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Including Student Assistance Decisions

Opinion

Changes at the SSAT

From 15 March 2002 a number of familiar faces have been missing from the Social Security Appeals Tribunal (SSAT). The directors in Melbourne, Canberra, Darwin and Hobart were not reappointed — not all of them in fact applied for reappointment. Christine Heazlewood, Rieteke Chenoweth, Jill Huck and Carol Hughes had been members and senior members, then directors for differing lengths of time, but they were all experienced members who will be sorely missed by the rest of the membership, and the organisation as a whole.

Christine Heazlewood, Rieteke Chenoweth and Jill Huck contributed an enormous amount to the reputation of the SSAT for efficient, correct, accessible and fair decision making. I am concentrating on the role of these three as they have been active as members for the longest period.

They embodied in their work and their cooperation the ethos of the SSAT as a multi member, multidisciplinary decision-making body, in which all members had a valuable role that was recognised and valued by each other member.

Each of them contributed papers and discussion to many Australian Institute of Administrative Law conferences, which ensured that the members — not just of the SSAT but also of a range of administrative review tribunals — thought about and redefined their roles as members of these tribunals.

Christine Heazlewood was appointed to the SSAT in May 1989, after having previously worked at the AAT in the area of social security law. She remained a part-time member of the SSAT with a break for a two-year period at the Superannuation Complaints Tribunal until she was appointed senior member in Melbourne in April 1998. This does not, however, adequately convey the amount of work she did for the Tribunal and its members. Nor can this convey her commitment to the parties before the SSAT. She was committed to the applicants and their right to have the correct decision made in their case. She was no less committed to the role of the SSAT as a guide to the departmental decision makers. A strong administrative review tribunal system ensures not just that the correct decision is made in the matter before the Tribunal, but that first-instance decision makers have an enhanced understanding of the legislation, and therefore first instance decisions are more likely to be correct.

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AAT Decisions

Background

person's control, to the Department if the Secretary considers that the information or document may be relevant to the question of:

(a) whether a person who has made a claim for a social security payment (other than pension bonus) under this Act is or was qualified for the social security payment; or ...

1304(2) A requirement under subsection (1) must be by notice in writing given to the person.

1304(3) The notice must specify:

(b) the period within which the person is to give the information, or produce the document, to the Department; and ...

1304(4) The period specified under paragraph (3)(b) must end at least 14 days after the notice is given.

...

1304(7) A person must not, without reasonable excuse, refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it.

Invalid notice

There was no dispute between the parties as to the facts. The Tribunal noted that Trieu felt aggrieved and discriminated against in her dealings with Centrelink.

The refusal to grant family allowance arose because the Department identified from a cross-matching of Commonwealth records, information which suggested that Trieu had assets which had not been disclosed in the course of her application for various benefits, including family allowance. The Department then sought tax returns and Notices of Assessment for the financial year 1997/98 from the Trieus. The request was made verbally and on the same day a Notice under s.1304 of the Act (the Notice) was sent to Trieu. The notice requested the information be provided within seven days.

Trieu provided the requested 1997/98 Notices of Assessment but not the requested tax returns. In the letter enclosing the Notices of Assessment Trieu noted that the legislation allowed 14 days. The Department rejected the family allowance application because Trieu had not provided all the requested information

The Department accepted that the notice should have given 14 days for compliance but notwithstanding the provisions of s.1304, the Department submitted it was the responsibility of claimants to justify their entitlements and to support their assertions with evidence so that the claim could be accurately determined. Where claimants failed to produce relevant information, their claims were liable to rejection. The Department also submitted that the issuing of a valid notice and failure to comply were not prerequisites to a decision to reject a claim and the evidence required by the Department to determine the claim was clearly made known to Trieu.

The AAT accepted as a general proposition that the issuing of a (valid) notice under s.1304 and failure to comply with such a notice, are not prerequisites to a decision to reject a claim. However, in this matter, the Department decided not to make a decision on the information provided by Trieu in support of her claim, but to seek further information 'bolstered' by the issue of a notice under Section 1304. It was entitled to do so, but clearly not entitled to alter the legislatively determined 14-day response time to seven days.

The AAT further accepted that a copy of Trieu's taxation return and group certificate for the relevant period could reasonably be considered to be relevant in determining the appropriate rate of payment of the pension. The AAT stated that section 1304(4) of the Act is clear in its terms that the notice allow at least 14 days after the notice is given, for compliance.

The AAT considered that because the oral requests for the tax returns were not complied with, the Department adopted a more formal course of issuing a Notice under s.1304 of the Act. The Tribunal found that Notice was patently invalid and Trieu had no obligation to comply with such a Notice. Consequently, the AAT found that the decision by the Department that Trieu was not entitled to family allowance on the basis of failure to comply with the defective Notice was flawed.

Furthermore, having adopted the course that information was to be provided in response to the Notice, rather than by way of response to a verbal request, the DFaCS was not then entitled to rely on the failure to provide information which had been requested verbally to disentitle the applicant to family allowance.

Accordingly, although the inspection and study of the applicant's tax returns for 1997/98, if she eventually supplies them in response to a correctly given notice may either indicate Mrs Trieu is eligible for Family Allowance, or in the alternative that she is not, Mrs Trieu will have been provided every opportunity of pursuing her case in accordance with the legislation. Therefore the decision which must follow for the moment is as follows (Reasons, paras 35 and 36).

Formal decision

The AAT set aside the decision of a Centrelink delegate of DFaCS, dated 16 November 1999 as affirmed by an Authorised Review Officer of the DFaCS on 20 January 2000, and the Social Security Appeals Tribunal on 2 June 2000 to reject Trieu's claim for family allowance. The AAT remitted the matter to the DFaCS to be reassessed taking the findings made in the Reasons for Decision into account.

There was no application before the AAT with regard to the health care card, and the Tribunal did not make a decision in that regard.

[M.A.N.]

Opinion continued from front page

Both Jill Huck and Rieteke Chenoweth, were first appointed as part-time members in 1986. By their interest and knowledge they ensured that the concept of multi-member panels at the SSAT was a reality, and not, as has been stated elsewhere, a matter of providing 'bookends'.

The decision not to have directors in the smaller States will make it more difficult for members in these States to ensure consistent and high quality decision making. The directors acted as foci for discussion and as the repository of the organisation's memory.

These members have not only contributed to the jurisprudence of the SSAT, but to the strength of administrative review in the Commonwealth. Members on most administrative review tribunals throughout the Commonwealth would have had the benefit of their input in the training and procedure of their tribunals.

The loss of the accumulated organisational memory of these members must be seen as a loss to the ability of the SSAT to go forward with full knowledge and awareness of its history, its aims and its possibilities.

I wish all of them the best in any future careers. I hope that their knowledge and experience is not totally lost to the administrative review system. I hope the SSAT will continue to be the successful efficient and accessible tribunal that it has been to date.

[A.B.]