

File notes:

New health scheme for 'disadvantaged persons'; rights of appeal to AAT

Part of the Commonwealth Government's new health care scheme, to operate from 1 September 1981, involves special provision for 'disadvantaged persons' who are to receive free public ward and outpatient treatment at public hospitals and free medical treatment from those medical practitioners who bulk bill the Commonwealth Department of Health. (These people will receive something less than free medical treatment if the medical practitioner does not bulk bill.)

There are four categories of 'disadvantaged persons' and the eligibility tests are listed in new sections of the *Health Insurance Act 1973*. These tests are complex and their administration is entrusted to the Director-General of Social Services: it is the Director-General who 'declares' a person to be a 'disadvantaged person' and therefore eligible for the benefits conferred by the new scheme. As one would expect, these declarations will be made by officers of the Department of Social Security, to whom the Director-General may delegate his powers under the *Health Insurance Act*: s.130J.)

The relevant provisions of the *Health Insurance Act* are as follows:

- Section 5 gives the Director-General power to declare an **immigrant or refugee** a disadvantaged person for six months following that person's entry into Australia. (There is no income test.)
- Section 5A authorizes the Director-General to revoke a s.5 declaration if the 'disadvantaged person' loses the status of immigrant or refugee.
- Section 5B gives the Director-General power to declare a **person on low income** a disadvantaged person for six months. The income limits are stated in complex language: indeed, they are quite unintelligible unless read with the terms of s.114 of the *Social Services Act*, laying down the income test for unemployment benefits. The income limits, according to these complex formulae, are:

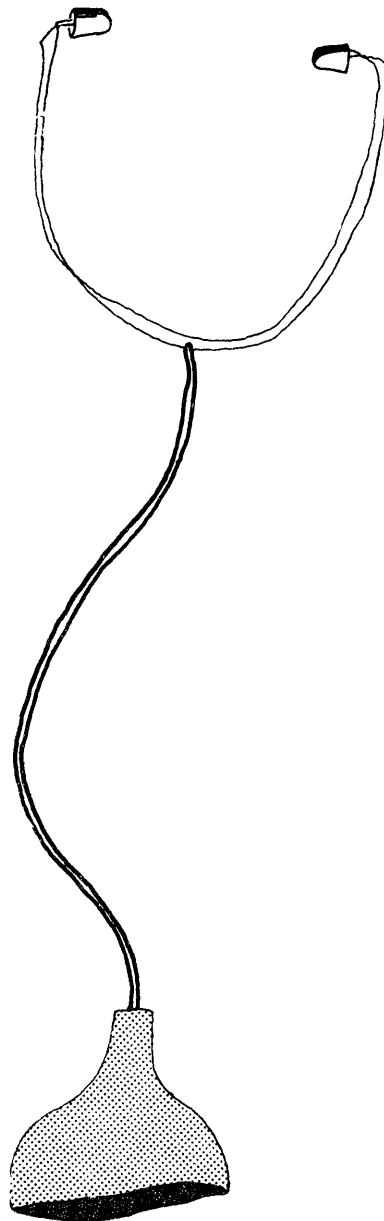
	no children	with one child	for each extra child
single	\$96 pw	\$160 pw	\$20 pw
married	\$160 pw	\$180 pw	\$20 pw

- Section 5C authorizes the Director-General to cancel a s.5B declaration if the income of a 'disadvantaged person', during any four weeks period, comes to 125% of the allowable income for that period.
- Section 5D gives the Director-General power to declare a **person on unemployment benefit** a disadvantaged person for two weeks, if that person's income falls below the limits specified in s.83CA of the *Social Services Act* (which establishes an income test for funeral benefits). Calculation of allowable income is complex: it ignores the amount of unemployment benefit being paid and looks only at *extra* income. The income limits for this *extra* income are, according to s.83CA of the *Social Services Act*:

	no children	with one child	for each extra child
single	\$40 pw	\$55 or \$57 pw*	\$11 pw*
married	\$68 pw	\$84 pw	\$16 pw

*depending on child's age.

- Section 5E gives the Director-General power to declare a **person on special benefit** a disadvantaged person for two weeks if that person's income falls below the limits specified in s.83CA of the *Social Services Act*. Accordingly, the income limits are identical to those for s.5D.



Appeal rights

- Section 5F(1) declares that decisions of the Director-General (or his delegates) under ss.5 to 5E may be reviewed by the Director-General under s.14 of the *Social Services Act*.
- Section 5F(2) declares that appeals against decisions of the Director-General's delegates under ss.5 to 5E can be taken to the Director-General under s.15 of the *Social Services Act*.

- Section 15A(3) of the *Social Services Act* declares that a decision of an officer (that is, a delegate of the Director-General) under ss.5 to 5E of the *National Health Act* is subject to appeal to the Administrative Appeals Tribunal in the same way as decisions under the *Social Services Act*—that is, after review by an SSAT and affirmation, variation or annulment by the Director-General: see new s.15A(1); or after affirmation, variation or annulment by the Director-General who certifies that an important principle of general application is involved: see now s.15A(2).

Comment

The legislation dealing with the 'disadvantaged persons' health scheme is complex: for example, s.5B (which covers people on low incomes) runs for four pages, contains 15 sub-sections, and cannot be understood without frequent cross-references to the *Social Services Act*.

However, the administration of the scheme is likely to be relatively mechanical: there are no broad discretions given to the Director-General; the most likely areas of dispute will be in calculating a person's income—in particular in deciding whether a payment is technically 'income' and, if it is, in which period the income is received. However, as the income provisions of the *Social Services Act* have been raised in very few social security appeals (in less than 2% of appeals lodged, we have been told), it seems that the 'disadvantaged persons' health scheme will generate very few AAT appeals.

Another possible area of dispute could be over immigrant and refugee status for the purpose of a s.5 declaration. To some extent, these statuses depend on legislative definition but they also depend on administrative procedures in the Department of Immigration and Ethnic Affairs. Those administrative procedures are complex and open up the prospect of argument and dispute over a person's status.

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