

Opinion

The seven years of the *Reporter's* life is a long time in social security: the *Reporter's* short life has seen sharp legislative changes: the assets test for pensions, now extended to benefits; elimination of income support for single parent families with older children, reduced eligibility for unemployment benefits; complete restructuring of income support for young people; and more extensive recovery powers for the DSS.

At the same time, the AAT has introduced independent, and usually well-informed and careful, external review to social security rights: the Tribunal has played an influential role in assessing eligibility for invalid pension, in making the DSS accountable for poor administration and in bringing some sense of purpose to the many discretions included in the *Social Security Act*.

However, in the past year or so amendments to the *Social Security Act* have adopted a new focus: a remarkable number of discretions has been replaced with tight eligibility and disqualification rules. At first glance, this might be welcomed as placing the rights of claimants on a firmer footing; but a closer assessment shows that, in almost every case, replacing discretion with firm rules has reduced the rights of claimants - their rights to income support are now more narrowly defined; and their right to seek review of DSS decisions is, in many cases, no more than a formality. Here are a few examples:

Section 136 provides that unemployment benefit is no longer payable to full-time students.

Section 3 (8) provides that a married couple can be separated under the one roof for a maximum of 6 or (where there are property proceedings) 12 months.

Section 3(10) prevents payment of family allowance for children not yet brought to Australia.

Section 7(4) introduces a statutory formula for 'deemed income' from assets disregarded under the assets test.

Section 88 allows payment of family allowance from the time of lodgment of the claim.

This list is not exhaustive. In each of the examples listed above the previous legislation had allowed for the exercise of a substantial discretion (within well-defined limits) so that individual cases were treated on their merits: see, for example, *Martens* (1984) 22 SSR 248 (unemployment benefit for student); *Kershaw* (1987) 39 SSR 487 (separation under one roof); *Tran* (1987) 40 SSR 503 (family allowance and children in Vietnam); *Copping* (1987) 39 SSR 497 ('deemed income'); and *Ozcagli* (1985) 30 SSR 379.

Of course, not every one of these decisions was favourable to the claimant: but the legislation did allow for a substantial review of the claimant's case on its merits. The emerging pattern in the *Social Security Act*, following the recent trend of amendments, will preclude that possibility.

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The *Social Security Reporter* is published six times a year by the Legal Service Bulletin Co-operative Ltd. ISSN 0817 3524

Editors: Peter Hanks, Brian Simpson

Typesetting: Jan Jay, Laserset Layout: Peter Robinson

The *Social Security Reporter* is supplied free to all subscribers to the Legal Service Bulletin. Separate subscriptions are available at \$20 a year (one copy), \$35 a year (two copies) or \$45 a year (three copies).

Please address all correspondence to Legal Service Bulletin, C/- Law Faculty, Monash University, Clayton 3168.

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