ISA SUBMISSION

Review of the financial system external dispute resolution and complaints framework

RESPONSE TO THE INTERIM REPORT

27 January 2017

Industry Super Australia

ABOUT INDUSTRY SUPER AUSTRALIA

Industry Super Australia (ISA) is an umbrella organisation for the industry super movement. ISA manages collective projects on behalf of a number of Industry SuperFunds with the objective of maximising the retirement savings of five million industry super members. Please direct questions and comments to:

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CONTENTS

EXECUTIVE SUMMARY

In its submissions to the Panel's issues paper, Industry Super Australia (ISA) highlighted the need for a different approach to the external dispute resolution (EDR) and complaints systems within the superannuation environment. These submissions reiterate the significant differences between superannuation and other financial products, including the regulatory environment and trust relationships. ISA reiterates these views.

Given the unique nature of superannuation complaints and disputes, ISA strongly supports the continuation of a stand-alone dispute resolution model that is consistent with the superannuation environment and is capable of efficiently providing enforceable decisions.

ISA supports the continuation of a Tribunal model and believes that an industry based scheme dealing with superannuation complaints would be inappropriate and would considerably reduce consumer rights.

It is recognised that the existing superannuation complaints arrangements can be improved, including the funding and governance arrangements. The interim report makes a number of recommendations for change which are supported and could be incorporated into a revamped and appropriately funded tribunal scheme.

ISA does not believe the Panel has made a compelling case for change and supports change to strengthen the Superannuation Complaints Tribunal (SCT), including improved funding and governance changes.

The Panel's finding that existing problems within the SCT, including funding, cannot be addressed within the existing scheme and can only be addressed via the introduction of an industry ombudsman scheme is not supported and it is suggested the Panel has not produced evidence to support this position.

Response to proposal for new industry ombudsman scheme for superannuation disputes

At page 18 of the draft report the Panel states its belief:

> *"... that the existing problems with SCT cannot be addressed within the existing tribunal structure, even with substantial reforms to funding, governance, appointment processes or other aspects of the legislative regime, as the rigidity of the statutory model would continue to hamper flexibility and innovation, making it difficult for SCT to respond to unanticipated future challenges..... the Panel recommends that SCT be transitioned to a new industry ombudsman scheme for superannuation disputes."*

ISA does not concur with the finding or recommendation of the Panel and on balance does not believe that transitioning from a statutory tribunal to an industry ombudsman scheme is a net positive.

It is submitted that the alleged benefits of the proposed transition as viewed through the lens of the Reviews' stated principles of efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs as outlined at paragraph 6.28 are challenged.

It is inappropriate to compare the perceived difficulties of the existing tribunal system with the proposed resolution of those difficulties via an industry ombudsman. For example, at 6.28 it is claimed that an industry ombudsman scheme is to be preferred, as it will be appropriately funded. It is suggested that this is a circular self-serving proposition. The case has not been made as to why an appropriately funded tribunal would not be equally or more efficient than an industry ombudsman scheme.

It is suggested that the reasoning behind subsequent assertions relating to matters pertaining to equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs suffer from the same failing.

A tribunal system has significant systemic advantages over an industry ombudsman scheme. The most significant of these relate to the rights complainants have, including enforceability of decisions.

The interim report makes the bold assertions that tribunals are less accessible; less flexible; apply black letter law; focused on apply individual resolution rather than improving industry practice.

And whilst extolling the virtues of ombudsman schemes the interim report finds that such schemes are independent, have the power to initiate investigations; can be proportionate to the manner in which a matter is addressed depending on its complexity; need not be bound by strict rules of evidence; can deal with systemic or industry wide issues; can be innovative and adopt to matters relating to new financial products and been shown to be effective in the judicial and financial services sectors.

ISA recognises that the existing superannuation complaints scheme can be improved. The most significant failing of the current arrangements is a chronic funding deficit. The interim report appears to compare the benefits of an appropriately funded ombudsman scheme with the failings of an inappropriately funded tribunal scheme.

ISA believes that an appropriately funded tribunal scheme has significant advantages over an industry ombudsman scheme and will ensure a higher level of consumer rights and greater certainty of outcomes for all parties.

The difficulties associated with an industry ombudsman scheme in the superannuation sector

The interim report does not address the unique role of the superannuation sector. As stated earlier, superannuation is a compulsory financial product at the heart of Australia's retirement incomes system. It is a highly regulated and complex environment. It is also important to recognise the unique trust between relationships within the superannuation environment and how these relationships alter the rights and expectations of the participants.

A further significant consideration are the existing regulatory and statutory rights and responsibilities that in many instances differ from those rights that exist elsewhere in the financial services sector. These differences have their foundation in the collective understanding that by compelling all Australian workers to set aside a significant proportion of their income to fund their retirement there flows unique rights and protections. These protections are based in statute and trust and employment law; not contract law.

The role of superannuation trustees

Superannuation trustees have the responsibility to act in the financial best interests of fund members. In exercising this fiduciary obligation, they apply an objective test to do what is fair and reasonable. This duty requires a wider consideration of what is in the best interests of all fund members.

The interim report proposes that an industry ombudsman could base their decisions on what is fair when considering all the circumstances. This is a different test to that required of superannuation trustees. It is suggested that it would add considerable confusion if there was any confusion regarding which duty has prominence.

The interim report proposes that an industry ombudsman scheme have a broader range of remedies available to it, including compensation for non-financial loss. It is suggested that compensation for non-financial loss may be inconsistent with the existing fiduciary obligations of trustees to act in the best interests of members as a whole.

Rights of members and beneficiaries

ISA is of the view that an industry ombudsman scheme does not provide members and beneficiaries the same enforceable rights as a statutory tribunal scheme. An ombudsman does not act for a complainant specifically and typically they can refuse to deal with specific matters.

Governance

ISA agrees with the Panel that the governance arrangements of the SCT can be modernised. Currently the Chairperson of the SCT is the executive officer of the Tribunal, responsible for the operation and administration of the Tribunal and the monitoring of its operations.[1]

[1] S 7A Superannuation (Resolution of Complaints) Act 1993 http://www.comlaw.gov.au/Details/C2015C00162

ISA Response to Draft Recommendations

ISA has limited its responses to the draft report's findings and observations to those matters that are relevant to superannuation.

Draft Recommendations

Draft recommendation 1

A new industry ombudsman scheme for financial, credit and investment disputes

There should be a single industry ombudsman scheme for financial, credit and investment disputes (other than superannuation disputes) to replace Financial Ombudsman Service (FOS) and Credit and Investments Ombudsman (CIO).

ISA recognises that there are advantages in establishing a single complaints ombudsman scheme which does not include superannuation disputes.

Draft recommendation 2

Consumer monetary limits and compensation caps

The new industry ombudsman scheme for financial, credit and investment disputes should provide consumers with monetary limits and compensation caps that are higher than the current arrangements, and that are subject to regular indexation.

ISA does not have an objection to the establishment of monetary limits and compensation caps however is of the view that such a scheme should incorporate appeal rights.

Draft recommendation 3

Small business monetary limits and compensation caps

The new industry ombudsman scheme for financial, credit and investment disputes should provide small business with monetary limits and compensation caps that are higher than the current arrangements, and that are subject to regular indexation.

ISA agrees with the raising of monetary limits and higher compensation caps; however is of the view that increases should apply to all consumers, not just small businesses.

Draft recommendation 4

A new industry ombudsman scheme for superannuation disputes

SCT should transition into an industry ombudsman scheme for superannuation disputes.

ISA believes that the implementation of this recommendation would inevitably result in a reduction in consumer rights, including the potential exclusion of a major class of superannuation beneficiaries; confusion and potential increased costs.

ISA does not believe the Panel has provided any compelling evidence to support its recommendation.

At 6.30 the Panel outlines in table form its proposed industry ombudsman scheme. We raise a number of issues that flow from the table shown at pages 151-154.

Structure and membership

ISA strongly supports the continuation of a statutory tribunal established by statute. Australians are compelled by statute to invest in their retirement. Superannuation is a key component of the social contract that seeks to provide a dignified retirement for Australian workers. This contract is reflected in statute and it is appropriate that the importance of this arrangement is reflected in statutory rights.

Function

The only change suggested to the function of the existing SCT is found through the addition of the word "flexible". Insofar that the existing scheme is not sufficiently flexible, a more efficient course of action would be making of amendments to improve flexibility where appropriate.

Jurisdiction over decisions of trustees

There is no objection to changes to the jurisdiction (in the context of the use of the term in the table at paragraph 6.30) of the SCT or its successor, provided there is a full industry and consumer consultation process. Improving the 'flexibility' of applicants and extending time limits imposes costs and uncertainty which could result in delays in payments to beneficiaries.

Powers and approach to decision making and enforceability of decisions

A bold assertion is made that a new industry ombudsman scheme could permit 'fairness in all the circumstances', improve flexibility whilst at the same time could 'take into account' relevant case law. It is submitted that this is a case of ill-considered overreach. In a similar vein the Panel suggests that third parties i.e. 'persons with an interest in a death benefit', could be joined upon application.

It is strongly suggested that these views fail to understand the fundamental difference in power and rights conferred upon a tribunal when compared to a voluntary industry scheme. Case law either applies or it is used only as a guide, subject to new voluntary 'flexibility' and discretion allowances.

Parties either have an enforceable right or they don't. The proposed change removes enforceable rights. A voluntary industry based ombudsman scheme does not provide enforceable rights to consumers. A tribunal established by statute which provides certainty to industry and enforceable rights to consumers provides a better outcome to the industry and the community. It is recognised that RSE licensees or trustees will not readily enter into conflict with a regulator or their industry peers by refusing to abide by a decision of a voluntary industry complaints body. However, the fact that this is possible and that a fund member, their beneficiaries or other interested party will not have an enforceable right is an unacceptable result.

The inability of a successful complainant to enforce an ombudsman decision relating to a death benefit against other family members is a clear example of the inadequacy of the proposed scheme.

In the example given above, there is unlikely to be any contractual or other legal relationship that could be found which would be capable of giving rise to an action that could see the ombudsman's decision enforced. In any event, if a right could be found, it should not be necessary that a successful complainant should be required in any circumstances to commence an action elsewhere to either re litigate or enforce a decision. As this practical and not uncommon example demonstrates the proposed industry ombudsman scheme for all its proposed flexibility, lacks clarity and finality. It would not be surprising if many potential litigants, having doubts regarding the enforceability of an industry ombudsman decision, bi-pass the scheme and seek resolution in another jurisdiction.

A party denied rights will care little if the regulator subsequently takes a dim view of the actions of a licensee.

The 1997 UK review of Civil Justice and Legal Aid observed that:

> "A number of private-sector ombudsmen, mostly covering the financial service industries, have also been established. Some of them are backed by statute. The main difference is that the decisions of private-sector ombudsmen are binding on the institutions that have joined the scheme. These schemes are therefore analogous to a kind of one-sided arbitration. Uniquely, the decisions of the Pensions Ombudsman, which is a statutory scheme, are binding on both parties."[2]
>
> The key considerations in the UK debates regarding the relative merits of tribunal or Ombudsman schemes have not considered industry or private ombudsman schemes; but rather the relative merits of two statutory backed schemes. The UK Council on Tribunals has previously observed that the UK Pensions Ombudsman scheme is subject to the jurisdiction of the County Court and expressed the view that the term Ombudsman for the UK Pensions scheme is a misleading nomenclature that should be changed.[3]
>
> It is the view of the UK Cabinet Office that the term Ombudsman should only be used where the schemes are entirely independent from the bodies which may be complained of. It is suggested that the industry scheme proposed by the draft report would not meet this level of independence."[4]

Superannuation is a complex and compulsory product. Society has a right to an incontrovertible ability to enforce rights and decisions. The Panel's response to complexity is to vaguely discuss 'flexibility' and remove rights. This is not an appropriate response.

ISA is currently participating in an industry response to better improve the group insurance offerings within superannuation, including the complaints processes. Consumer rights representation is part of this process. A commitment has been made by industry participants that they will work towards the establishment of an industry code of practice with a view that the code will be approved by ASIC. It is the group's view that any code of practice should improve consumer rights and experiences. It is ISA's view that this would include the continuation of enforceable rights for consumers.

A further issue relates to the fiduciary duties imposed upon trustees when it comes to decision making in the best interests of members. Under s52(2) of the *Superannuation Industry (Supervision) Act* 1993 (SIS Act) the trustees of a superannuation fund are required to perform their duties and exercise their powers in the best interests of the beneficiaries of the fund. Trustees have an obligation to do what is fair and reasonable. This is an objective test. It is suggested that the use of a different test in decision making by an industry based tribunal would cause confusion and uncertainty, which is to be avoided.[5]

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[2] A report to the Lord Chancellor by Sir Peter Middleton GCB, September 1997. Annex C.8.

[3] See Amicus Curiae Issue 26 April 2000 http://sas-space.sas.ac.uk/3837/1/1397-1582-1-SM.pdf

[4] See http://www.ombudsmanassociation.org/docs/CabinetOfficeGuidanceNov09.pdf

[5] For a discussion on the duty of trustees to do what is fair and reasonable for beneficiaries compared to fair and reasonable in the circumstances see: *Mercer Superannuation (Australia) Limited v Billinghurst* [2016] FCA 1274

Remedies

ISA does not believe a complaints scheme should be capable of awarding compensation for non-financial loss, particularly if there is no cap on potential compensation. Compensation for non-financial loss is likely to impose additional costs and uncertainty into the system. It is arguable that trustees could be in breach of their fiduciary duty to protect the financial interests of all beneficiaries if they were to pay non-financial compensation. This could potentially cause a conflict between a statutory enhanced fiduciary duty and a voluntary industry based scheme.

It is suggested that the only clear way non-financial loss could be appropriately considered would be via amendment to the trustee covenants found in section 52 of the SIS Act. ISA would oppose such an amendment as it would potentially add significant costs and delays to the system.

Rights of appeal

An industry ombudsman scheme as proposed has no rights of appeal. Rather what is suggested is that complainants could commence action under contract law or undertake another form of action. This is unacceptable because it is unfair; inequitable and inefficient.

Without automatic appeal rights, there is a serious question of accountability of the decision making process of the proposed scheme. It is also suggested that only those litigants with resources would be capable of commencing a separate action, this is highly inequitable. As mentioned earlier, it is also doubtful that some parties would have standing under contract law to commence an action where they are not party to any contractual arrangement. The proposed arrangement regarding appeal rights is seriously flawed.

Funding and resourcing

Lack of funding for the SCT has restricted its ability to undertake its prescribed duties. ISA, and we believe the industry as a whole, is open to a sensible discussion as to how a superannuation complaints scheme can be appropriately funded. Currently the SCT is indirectly funded by the industry via an industry levy. Providing a complaints tribunal greater certainty of funding and/or greater control over expenditure is not a matter that should drive any decision regarding the merits of an ombudsman or statutory based tribunal.

ISA supports the introduction of appropriate funding arrangements for the SCT that will enable the SCT to establish performance metrics that it will have a level of confidence it can resource. It is submitted that the funding levels and arrangements of the SCT are inadequate. ISA proposes the continuation of an industry levy and that the levy have a component which is impacted by the nature and source of complaints.

It is unclear how the Government's announced changes to introduce an industry funding model for ASIC will impact upon the existing funding arrangements.

Appointments

ISA supports the continuation of a tribunal system with statutory appointments for certain, but not necessarily all appointments. ISA supports a change to the governance arrangements of the SCT and the establishment of a Board which could, at least in the first instance, reflect the existing Advisory Council. At a minimum the Chair and Deputy Chair should be statutory appointments.

It is suggested that there may be benefits to the establishment of an adhoc expert panel which could provide advice in complex or specialist areas by means of a regular review or on a needs basis. A similar scheme is adopted in the *Fair Work Act* 2009 by use of an Expert Panel to advise on matters relating to the setting of minimum wages.

Processes and ADR mechanisms

Insofar as the Panel has identified opportunities for alternative dispute resolution, these should be facilitated. It is submitted that the requirement that the SCT undertake conciliation prior to commencing a hearing is good dispute resolution practice and should be encouraged rather than seen as a hindrance to the nebulous 'flexibility' sought by the Panel. The process of conciliation is to be encouraged. Undertaken correctly conciliation can be an informative process that either removes, resolves or narrows the scope of disputes. It is unclear why the Panel does not consider it appropriate that conciliation take place or why this is not a flexible approach.

At 2.5 of its original submissions ISA stated that

> *"... there may be merit in introducing a triage system which directs consumers to the appropriate forum for their dispute."*,
>
> and that
>
> *"There is also merit in introducing a robust triage system within the SCT. Given the significant number of complaints that are withdrawn, a triage process that identifies these complaints as early as possible has the potential to generate considerable efficiencies. A triage process could also enable the SCT to identify complaints that are well suited to conciliation and fast track this process."*

This innovation can and should take place within a tribunal based scheme.

Oversight and accountability

The Panel's position that a new scheme would be the subject of additional accountabilities and oversight is disputed. The removal of a tribunal based scheme would remove Parliamentary oversight, the jurisdiction of the Commonwealth Ombudsman and the removal of the industry Advisory Council. Its replacement by a voluntary industry code based scheme does not add additional accountability.

Notwithstanding this view, ISA submits that the governance arrangements applying to the SCT can and should be modernised. The Panel's view that the roles of CEO and Chair should be separated are supported, as is the recommendation that a representative Board oversee a complaints scheme. It is suggested that improved governance arrangements can be achieved within a tribunal scheme that also includes appropriate statutory oversight. There are a number of statutory bodies which have commendable governance and reporting arrangements which could be emulated where appropriate; one such example is the Administrative Appeals Tribunal.

Systemic issues

The Panel appears to be suggesting that the SCT is not required to undertake any systemic issues work and that the benefits of an industry ombudsman is that it would be required under the proposed scheme to do so. It is important to note that there is no hindrance or prohibition, other than resource limitations, on the Tribunal providing systemic analysis or work or commissioning work.

Draft recommendation 5

A superannuation code of practice

The superannuation industry should develop a superannuation code of practice.

At 6.34 the Panel's report notes that key sections of the industry, including ISA, are developing a code of practice regarding group insurance arrangements within superannuation, including, but not limited to, complaints handling. It is important to note that this representative group has declared that any code should be capable of being approved by ASIC. The code of practice is not being developed as a compliment to an industry ombudsman scheme, but rather a statutory based scheme with enforceable consumer rights.

Draft recommendation 6

Ensuring schemes are accountable to their users

Both new schemes should be required to meet the standards developed and set by ASIC. At a minimum, ASIC's regulatory guidance should require the schemes to:

- ensure they have sufficient funding and flexible processes to allow them to deal with unforeseen events in the system, such as an increase in complaints following a financial crisis or natural disaster;
- provide an appropriate level of financial transparency to ensure they remain accountable to users and the wider public;
- be subject to more frequent, periodic independent reviews and provide detailed responses in relation to recommendations of independent reviews, including updates on the implementation of actions taken in response to the reviews and a detailed explanation when a recommendation of an independent review is not accepted by the scheme; and
- establish an independent assessor to review the handling of complaints by the scheme but not to review the outcome of individual disputes.

In addition, ASIC's regulatory guidance should require the new scheme for financial, credit and investment disputes to regularly review and update its monetary limits and compensation caps so that they remain relevant and fit-for-purpose over time.

ISA agrees that a complaints scheme should be appropriately funded; transparent; meet ASIC standards and be the subject of review and believe that either such standards exist or can be implemented within a tribunal based scheme such as the SCT.

Draft recommendation 7

Increased ASIC oversight of industry ombudsman schemes

ASIC's oversight powers in relation to industry ombudsman schemes should be enhanced by providing ASIC with more specific powers to allow it to compel performance where the schemes do not comply with EDR benchmarks.

ISA does not support this recommendation. If the Panel believes an industry ombudsman scheme is appropriate, with a level of 'flexibility', it is unclear what standards ASIC would apply and what powers it could impose upon an industry scheme, if any. A statutory based tribunal scheme is much preferred to a half-way house approach.

Draft recommendation 8

Use of panels

The new industry ombudsman schemes should consider the use of panels for resolving complex disputes.

Users should be provided with enhanced information regarding under what circumstances the schemes will use a panel to resolve a dispute.

ISA concurs that expert panels have a role to play and is of the view that this would enhance the role and improve efficiencies within the SCT.

Draft recommendation 9

Internal dispute resolution

Financial firms should be required to publish information and report to ASIC on their Internal Dispute Resolution (IDR) activity and the outcomes consumers receive in relation to IDR complaints. ASIC should have the power to determine the content and format of IDR reporting.

ISA supports this recommendation.

Draft recommendation 10

Schemes to monitor IDR

Schemes should register and track the progress of complaints referred back to IDR.

ISA supports this recommendation.

Draft recommendation 11

Debt management firms

Debt management firms should be required to be a member of an industry ombudsman scheme. One mechanism to ensure access to EDR is a requirement for debt management firms to be licensed.

ISA has no view on this recommendation at this stage.

ISA Response to Panel Observations, Findings & Information requests

The Panel is of the view that there is considerable merit in introducing an industry-funded compensation scheme of last resort.

ISA does not support this view and believes it has little relevance to the superannuation sector. Superannuation licensees are appropriately regulated. There has not been calls for such schemes in the prudentially regulated superannuation sector by regulators; government; industry participants or consumer groups.

Information requests

Information Requests	ISA Response
P112 Should the national consumer credit protection law be extended to small businesses?	ISA has no view on this matter
P131 Should schemes be provided with additional powers and, if so, what additional powers should be provided? How should any change in powers be implemented?	The power to order the delivery of IDR statistics and or relevant documentation could be considered. It is unclear how such powers would be enforceable under an industry ombudsman scheme.
P 135 Does EDR scheme membership by credit representatives provide an additional or necessary layer of consumer protection that is not already met through the credit licensee's membership?	ISA does not have a view at this stage.
P149 What should be the monetary limits and compensation caps for the new scheme? Should they be different for small business disputes?	ISA does not support the imposition of monetary limits and does not support compensation for non-financial loss.
P 161 On what matters should ASIC have the power to give directions? For example, should ASIC be able to give directions in relation to governance and funding arrangements and monetary limits?	ISA believes that these are public policy matters that should be established by statue whilst allowing an appropriate level of flexibility.
P 162 What IDR metrics should financial firms be required to report on? Should ASIC publish details of non-compliance or poor performance IDR, including identifying financial firms?	ISA supports a level of transparency regarding IDR reporting that would be sufficient to identify the relevant licensee; product; the broad nature of the dispute; steps and time taken to deal with the complaint and outcomes. The public release of such information, including the naming of the financial firm will provide an incentive to improve IDR outcomes. Such information will assist policy makers and ASIC and can inform funding and resource allocation.

Panel Findings

Panel Findings	ISA Response
P 98 The existence of multiple schemes that have overlapping jurisdictions contributes to consumer confusion and makes it more challenging to achieve and be seen to achieve comparable outcomes for consumers with similar complaints.	ISA agrees with this observation.
P 101 Where it is the financial firms (and not the consumers) that have a choice of scheme for dispute resolution, it is not clear that competitive tension drives innovation and better outcomes for consumers.	ISA agrees with this observation.
P 103 The need to establish and run and, in the case of the regulator, approve and oversee multiple schemes results in unnecessary duplicative costs and an inefficient allocation of resources.	ISA agrees with this observation, except that it should be recognised that the superannuation sector is unique and that it is more efficient to operate a separate scheme that applies to superannuation matters.
P 105 The current monetary limits for consumers are inadequate.	ISA agrees with this observation.
P 112 The small business jurisdictional limits at the schemes are currently inadequate which means small businesses are unable to access effective dispute resolution arrangements.	ISA has no view on this matter.
P 114 ▪ There is currently no mechanism for consumers with complaints in respect of unlicensed debt management firms to seek access to EDR. ▪ Where the dispute brought to EDR does not have merit, the activities of some debt management firms can hamper the efficiency of EDR schemes by diverting scheme resources from other disputes.	ISA agrees with this observation, but does not believe it is applicable to the highly regulated superannuation industry.

Panel Findings	ISA Response
P 120 The delays experienced at SCT, particularly in relation to TPD and death benefits complaints, are unacceptable and have serious implications for the effectiveness of SCT as a dispute resolution forum. SCT funding has been steadily decreasing with current resourcing levels neither sufficient nor sustainable. There is a lack of transparency of current funding and budget arrangements.	ISA agrees with this observation and believes appropriate funding and changes to existing governance arrangements can rectify these issues.
P 122-123 The legislative prescriptions on how SCT is currently permitted to handle complaints inhibit its ability to choose the most appropriate dispute resolution mechanism. Transparency and accountability of operations is important for efficiency and performance is currently lacking. Compared to industry ombudsman schemes, SCT is restricted in its ability to adapt and reform itself to address issues and future challenges because it requires involvement by government and legislative change. SCT can improve its stakeholder education and outreach activities.	ISA does not believe the Panel has taken a balanced approach when considering the relative merits of tribunal and ombudsman schemes. It appears that the starting premise of the Panel is that an ombudsman scheme is flexible, efficient and not constrained by legislative dictates whilst the SCT is flawed beyond repair. Earlier points in these submissions deal with the views regarding conciliation, governance and other matters.
P 124 SCT governance arrangements are in need of modernisation. The current situation, with the Chairperson performing a dual role as a CEO as well as Chair of the Tribunal and lacking financial delegations, has resulted in a misalignment of accountability and powers and does not align with good public sector practice. There is a lack of direct input by consumer and industry experts in the governance of SCT. The current appointments process for Tribunal members can be lengthy making it more difficult for SCT to manage its operations and to quickly respond to emerging issues.	ISA agrees that the governance arrangements of the SCT require modernisation, including the separation of the roles of CEO and Chair. ISA supports a Board structure that includes industry and consumer representation.

Panel Findings	ISA Response
P 125 Consumers can find it difficult to access and navigate SCT. SCT is hampered by restrictive legislation which contains a narrow definition of fair and reasonable in comparison to industry ombudsman schemes.	Earlier in these submissions ISA has addressed the specific issues relating to 'fair and reasonable' and 'fair and reasonable in all the circumstances'. We are of the view that the Panel has not appreciated the complex issues relating to the fiduciary duties upon trustees and their intersect with the role of the SCT.
P 125 Although it can refer issues to regulators, a shortcoming is that SCT is not required to resolve systemic issues relating to complaints handling.	It is unclear how either the SCT or an industry ombudsman can be required to resolve systemic issues relating to complaints. Other than resourcing limitations, there is no hindrance to either type of scheme identifying and reporting on systemic issues.
P 127 The governance model of industry ombudsman schemes, with even numbers of directors with industry and consumer expertise and an independent chair, assists in ensuring that schemes can operate independently of industry, despite being industry funded. Where EDR schemes have sufficient funding flexibility, it allows them to respond quickly to changes, such as an increase in the number of disputes received.	ISA does not agree with this bold assertion. The existing STC is industry funded and independent. Funding and the flexibility to allocate funding to priority areas is an important consideration and one that can be dealt with within a tribunal scheme.
P 129 Regular independent reviews of an EDR scheme's performance and procedures are an important feedback and accountability mechanism to ensure they continue to evolve and improve. Independent Assessors have the ability to promote scheme accountability and improve scheme decision-making processes.	External review and accountability are important considerations.
P 132 Panels play an important role in resolving complex disputes, however, they do impose costs on the system. There is currently a lack of transparency around when a panel will be used.	ISA has made earlier comments relating to the use of expert panels.

Panel Findings	ISA Response
P 134 ASIC's limited oversight powers do not allow it to take targeted action to address problems within a scheme.	To the extent that there are oversight issues, these can be more readily resolved within a statutory based regime.
P 141 Effective EDR is supported by effective IDR. Data on IDR outcomes is limited and inconsistent and this means that it is difficult to determine how effective internal dispute resolution currently is and whether it is improving over time. Tracking by EDR bodies of disputes referred back to IDR is an important element of the framework and could assist in encouraging firms to reach a solution or identify systemic issues in IDR.	ISA agrees.