

Freedom of information

LETTS and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. W83/68)

Decided: 2 October 1984 by G. D. Clarkson, I. A. Wilkins and J. G. Billings.

Arthur Letts applied to the DSS, under s.11 of the *Freedom of Information Act*, for access to his pension file. The DSS provided access to most of the file but withheld a file note which recorded an allegation that Letts had been claiming a pension under another name. Letts asked the AAT to review the decision.

The legislation

Section 37(1)(b) of the *FOI Act* provides that a document is exempt from disclosure if its disclosure would identify or lead to identification of 'a confidential source of information in relation to the enforcement or administration of the law'.

The AAT noted that, following the receipt by the DSS of the information contained in the file note, a successful prosecution was brought against Letts under s.29B of the *Crimes Act 1914* for imposing upon the Commonwealth by an 'untrue representation . . . with a view to obtaining money'.

The AAT said that it was quite clear, without looking at the file note, that 'disclosure of that document would reveal the authorship of the information . . . which led to the prosecution of the applicant in enforcement of the law. This is sufficient to establish the respondent's claim for exemption . . .': Reasons, p.8.

HUDSON and DEPARTMENT OF SOCIAL SECURITY (No. A84/79)

Decided: 23 November 1984 by W. Prentice, E. Coates and J. H. McClintock.

Margaret Hudson applied to the DSS, under s.11 of the *Freedom of Information Act 1982*, for access to her family allowance and widow's pension files. When that access was provided, the DSS excluded documents relating to the payment of family allowance for Hudson's children to various other people (who had custody of these children). On review of the decision to exclude those documents from disclosure, the DSS claimed that they were exempt under ss. 38 and 41(1) of the *FOI Act*.

The legislation

Section 38 exempts from disclosure a document if another Act prohibits persons from disclosing information of the kind contained in the document.

(Section 17 of the *Social Security Act* prohibits a person from disclosing to any person 'any information with respect to the affairs of another person acquired by him in the performance of his duty . . . under this Act . . .')

Section 41(1) of the *FOI Act* provides the document is exempt from disclosure if that disclosure would involve 'the unreasonable disclosure of information relating to the personal affairs of any person . . .'

Secrecy provision exemption

The AAT said that the claim for exemption under s.38 of the *FOI Act* might succeed depending on whether s.17 of the *Social Security Act* was 'formulated with such precision that it refers with particularity to the information which must not be divulged': *News Corporation v NCSC* (1984) 52 ALR 277 at 281.

The Tribunal said that it was 'inclined to the opinion' that s.17 had formulated with precision a category of information which should be protected by the prohibition; that the *Social Security Act* sought 'to establish a public interest in the confidentiality of information supplied under it by a person seeking benefits as against the inquiries of other persons'; and that Hudson's claim for access under the *FOI Act* would fail on this basis.

Personal affairs exemption

However, the AAT said, it was not necessary to deal with this point because the documents concerned were exempt under s.41 of the *FOI Act*. In the context of that section, the AAT had to consider—

whether, having regard to the intention of the [FOI] Act to further the public availability of information in Commonwealth files subject to exceptions, disclosure of that information would work such an invasion of the privacy of the persons to whom it referred as to outweigh the possible public right to access to official information, and so be 'unreasonable' within the meaning of the section.

(Reasons, para. 11)

The documents in question contained details of the addresses of Hudson's children and of the people to whom family allowance had been paid for children. These details, the AAT said, were—

details personal to the children and the recipients of the maintenance moneys and not to Mrs Hudson. These matters appear clearly to have current relevance; and we consider the privacy of the children and the recipients as to these personal matters, outweighs any public interest in regard to the general desirability of the information in government files being opened. Our conclusion then is that it would be unreasonable to disclose any of the information in the disputed documents.

(Reasons, para. 12)

Formal decision

The AAT affirmed the decision under review.

Publications

Two articles in recent issues of the *Australian Journal of Social Issues* deal with the assets test.

In the first article John McCallum places the assets test in historical perspective. He demonstrates how the move towards providing universal age pensions allowed the debate to revolve around the asset testing of those not in need but who nevertheless had come to expect an entitlement to age pension.

He comments:

The Assets Test debate should have been about fairness, about help to those in need, instead it was about defending the interests of the wealthy. The failure of the initial formulation of the Assets Test was that it seemed to threaten all pensioners and that help to the needy was relegated to the rhetoric of the announcements. Consequently, opposition to the Assets Test was not from the wealthy, middle class welfare recipients but from a united front of all pensioners who had quite simply had enough of sudden, threatening changes to their income support expectations. (p. 219)

As the introduction of the assets test evidences a move to selective pensions, according to McCallum we should now focus attention on the needy. He concludes that the poor pensioner needs an increase in rate of pension and increased supplementary assistance if a renter.

In the second article Sheila Shaver argues that McCallum does not go far enough. She observes that 'It is unlikely that a simple reversion to welfare for the needy is either possible or desirable.'

The view that the age pension is a right has become to some extent entrenched. This clearly stands in the way of now providing only for the needy.

Further, she argues that a move to selective provision of pension could turn into 'an inward spiral' in which the tax-paying community resent paying for benefits only available to others.

In her view, selectivism 'is an essentially passive response to the demise of full employment and the crisis of the welfare state.'

Positive social policy innovation will have to reach more broadly than the reallocation of existing social security expenditure. In particular, it will have to address the relation between social and economic policy, joining economic policies for industry, employment and structural adjustment with social wage policies which shelter individuals from coercive effects and disproportionate shares of the social costs. These will have to be linked by tax reform for redistributive equity in public finance. Assets testing needs to be thought in this context, as part of tax and social security reform across the population as a whole. (pp. 305-306)

- John McCallum: 'The Assets Test and the Needy', (1984) 19 *Australian Journal of Social Issues* 218;
- Sheila Shaver: 'The Assets Test and the Politics of Means Testing', (1984) 19 *Australian Journal of Social Issues* 300.