

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates 30 May – 1 June 2006

**Question: bet 94 (ASIC)**

**Topic: Superannuation fees and the Complaints Tribunal**

**Hansard Page: E60**

**Senator MURRAY asked:**

With regard to this list of misceants, shall we call them, would the ATO have been made aware of those on a standard basis?

**Mr Lucy**—That is correct.

**Senator MURRAY**—Is it correct that the super complaints tribunal cannot look at fees? Somebody has written to me and said that the super complaints tribunal does not look at fees. Is that true?

**Mr Lucy**—We will have to take that on notice. It is obviously a question that would be ideally answered by the super complaints tribunal, but I can obtain the information for you and provide it on notice, if you wish.

**Senator MURRAY**—Yes. Obviously, ASIC takes an interest in the fees area. It would seem strange to me that a complaints tribunal would not deal with that area. I will read a paragraph from this. I have not found out whether I can release it, otherwise I would give it to you. It states:

One essential point is that there are no arrangements in place to oversee the exercise of discretion of fund administrators in setting fees fairly and fairly changing the setting of fees for different groups of existing members who may have limited mobility.

It goes on to suggest that the complaints tribunal does not set fees. Can you come back with that?

**Mr Lucy**—Certainly

**Answer:**

The SCT's jurisdiction is set out in the *Superannuation (Resolution of Complaints) Act 1993* [SROC].

The SCT can broadly deal with complaints about decisions by regulated trustees, except decisions that relate to what is defined as the 'management of the fund as a whole'.

The setting of fees would fall under section 14(6) of SROC (the 'management of a fund as a whole' provision) and the SCT would not be able to review this (this would include a complaint that a fund's fees and charges are too high or are somehow inappropriate for particular members). The investment performance of a fund would also fall under this exception.

The SCT will, however, deal with a complaint that fees and charges were not disclosed or that misrepresentations were made about the existence or level of fees and charges (this would include an allegation of agent misrepresentation).

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While the Tribunal's role is to determine whether the decision of the Trustee in relation to the complainant was fair and reasonable in the circumstances, this does not extend to determining whether certain fees or charges set by the Trustee are 'fair and reasonable'.