

Background

Behind closed doors – with the SSAT

Not only must justice be 'seen' to be done in the abstract sense – it is important that the proceedings of decision-making bodies be also physically visible - all things being equal. And therein lies the rub, especially for administrative bodies making decisions on appeal requiring the interpretation of legislation – the very nature of the cases cries out for privacy as compared with (say) criminal court trials.

But if the social security appellant is to be afforded a hearing in private, with not even professionals such as social workers or lawyers being admitted unless they are involved in the case, how do such professionals acquire their own necessary practical experience of the proceedings?

This article is not intended to probe the pros and cons of open or closed (or partly closed) Tribunals, but it is desired to draw attention to the fact that closed

Tribunals such as the SSAT need continually to pursue a course of public education to ensure that the community at large is alerted to their rights of appeal and how to exercise those rights.

Accordingly, the veil needs to be lifted and the publicity needs to be more vigorous than may be required for appeals to courts where the public may be expected to approach their solicitors readily enough for advice.

It is intended therefore that this introductory article will be the first of a series from the various SSATs in the States.

The ultimate object is to ensure that not only the practitioners but the public at large feel at ease with a knowledge of their rights and a readiness to act where they may feel aggrieved with initial decisions against their claims.

Success rates in the SSAT

Appellants may be comforted by figures showing the percentage of successful appeals under particular legislation; and so the matter is here discussed but with heavy qualification.

When legislation is new or complex or both, a range of interpretations may

be expected at primary level and it is not surprising if an appeal body allows a relatively high level of appeals in whole or in part. Conversely, the law may be relatively clear or long established with many precedents and well known decided cases. In the latter situation successful appeals should be relatively hard to achieve in large numbers.

In the case of social security legislation where the law has been constantly changing, at least one-third of departmental decisions appealed to the SSAT have been set aside by the SSAT Australia-wide in recent times. This is not to say that this success rate will continue but at least the history to date should encourage appellants who feel they have a valid case.

Deirdre Fitzgerald

[Deirdre Fitzgerald is the Senior Member of the SSAT in Melbourne.]

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Letter to Editor

Dear Editor,

I am writing to correct an article by Allan Anforth which appeared in the *Social Security Reporter*, No. 58, December 1990.

The new s.4C of the *Social Security Act 1947* (the Act) does not apply to managed investments the rate of return of which falls below 10% as was suggested by Mr Anforth in his article. Mr Anforth's article is based on the premise that managed investments such as life insurance bonds, rollovers and units in public unit trusts are 'loans'. This is incorrect and contradicts the plain meaning of the term 'loan' which is used for social security purposes. Had Mr Anforth contacted the Department before publishing his article, this would have been explained to him.

The new s.4C of the Act provides for the assessment of loans in determining a person's entitlement to pension or benefit under the income test. Apart

from adopting the ordinary meaning of what constitutes a loan, the definition of loan in s.4C includes a specific reference to debentures, bonds, such as government and semi-government bonds, and other securities such as commercial bills. Other investments covered by Division 2 of Part 1 of the Act are not loans in the ordinary meaning of the term and there is no intention to bring them within the definition of 'loan'.

It would be appreciated if you would bring this matter to the attention of your readers.

D. Volker,
Secretary, DSS