



27 January 2017

EDR Review Secretariat
Financial System Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By email: EDRreview@treasury.gov.au

Dear Professor Ramsey

Review of the financial system external dispute resolution and complaints framework

As the union representing staff in the Superannuation Complaints Tribunal, the Community and Public Sector Union (CPSU) welcomes the opportunity to make a submission to this Review.

The panel established for this Review has been asked to examine the Financial Ombudsman Service (FOS), the Credit & Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT). This submission will focus primarily on matters relating to the SCT, particularly with regard to comments in the interim report (the Report) of the review.

The SCT and our members perform an essential role in providing a free dispute resolution service that is widely seen as fair, independent and effective by both industry and consumers alike. The Report identifies a number of problems with the SCT, none of these include a lack of integrity or independence from industry, or are attributable to SCT staff and the executive “who are held in high regard.” While the finance sector has been beset by allegations of unscrupulous behaviour, it is important to note that the superannuation industry has not been the subject of these allegations. Independence of an External Dispute Resolution (EDR) body (both real and perceived) is critical to maintaining this.

Contrary to the findings and recommendations of the Report, one of the many strengths of the SCT is its statutory nature. The lack of enforceability of the FOS determinations in particular, highlights one of the weaknesses of the current industry model that the Report recommends for the SCT. In their submission to the Issues Paper, Industry Super Australia states that the “lack of enforceability which leads to lack of consumer compensation, means that [the FOS] has very little power to create meaningful outcomes for consumers.”¹ If Australians are to have any confidence that their superannuation contributions are well managed, then an EDR, as one CPSU member stated, “*must have teeth.*” Unlike the FOS

¹ Industry Super Australia submission, 7 October 2016, p.6

and CIO, compliance with SCT determinations is not a problem. In the entire history of the SCT there are only 5 instances where a party has refused or failed to adhere to a determination.²

There is no argument that the delays seen in processing superannuation complaints is unacceptable. Backlogs of complaints in the SCT are acute and are having a deleterious effect on Australians seeking redress, especially in regards to death benefits and total disability claims. However there is unanimous agreement that this is due to chronic underfunding. While complaints have seen a steady increase, staffing numbers have dwindled. As one CPSU member commented, *“we’ve seen people leave and then not be replaced. The workload has only gone up and the pressure to do more with less, has only made the situation worse.”*

Underfunding is not the fault of the SCT, its employees or the statutory model. It is a symptom of successive governments failing to address long term funding problems in SCT, Australian Securities and Investments Commission (ASIC) and the Australian Public Service (APS) as a whole. Indeed the efficiency dividend, which applies to the vast majority of APS agencies, requires an annual reduction to their budgets. Intended as a mechanism to drive efficiencies, the opposite is often the case, as one CPSU member highlighted that the declining budget has prevented SCT from running as efficiently as it could.

“We do so much of our work manually; it’s paper based mostly. The needed upgrades to systems have been impossible due to the lack of funds; underfunding has either created inefficiencies or made the existing ones worse.”

While the SCT has received additional short-term funding to deal with the backlog of complaints, without a long term funding solution, these problems will persist and likely worsen.

The SCT is currently industry funded, receiving levies collected by the Australian Prudential Regulation Authority (APRA), which is then provided to ASIC to distribute to the SCT. The Report and many of the submissions from industry are critical of this approach, finding it indirect and inefficient. While the CPSU does not have a current position on a preferred funding model, we do note that a number of submissions suggest direct funding and improved budgetary control for the SCT as a solution. We would welcome further consultation with consumers, industry, the SCT and Government to find a workable and long term funding solution.

The CPSU strongly believes that chronic underfunding is neither a feature of statutory body, nor is it an insurmountable problem. There simply needs to be the political will to do what is in the best interests of Australians as they transition from the workforce to retirement: to properly fund the current tribunal which is independent, robust and offers Australians a high level of consumer protection and enforceability that the FOS and CIO do not currently provide.

Similarly, criticism of the SCT and statutory bodies generally made by the Report, that the legislative underpinning of the Tribunal makes it inflexible and unable to keep up with modern governance practices, can and should be remedied by legislative change. Flexibility

² Superannuation Complaints Tribunal submission, 7 October 2016, p.19

can be built in. In their submission to the Issues Paper, the SCT identifies a number of improvements to governance that they believe will lead to positive change in the organisation, including operational autonomy, establishing a Board of Directors, and a Management ability to delegate certain functions.³ The CPSU believes that through further consultation with stakeholders and willingness by Government to improve the current Tribunal, rather than dump it and start again, solutions can be found and implemented.

Funding models and legislation can be changed, governance modernised and improved. None of the problems identified in the Report are insurmountable. It is the position of the CPSU that the recommendation that the SCT transition to an industry model to be unfounded. We are unconvinced that an industry model will improve outcomes for Australians and actually risks throwing the baby out with the bathwater. The SCT has the confidence of industry and consumers with regards to independence and integrity, to an extent that the industry schemes simply do not have.

For any further information, please contact Graeme Price, CPSU Organiser via email graeme.price@cpsu.org.au or call (03) 8620 6371.

Yours sincerely,



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Deputy Secretary

³ SCT submission, p.30