

Reporter

UNIVERSITY OF N.S.W.
11 SEP 1991
LAW LIBRARY

Opinion

The 1991 Social Security Act

The *Social Security Act* 1991 commenced operation on 1 July 1991. It replaced the *Social Security Act* 1947—a consolidation of legislation passed between 1909 and 1945.

The 1947 Act was, as most readers of the *Reporter* will know, frequently and intensely amended; so that, by 1990, it was a strange and often opaque mixture of ideas and expression, spanning 80-odd years.

The 1991 Act was drafted to reflect, in a more rational and functional form, the rules and policies set out in the 1947 Act. It is the first Commonwealth legislation expressed in 'clear English'. When introducing the legislation, Social Security Minister Brian Howe said it had 2 aims:

'The first has been the aim of making each individual provision as simple and easy to read as possible. The second has been the aim of making the arrangement of the provisions in the Act logical and easy to follow.'

Howe said that the primary purpose of the new legislation was —

'to overcome readability problems that had developed mainly as a result of the volume of changes made to the current Act since 1947.'

The structure of the Act has been radically changed; and it has grown from 253 sections in the repealed Act to almost 1400 sections. These changes will no doubt require real adjustments on the part of readers. Will that effort be rewarded?

My short experience in working with the new Act suggests that, although the learning

curve may be steep, the end is worth the effort. The new Act is far more user friendly: for example, its treatment of different programs is consistent and logical; and the new rate calculators for pensions, benefits and allowances (set out in Chapter 3) have reduced some of the more obscure and frustrating elements of the old Act to a process which, so long as the user doesn't panic, actually works.

For the present, the AAT probably won't be able to test the advantages of the new Act. The transitional provisions, in Schedule 1A to the 1991 Act, seem to mean that the merits of appeals to the AAT which were outstanding at 1 July 1991 will be dealt with under the 1947 Act; although the procedural rules of the 1991 Act will apply.

The 1991 Act does include some policy initiatives: the Job Search and Newstart Allowances have replaced, from 1 July 1991, unemployment benefit. There are some remarkable innovations in the new provisions—particularly the Newstart Activity Agreements, which all unemployed people will be required to negotiate after 12 months on Job Search Allowance; and which will then be used to control their continued eligibility for Newstart Allowance.

No doubt the administration of these Agreements will generate considerable friction between the CES (appointed to administer this aspect of the Newstart Allowance program) and clients of the DSS. At least, thanks to amendments to the legislation negotiated between the Government and the Australian Council of Social Service, persons dissatisfied with the CES administration of most aspects of the Agreements will have the right to appeal to the SSAT and the AAT.

[P.H.]

In this Issue

Opinion

AAT decisions

- Income test: interest-free loans *Hill... 858*
- Income test: Pyramid investment *Raisbeck... 858*
- Maintenance income test: *Young... 859*
- Maintenance income test: SSAT jurisdiction *Haddon... 859*
- Overpayment recovery *Smith... 860*
- Assets test: financial hardship *Gates... 860*
- Assets test: valuation of debt *King... 861*
- Assets test: secret trust? *Macrides... 862*
- Special benefit: unable to earn *MD... 863*
- Special benefit: residence *Sritharan... 863*
- Unemployment and sickness benefit: self employment *Richards... 864*
- Cohabitation *Mills and Lyle... 865*
Morris... 865
Rabbets... 866
- Family allowance arrears: date of effect of decision *Moore... 867*
- Overpayment: unable to quantify *Weir... 868*
- Invalid pension: incapacity for work *Zammit... 868*
Hughes... 869
Stanisavljevic... 869
- Compensation recovery: part of lump sum payment by way of compensation *Zanin... 870*
Gardiner... 870
- Sickness benefit: 'decision' to reject a claim *Mecozzi... 871*
- SSAT jurisdiction: reviewable decision *Sebaratnam... 872*
- AAT review and criminal proceedings *Skinner... 873*
Pluta... 873
- Backdating invalid pension: claim for another payment *Calderaro... 874*

Federal Court

- Cohabitation *Hilton... 875*
- Waiver of AUSTUDY overpayment *Migotto... 875*
- Discretion to disregard compensation payment *Smith... 876*

The *Social Security Reporter* is published six times a year by the Legal Service Bulletin Co-operative Ltd. Tel. (03) 544 0974

ISSN 8017 3524

Editor: Peter Hanks

Contributors: Peter Hanks, Regina Graycar, Denny Meadows, Jenny Morgan, Brian Simpson, Beth Wilson, Pam O'Connor, Allan Anforth and Christine Heazelwood.

Typesetting & Layout: Graphic Zone

Printing: Thajo Printing, 4 Yeovil Court, Mulgrave.

Subscriptions are available at \$35 a year, \$25 for Legal Service Bulletin subscribers.

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

Copyright © Legal Service Bulletin Co-operative Ltd 1991

Registered by Australia Post — Publication No. VBH 6594