

CHAPTER 2

PERFORMANCE OF THE TRIBUNAL

What is it required to do?

2.1 The Tribunal is an independent statutory body established under the *Superannuation (Resolution of Complaints) Act 1993* (the Act). Its role is to resolve complaints that members of superannuation funds may have in relation to certain decisions of trustees of regulated superannuation funds or approved deposit funds.

2.2 Section 12 of the Act specifies the functions of the Tribunal:

- to inquire into a complaint and try to resolve it by conciliation; and
- if the complaint cannot be resolved by conciliation, to review the decision of the trustee to which the complaint relates.

A table describing the complaint procedure is set out in Appendix D.

How well did it operate?

2.3 There was substantial evidence to suggest there were some significant operational problems. The Committee has been made aware of the pressures experienced by the Tribunal in its first 12 months, however, it appears to the Committee that the operational problems resulted from a convergence of factors, some of which were beyond the control of the Tribunal, others which could have been averted.

2.4 The Committee recognises that superannuation has developed very rapidly. Such rapid development in any industry creates difficulties for the bureaucratic process responsible for its supervision. The Committee therefore acknowledges that whilst leadership issues were raised in this inquiry, the Tribunal did not have the time that was available to other parts of the superannuation industry to evolve and develop its processes.

2.5 In its first 12 months, the Tribunal received 881 complaints, 465 of which fell outside its jurisdiction. Of the complaints within jurisdiction,

12 determinations were made. The Chairperson has stated that the Tribunal will soon be delivering two review decisions per week.¹

Delays

2.6 The Committee heard evidence of delays in the handling of member complaints. One example was a member of an industry fund who lodged a complaint on 6 March 1995. The fund involved approached the Tribunal on 6 July to see what was happening with the complaint. On 18 July the Tribunal advised that it had no jurisdiction over the matter as the member had made the complaint outside the 28 day period within which to object.²

2.7 Another example is that of Mrs Sonia Nolan. Her case before the Tribunal began with a submission to the Insurance and Superannuation Commission (ISC) in January 1994 who forwarded it to the Tribunal in June 1994. Mrs Nolan completed the appropriate form and visited the offices of the Tribunal on about 21 July 1994 and had a lengthy discussion with an officer there.³

2.8 Mrs Nolan was correctly informed that the fund had 90 days to respond, before the Tribunal could act. That period expired in October 1994 with a refusal by the fund to settle her matter so she then telephoned the Tribunal. Following the passage of another 45 days the Tribunal advised it had all the relevant documentation and would look into the matter. Mrs Nolan's evidence continued in this way:

I received a couple of letters saying that the tribunal was now looking at the matter and then, in January [1995], I received a lengthy letter from the tribunal saying that basically it could not hear my case. It was out of its jurisdiction; it could not handle my particular complaint.⁴

2.9 The Tribunal provided justification for time taken to finalise complaints:

The average time taken to finalise a complaint that was within jurisdiction was 95 days ... If a complainant comes in and the fund is responding to the limit of the time-lines given, there would be a minimum of three months before a complaint could be concluded.

¹ Lockery, Evidence, p 46

² SCTREV Sub No 18

³ Evidence, p 75

⁴ Evidence, p 76

So our 95 days as against 84 days, if the full time limit is taken by the complainant or the trustee.⁵

2.10 It was put to the Committee that ‘delays are often a symptom of poor information management’.⁶ The evidence certainly pointed to a slow flow of information.

A set of procedures should be devised in consultation with the users and strictly enforced and the tribunal must take control of the caseload. This means tracking cases, enforcing deadlines and rewarding compliance with deadlines.⁷

Case management

2.11 The Committee questions the adequacy of the system of case management. The Australian Federation of Consumer Organisations (AFCO) was very critical of the case management system in saying that it ‘has failed under testing every time’. Ms Jenni Mack said:

What this means is that the Tribunal has no way of recording and categorising data in a way that fosters efficient reporting. The Chair informed me that record keeping is done manually and that is why material is being produced with mistakes and with great difficulty.⁸

Ms Mack emphasised that an ‘effective case management system must be put in place with utmost urgency’.⁹

2.12 The appropriate information technology was not in place:

The capacity of the Tribunal to monitor and report on its operations has been hampered during the year by the absence of an adequate database or case management system. By the end of the reporting period such a system was still not fully operational ...¹⁰

⁵ Cardiff, Evidence, p 216

⁶ Transformation Management Services, SCTREV Sub No 31

⁷ *ibid*

⁸ SCTREV Sub No 26

⁹ SCTREV Sub No 26

¹⁰ Superannuation Complaints Tribunal, SCTREV Sub No 19

The statutory constitution of the Tribunal

2.13 The Committee considered section 9 of the Act, a section which provides for the constitution of the Tribunal for the purposes of exercising its powers.

2.14 The section requires the Tribunal, when exercising its functions and powers in relation to a complaint, to include the Chairperson or the Deputy Chairperson. During the Tribunal's first 12 months, there was no provision for a Deputy Chairperson and the Chairperson was required to be part of the Tribunal when it exercised its powers. This placed a certain degree of pressure on the Chairperson and may well have contributed to the delays reported to the Committee. Mr Ken Lockery expressed ASFA's view that:

given that the chairperson currently sits on all review cases, it is difficult to see how they would do more than two or three [matters] a week.¹¹

He went on to observe that:

if we have got the best part of a thousand complaints before the Tribunal, settling two a week means that we have got nine years' worth of complaints currently there.¹²

2.15 The Committee notes that other merit review tribunals do not have a comparable requirement. The Administrative Appeals Tribunal, the Social Security Appeals Tribunal and the Refugee Review Tribunal are not required to be constituted in such a restricted manner.¹³ The report of the Administrative Review Council of the merits review tribunals, *Better Decisions: Review of Commonwealth Merits Review Tribunals*,¹⁴ recommended that 'the composition of panels to review particular cases should be left to the discretion of review tribunals'.¹⁵

2.16 Whilst the legislation which now provides for a Deputy Chairperson is an improvement, the statutory requirements relating to the composition of the

¹¹ Evidence, p 46

¹² Evidence, p 47

¹³ Administrative Appeals Tribunal Act 1975, section 21; Social Security Act 1991, section 1327; Migration Act 1958, section 421

¹⁴ Report No 39, 1995

¹⁵ Recommendation 7

Tribunal remain inappropriate in the view of the Committee. The Committee considers that the constraint put on the composition of the Superannuation Complaints Tribunal may increasingly inhibit its ability to meet the objective of providing a 'quick'¹⁶ dispute resolution mechanism.

Recommendation 2:1

The Committee recommends that the government reconsider the legislative requirement that the Tribunal must include the Chair or Deputy Chair when exercising its powers and assess whether it would enhance the timeliness of the Tribunal to have a less restrictive provision such as those found in the Administrative Appeals Tribunal Act, Social Security Act and the Migration Act.

Performance assessment

2.17 In seeking to evaluate the performance of the Tribunal the Committee used the following criteria:

- accountability
- corporate planning
- the handling of inquiries
- available information.

Accountability

2.18 Any particular tribunal can be accountable in various ways to different stakeholders in relation to different aspects of its operations. For this Tribunal there was basic accountability to Parliament through the submitting of an annual report.¹⁷

2.19 There is also a relationship to the Insurance and Superannuation Commission (ISC), the body responsible for planning the establishment of the

¹⁶ Section 11

¹⁷ Section 67(1)

Tribunal. The ISC continues its involvement through responsibility for the staffing, budgets and policy formulation of the Tribunal.

2.20 The Committee considered there was an inadequate accountability to other stakeholders, notably trustees, actual and potential complainants, and the industry generally. This essentially related to a lack of information about the operation of the Tribunal. AFCO said the Tribunal was 'yet to settle on a methodology for reporting' and even if reports were available the SCT had no means of distribution.¹⁸ The reporting of its decisions is discussed below in paragraph 2.29.

Corporate planning

2.21 There was an absence of corporate vision in the establishment and early operation of the Tribunal. The Committee is concerned that little seems to have happened since, in relation to corporate planning, beyond the implications of the expansion in the jurisdiction of the Tribunal.

2.22 In the Tribunal's annual report for the year 1994/95, there is information provided about structure and operation including the Memorandum of Understanding between the Tribunal and the ISC. However, the Committee detects no overall corporate strategy that could be fairly identified as a corporate vision or plan.

The handling of inquiries and complaints

2.23 While raw statistics were provided on the number of complaints handled, together with a degree of characterisation, the Committee would also like to see implemented some 'best practice' initiatives. These should include a minimum time for responding to telephone and written inquiries and an effective file tracking system. It was suggested to the Committee that perhaps 28 days was an appropriate turnaround time, that being the figure applicable to complaints in the banking industry.¹⁹

2.24 The Tribunal advised that it was 'currently fine-tuning its computerised complaints management system to provide throughput indications'.²⁰ It said:

Statistics on the time taken to handle different types of complaints will be available in future reports.²¹

¹⁸ SCTREV Sub No 26

¹⁹ Wallace, Evidence, p 181

²⁰ SCTREV Sub No 19

2.25 The Access to Justice Report recommended that each Commonwealth court and tribunal should develop a charter, with a view to setting standards for all aspects of its dealings with the public.

2.26 In its Justice Statement, the previous government supported the development of charters of access and service. Over the next two years the Federal Court, the Family Court and the Administrative Appeals Tribunal will develop charters.²²

2.27 The Committee is of the view that such a charter is an appropriate document for the Superannuation Complaints Tribunal to develop.

Recommendation 2.2:

The Committee recommends that the Superannuation Complaints Tribunal develop a charter of access and service, using those developed by the Federal Court, the Family Court and the Administrative Appeals Tribunal as a model.

Available information

2.28 There was a general impression through the evidence of inadequate information at two levels. Firstly the inadequacy of statistical data was indicated by the Federal Bureau of Consumer Affairs.²³ Second, the issue of public awareness of the Tribunal and its function may need to be further addressed.

2.29 Also the Tribunal faced difficulties in distributing its determinations. Distribution through the legal publishers Butterworths was said by AFCCO to have 'worked reasonably well as far as the industry was concerned but none reached the community sector'.²⁴ AFCCO pointed to the subscription costs as effectively excluding community groups and said:

At any rate this is not information the community should expect to pay for.²⁵

²¹ SCTREV Sub No 19

²² The Justice Statement, May 1995, pp 57-58

²³ SCTREV Sub No 16

²⁴ SCTREV Sub No 26

²⁵ SCTREV Sub No 26

2.30 The Committee was surprised to learn from its own inquiries that one state consumer complaints tribunal was unaware of the existence of the Superannuation Complaints Tribunal and welcomed the Committee's advice of the Tribunal's existence.

2.31 The Committee is aware that the provision of information about the Tribunal has evolved since the Tribunal completed its first year of operation. It must continue to evolve and must be reviewed to ensure this continues.

Achievements

2.32 In the period 1 July 1994 to 30 June 1995 a total of 881 written complaints and 5188 telephone inquiries were received by the Tribunal with 53 per cent of the written complaints being outside the Tribunal's jurisdiction. Of the 416 complaints within jurisdiction 321 (77 per cent) were in the inquiry/conciliation stage at 30 June 1995, while 83 (20 per cent) had been completed after inquiry and conciliation. Another 12 (three per cent) had gone to review hearings.²⁶

²⁶ SCTREV Sub No 19