

## FOCUS

### SOCIAL SECURITY APPEALS - THE ARC'S LATEST REPORT

#### In Brief

A major report issued by the Government's independent adviser in matters of administrative review, the Administrative Review Council, has recommended important changes to the social security appeals system. Key recommendations are:

- . abolition of SSATs, to be replaced by a nationally co-ordinated review body with powers, duties and status befitting the first tier of external review in a high volume area of government decision making;
- . retention of the AAT as a final tier review, with only minor changes; and
- . a national survey of the needs of social security claimants as a basis for devising more effective avenues of advice and assistance about social security law and the review processes.

#### Background

The ARC's report, The Structure and Form of Social Security Appeals, is a second look by the Council at social security appeals. In June 1980 the Council recommended that SSATs be abolished and replaced by an improved internal (i.e. departmental) review system. Since then, important developments have occurred in the social security area and, as well, the Council has gained more experience in comparable high volume areas of government decision making. The Council's latest report is a response to these changes, and follows upon a request by the Attorney-General in November 1983 to conduct a re-examination of the area.

#### Basic Objectives

An effective system of social security appeals needs two tiers of external review. These two tiers should not duplicate one another but be complementary in function. The emphasis in the first tier should be on the provision of economical,

expeditious and informal review. The second tier should determine individual cases filtered through the first tier, but should also develop general principles or standards for the guidance of both primary decision makers and the first review body. Thus, at each tier different rules governing the manner in which an appeal is heard should apply.

#### Need for Changes to SSATs

The ARC concluded upon its review that SSATs were unsatisfactory in two main respects. First, the existing structure undermined public confidence and promoted dissatisfaction in some appellants by

- . the capacity only to recommend;
- . the fact that in many respects the various SSATs operated under different procedural 'rules'; and
- . the occurrence of unnecessary and avoidable delays.

Second, SSATs did not have the status and independence deserving of a first tier tribunal in a high volume area of government decision making. This was shown by -

- . the absence of a legislative foundation;
- . the practice of the Director-General rather than the Minister appointing the departmental member;
- . the absence of any formal powers of control over the progress of appeals; and
- . the lack of involvement in decisions relating to the disclosure of documents (decisions normally taken by the DSS).

#### A New SSAT

The report recommended the establishment of a national Social Security Appeals Tribunal with the following principal features:

- . Foundation. The Tribunal should be established by statute.
- . Membership and constitution. The Tribunal should be constituted in a similar multi-disciplinary manner as is the current practice in relation to SSATs. Thus, each panel should consist of a legal member, a welfare member, a public service member (who may be a present or former employee) and in medical appeals (and at the discretion of

the Chairman of the SSAT) a medical member.

- . Powers. Unlike SSATs, the new SSAT should have determinative (i.e. binding) powers. It should also be able, in cases of hardship, to order the interim payment of a pension or benefit, and to stay a cancellation, suspension or reduction of a pension or benefit pending the determination of an appeal.
- . Procedures. A balance was sought to be struck between the need to maintain the informality of present SSATs and the need for justice to be done and seen to be done. Accordingly, informality was sought to be preserved by recommending that SSAT hearings should generally be in private, and by requiring the Director-General to seek the Tribunal's permission before being represented before the SSAT. (Where the DSS is represented the Tribunal should be empowered to require the DSS to meet the reasonable costs of providing suitable representation for the appellant). Fairness is promoted by recommendations which aim to ensure that the parties know in advance the case they have to meet at the hearing, and by requiring the Tribunal to give reasons in writing for its decision upon request.

Summing-up. The new SSAT is an evolutionary rather than a radical step in the development of a effective social security appeals system. The recommendations aim to preserve the existing informality of SSATs while at the same time removing their inadequacies as the first tier of external review.

## REGULAR REPORTS

### ADMINISTRATIVE REVIEW COUNCIL

#### Update on Council Recommendations

Citizenship. Most of the Council's recommendations made in its 7th Report, Citizenship Review and Appeals System, have been adopted in the Australian Citizenship Amendment Bill 1984, currently before the Senate.

Repatriation. The recommendations made by the Council in its 20th Report, Review of Pension Decisions Under Repatriation