund members are unaware of their rights and benefits. For example many are unaware of their entitlements to claim death and disability benefits and are confused as to their avenues of complaint.²⁹

6.27 While undoubtedly there is more information available as a result of the current 'prudential regime',³⁰ the Committee agrees with Mr Berrill that:

there is still a significant information gap which an independent superannuation advice service would assist in addressing.³¹

Conclusions

6.28 The Committee considers there is a case for a limited government funded superannuation consumer advice service and proposes that it operate out of existing community legal or credit advice centres. The Committee believes the track record of the funds is not yet at a satisfactory level, and this combined with the compulsory and complex nature of superannuation arrangements, is sufficient justification for the establishment of such a service.

6.29 A concern of the Committee is that such a service needs to be contained. That means a restricted service to the individual service users, generally limited to two appointments, and restricted to advice and information only; not for the running of cases before the Tribunal or elsewhere.

6.30 The Committee believes that over time people will become more aware of their superannuation rights and entitlements through the education and information programs of the ISC and other bodies. Therefore, the Committee

²⁸ SCTREV Sub No 15 (Supp)

²⁹ SCTREV Sub No 28

³⁰ SCTREV Sub No 28

³¹ SCTREV Sub No 28

advocates the life of the advisory service outlined in the above two paragraphs be limited to two years, at which time a further assessment of the advisory needs of superannuation members would be made. At that time, the government must review the experience of this type of educational advice and assess whether it is adequate.

Recommendation 6.1:

The Committee recommends that a limited government funded superannuation consumer advice service be established within the existing community legal or credit advice centres; that there be a general limit of two appointments for each client; and that the service be restricted to providing advice and information only and not extend to the running of cases before the Tribunal. The Committee further recommends that this arrangement be reviewed after two years and an assessment as to its adequacy be made at that time.