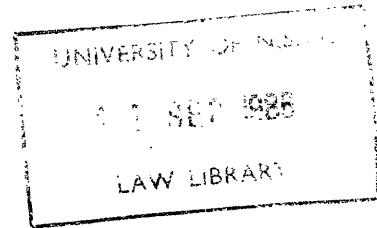


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# SOCIAL SECURITY

Number 32 August 1986



## Opinion

Last December we foreshadowed some modest changes to the structure of Social Security Appeals Tribunals: see (1985) 22 SSR 355-6. Some of those changes are now being implemented. The Minister for Social Security will shortly appoint a principal member 'in each State and Territory to be responsible for the overall operation of the Tribunal in that State or Territory and for the provision of advice and reports to the Minister and the Department'. According to recent advertisements, this will be a part-time position (not full-time, as the Minister had suggested last year). However, a duty statement issued by the Minister in July 1986 indicates a wide range of administrative, policy and information responsibilities - including 'overseeing the quality ... of recommendations', 'directing ... the administrative operations of the Tribunal', and 'liaising ... to ensure [national] uniformity of procedures and consistency of decision-making and approach'. Just how any person will be able to perform these functions in one of the larger SSAT offices (in Melbourne and Sydney, particularly) on a part-time basis, remains to be seen. Very few other changes to the structure or role of the SSATs are to be introduced. In particular, the SSATs will not be given decision-making power: rather, their function is to 'recommend the preferable outcome in accordance with the law', a recommendation which will then be considered by the Department. The fundamental recommendations of the Administrative Review Council, that the SSATs have full decision-making power and some statutory base (rather than depending upon ministerial

directives), have been rejected: see (1984) 20 SSR 226.

An example of the problematic nature of the relationship between SSATs and the DSS arose in April 1986, when the Minister wrote to the convenors of SSATs, 'asking' that they not review any decision taken by the Secretary under s.139 of the Social Security Act. This section authorizes the Secretary (and other officials, including the Director of Public Prosecutions) to 'consent' to the prosecution of offences under the Act.

In his letter of 29 April 1986, the Minister noted that the DPP had a supervisory role over Commonwealth prosecutions; and that 'the public interest is not necessarily best served' by extending administrative review to prosecution decisions.

Whether or not the Minister has a point, one consequence of his request, if it were acted on by SSATs (or if it took the form of a directive) would be to narrow the review jurisdiction of the AAT. That Tribunal's jurisdiction depends, according to s.15A(1) of the Social Security Act, on an SSAT having reviewed the decision under review before the AAT. By directing SSATs not to review certain DSS decisions, the Minister can narrow the review jurisdiction of the AAT - the only independent body with power to change DSS decisions. Is there any other aspect of the AAT's jurisdiction which can be narrowed through ministerial directive, rather than through the normal processes of legislation?

PH

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