

Background

SOCIAL SECURITY APPEALS: NEW PROPOSALS

In January this year the Administrative Review Council released a draft report, 'Structure and Form of Social Security Appeals'.

This report was requested by Attorney-General Gareth Evans in November 1983. In his letter to the Council, the Attorney had asked it to consider 'a two-tiered approach to social security appeals'.

Background

The first report of the Administrative Review Council on the subject of social security appeals was made in June 1980. At that time, the Council had recommended that Social Security Appeals Tribunals be abolished in favour of a general right of appeal to the Administrative Appeals Tribunal.

Although the jurisdiction of the AAT was substantially expanded in September 1980, no steps were taken to establish the 'single level' system of appeal recommended by the Council. Indeed, that recommendation was criticized on the ground that it would lead to the AAT being flooded in a tidal wave of social security appeals and reduce the AAT's capacity to undertake in-depth review of Department of Social Security policies and practices. (In 1981-2, there were 11 721 appeals to SSAT's, followed by 12 284 appeals in 1982-3.)

The current proposal

In its most recent draft report the Administrative Review Council has accepted the substance of these criticisms. The report quotes, with approval, Martin Partington's observations:

The AAT would not appear to be the ideal forum for the initial determination of social security appeals . . . The AAT is not a suitable forum for the processing of large numbers of individual cases: it is a most valuable forum for more detailed considerations of specific issues of difficulty.

One consequence of its work is that the AAT has been able to highlight a number of specific difficulties with the substance of social security law; for example, the means of defining 'income' for the purposes of working out means tests, or the 85% incapacity rule in relation to invalid pensions. Indeed, in a number of cases the AAT has recommended that detailed changes in the statute law should be made. It is most desirable that public attention be drawn to these matters, rather than that they remain concealed and regarded merely as administrative difficulties

(Professor Martin Partington, 'The Impact of the AAT on Social Security', Faculty of Law, Monash University, 1983).

Arguing that more than three years experience of the present appeal system has demonstrated its basic advantages (as well as some obvious problems), the Council says that this system should be adapted and modified, rather than replaced.

The Council's draft report recommends that a 'two-tiered' review structure be retained:

- The first tier would be a Social Security Appeals Tribunal, established under the *Social Security Act* with full power to decide (rather than recommend).

Its members would be appointed by the Minister, rather than the Director-General and would reflect the present membership of SSAT's - lawyers, welfare workers, medical practitioners and DSS officers. (Special procedures for appointment and tenure are proposed to protect the independence of the Tribunal members.)

The Tribunal would be a national body with a full-time President responsible for its operations, assisted by full or part-time Deputy Presidents in each State or Territory.

The Tribunal should follow informal procedures but these must be structured to improve the quality of justice offered to appellants - for example, access to all relevant DSS documents, oral hearings, no limit on representation, payment of appellants' expenses and an obligation on the Tribunal to give reasons for its decisions.

- The second tier would continue to be the Administrative Appeals Tribunal: it would hear applications for review of SSAT decisions, as it now does; but an application could be lodged either by an unsuccessful claimant or by the DSS. (The right of the DSS to appeal is a consequence of the proposal that the SSAT have power to decide appeals rather than merely recommend.)

It would be possible for a claimant to go directly to the AAT (by-passing the SSAT if the President of the SSAT certified that the matter involved an important principle of general application. (Currently, the SSAT's can be by-passed only where the Director-General issues a certificate; but the Council noted that no such certificate had been issued.)

Advice and assistance

In its draft report, the Administrative Review Council has returned to its 1980 recommendation that claimants should have access to an adequate scheme of advice and assistance. The absence of

such a scheme (despite the 1980 recommendations) is now described as a 'deficiency' of the present system of appeals. The Council has now called for 'access to independent sources of advice and assistance concerning social security law and the review processes.'

It recommended that a comprehensive national survey be conducted to assess the specific needs of social security claimants for advice and assistance so that an appropriate scheme might be devised.

Future action

The Administrative Review Council is expected to finalize its report on 2 March 1984 and, shortly after, to forward it to Attorney-General Evans. Any comments on or criticisms of the proposals can be made direct to the Attorney-General, Parliament House, Canberra.

PH.

Statistics

This table of applications lodged with and decided by the AAT, is compiled from information provided by the Department of Social Security.

| | Oct. 83 | Nov. 83 | Dec. 83 | Jan. 84 |
|--------------------------------------|------------|------------|------------|------------|
| Applications lodged* | 93 | 84 | 44 | 62 |
| Decided by AAT | 24 | 28 | 29 | 19 |
| Withdrawn | 30 | 41 | 17 | 18 |
| Conceded | 34 | 44 | 26 | 30 |
| No jurisdiction | 3 | 1 | 2 | 5 |
| Awaiting decision at end of month | 1234 | 1204 | 1174 | 1164 |

State where application lodged

| | | | | |
|------|----|----|----|----|
| ACT | 0 | 1 | 2 | 0 |
| NSW | 40 | 34 | 14 | 24 |
| NT | 0 | 0 | 0 | 1 |
| Qld. | 4 | 6 | 3 | 9 |
| SA | 6 | 9 | 5 | 5 |
| Tas. | 1 | 3 | 1 | 2 |
| Vic. | 28 | 22 | 11 | 15 |
| WA | 14 | 9 | 8 | 6 |

*Applications lodged: type of appeal

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|----------------|----|----|----|----|
| Medical appeal | 55 | 53 | 19 | 48 |
| Other appeals | 33 | 29 | 21 | 14 |
| FOI | 5 | 2 | 4 | 0 |