

SOCIAL SECURITY

Opinion

Progress report - a few problems

When the AAT was set up in 1975, one of its objectives was to provide flexible review of decisions made within the Federal bureaucracy.

Is the AAT achieving that objective? One problem is the degree of inconsistency in AAT decisions - without a consistent approach to problems, the AAT will have little impact on the administrative process (see 'Social Security: Resisting welfare rights' (1987) 12 *LSB* 266). This inconsistency is illustrated by the decisions in *Tallon* (p.544) and *Di Pietro* (p.544), dealing with the effect of compensation payments on social security entitlements

Another problem comes from limits on the AAT's review powers. For example, in *Le van Diep* (p.553), the AAT decided that it could not review a decision, made by the DSS, that Le was liable to repay special benefits paid to his father. This was because the DSS decision had not been made under the *Social Security Act* (as s.17(1) requires) but under the Migration Regulations. Disputes over assurances of support, given for elderly immigrants by members of their families, do occur; is there no way of settling these disputes, short of expensive litigation in the Federal Court?

Strange tales, but true

Anyone who works with the *Social Security Act* knows how complex the Act is; and how regularly it is changed. Occasionally, one wonders whether there is an intelligent hand guiding those changes. Take the change to the 'deemed income' provisions in s.7(4), made from 13 November 1987. This change was drafted in response to the

Federal Court decision in *Copping* (1987) 39 *SSR* 497. The Federal Court had decided that the personal situation of a pensioner and her family should be considered in deciding the level of 'deemed income' (income which could 'reasonably be expected to be derived') from property which was disregarded under the 'financial hardship' provision - s.7(1).

The amending Bill would have taken, as the 'deemed income', either 2.5% of the property's income or the commercial market rent, whichever was greater. Obviously, this would have had a serious impact on pensioners who owned marginal farming properties, now being operated by their children - a common situation in assets test cases.

The Government accepted an amendment to the Bill, so that 'deemed income' is now either the 2.5% or the market rent, whichever is the lesser. Even in this form the impact on pensioners with marginal farming properties could be serious, in almost all of the AAT cases where 'deemed income' has been in issue, the evidence has been that the pensioners' children could not pay a rent calculated in this way; so there will be strong pressure to sell marginal family farms.

But here is where the story takes a strange twist: after accepting the amendment to the Bill, the Government gave an undertaking to Parliament that the new s.7(4) would be administered to take account of 'the overall financial situation of the family member' working a pensioner's farm, when deciding what rent that family member could reasonably be expected to pay. The DSS is apparently following that line of approach - it is as if, for pensioners with farms being worked by family members, s.7(4) was never amended! The legality of the Government's undertaking and of the DSS practice was queried by the AAT in *Sharpe* (p.542).

[P.H.]

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